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**‘The Locus of Creativity in Classical Performing Arts: Economics  
and Intellectual Property in Theatre Management’**

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## **'The Locus of Creativity in Classical Performing Arts: Economics and Intellectual Property in Theatre Management'**

### **Abstract**

*The major challenge facing performing arts in general and classical dance theatres in particular is about inducing and protecting 'creative aesthetic expression'. In this paper it is argued, that a classical dance theatre of the 21<sup>st</sup> century will be able to sustain itself in the long run, only if it can realize the economic value of its creative capital, through appropriate product pricing strategies and IP Protection tools. The initial section of the paper seeks to distinguish the 'creative aesthetic expression' element in Classical Dances from its 'technical virtuosity'. The focus of the paper thereafter shifts to possible philosophical and functional trajectories of repertoire driven theatres. The paper then proceeds to consider the micro-economic and intellectual property implications of these trajectories. Here the effort is to understand the 'pricing' strategies of 'repertoire deepening' and 'repertoire widening' classical dance theatres. The paper seeks to bring out the latent Brand Value of a classical dance theatre in terms of its product pricing dynamics. The paper finally delves on the ideal of 'creative commons' as a brand equity optimizing tool. It is argued that the ideal of 'creative commons', if applied to the creative assets of a classical dance theatre, can deliver optimum benefits not only to the theatre and its artistes but also to the country to which the art/ dance form belongs. The paper bases its analysis by drawing upon the examples of Classical Russian Ballet and India's classical Sanskrit Dance form, 'Koodiyattom'.*

**Keywords:** Creative Aesthetic Expression, Repertoire, Deadweight loss, Latent Brand Value , Russian Ballet, Koodiyattom

## **The Locus of Creativity in Classical Performing Arts: Economics and Intellectual Property in Theatre Management**

“The originality of genius in art as in science consists of a shift of attention to aspects of reality previously ignored, discovery of inner connections and the perception of familiar objects or events in a new light.”

Arthur Koestler, The Act of Creation, 1964

### **Background**

One of the major challenges facing performing arts theatres and notably classical dance theatres (the focus of this paper) relates to inducing and protecting ‘creative aesthetic expression’. Experts grappling with Intellectual Property Rights (IPRs or IP hereafter) would argue that creative content and expression are intellectual assets which need to be ‘protected’ in order to generate incentives for the creator /originator of ‘aesthetic’ expression. However those who see classical performing arts, notably classical dances as ‘traditional’ would argue for their protection as ‘traditional knowledge’, ‘heritage’ or ‘grand inheritance’ in view of their richness, splendor and timelessness. Both points of view have their relevance to classical dances.

However, more deeper is the issue of delineating ‘new’ and ‘creative’ aesthetic expressions in traditional performing arts – expressions that occur from time to time and provide interesting extensions to existing precepts. This brings us to two major pathways available to a theatre of classical dances. The first one is of sticking to the ‘old’ in its repertoire and working hard to impart the theatre’s stamp of creativity or style on ‘old’ classical dance themes. This pathway is termed here as ‘repertoire deepening’. The second pathway for a classical dance theatre is to ‘widen its repertoire’ by focusing on new plays and ensuring that these plays as performed by the theatre’s artistes carry a high degree of technical proficiency.

Indeed when it comes to classical performing arts that are rooted in traditional canons (like Bharatha’s ‘Natya Sastra’) , the task of delineating the creative ‘spins and turns’ generated by artistes or choreographers that go beyond ‘laid down’ choreographic canons, is not easy. The overbearing weight of the ‘canons’ of classical dance on technique, style, theme, choreography, music and motion should not, in the normal course, make it easy for new forms of ‘creative improvisation’ to be tried out by theatres or artistes. In this paper, it is argued that while there is creative content in traditional canons, there exist great possibilities for new forms of creativity originating or springing from canonical traditions, particularly in the hands of talented artistes and/or choreographers who look for aesthetically pleasing innovations. To

take note of these forms of creativity and having a strategy to protect them would be the first critical objective of talented theatres, their prima stars and the country/ community that nurtures them.

However when theatres attempt to make their mark on new plays or dance themes, it engenders new problems. The problem with new plays is that their ability to gain the acceptance of connoisseurs and discerning spectators is low. This may not only be due to the cognitive grip of classical dances in the minds of connoisseurs and impressionable lay spectators, but also on account of the limited ability of such new offerings to generate sparks of creative aesthetic expression, despite these new products being of high quality when it comes to 'technical virtuosity'. Thus, a theatre that focuses on 'repertoire widening' is constrained by the relative paucity of creative aesthetic resources. Their systems and techniques of pricing their offerings and protecting their intellectual assets are constrained by the paucity of creative aesthetic resources. By contrast, theatres that engage in 'repertoire deepening' (or working on the 'old') over a long period are rich in creative aesthetic resources.

It will be instructive to discuss these aspects with reference to Classical Russian Ballet and India's classical Sanskrit Dance form, 'Koodiyattom'. These two dance forms, though belonging to two culturally distinct countries, have the common feature of being steered by the 'visible hand' of the State.

### **Technical Virtuosity Vs Creative Aesthetic Expression**

It is impossible to separate technical virtuosity from creative aesthetic expression in classical performing arts in general and classical dances in particular. What is perceived as technical virtuosity may morph into 'creative aesthetic expression' with passage of time. Classical Western Ballet is stated to have originated in Italy. The dance form thereafter spread to France and Russia to create its own Russian, French and Scandinavian variants. The 'pointe' (standing on one's toes) is the most evocative symbol of Western Ballet. It is chronicled that Marie Taglioni, the celebrated Italian Ballerina tried out 'pointe' as a choreographic element for the first time in 1832, while performing in *La Sylphide*. Though Taglioni used the 'innovation' to heighten the aesthetic quality of her dance, 'pointe' was seen more as an 'outstanding technique' that supplemented other techniques such as 'gravity beating leaps' and 'centrifugal spins' that had characterized ballet dance until then<sup>1</sup>. Thus with 'pointe' becoming a technique, 'grace', the 'lightness' of stage presence and 'floating motions on stage' became the hallmark of creative richness that distinguished a 'great' ballerina from an 'excellent' one. However Marius Petipa, the star choreographer of the Mariinski Theatre of Russia in the late 19<sup>th</sup>

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<sup>1</sup> The Italian Carlo Blasis school was noted for 'techniques and virtuoso steps'. A case in point of a great technical feat in Ballet was the thirty-two turning fouettés introduced by Pierina Legnani in the 19<sup>th</sup> century. See Illarinov, Boris, et al, (2008).

century, redefined 'pointe' once again. He 'turned the technical feat / stunt of pointe into a poetic metaphor, aided by the lyrical quality of Tchaikovsky's music (Homans, 2010, p 275-276). Thus what was a 'technical virtuosity' turned into a 'creative aesthetic expression' aided by poetics and lyricism of accompanying music<sup>2</sup>.

Much later, at the turn of the 20<sup>th</sup> century, when the Russian intellectual maverick, Sergei Diaghilev, initiated the 'Ballet Russes' Company ( for staging Russian Ballet ) in Paris, it led to the mushrooming of new 'creative turns', which the world of ballet had not seen until then. Vaslav Nijinsky the talented dancer turned choreographer was the ultimate vehicle of 'creative aesthetic expression' as far as Ballet Russes was concerned. The 'Rites of Spring' which Nijinsky choreographed and Igor Stravinsky scored the music for, was performed for the first time in Paris in 1913. The Ballet was a riot of colors and creative aesthetic expression. Similarly Mikhail Fokine's 'ballet passeism' with its emphasis on lightness and airiness of dance was another treasure trove of creative aesthetics<sup>3</sup>.

In the 1960s, another superbly talented Mariinskian, Rudolf Nureyev ( who defected from Soviet Union and sought asylum in France in the 1960s) , gave fundamental 'creative turns' to the Petipa version of Swan Lake, through aesthetically pleasing changes in choreography and alterations to the original ballet's situational context.

Indian classical dance forms have a different dimension when it comes to technical virtuosity and creative aesthetic expression. While the precision of footwork and related motions define the technical virtuosity of Indian Dances, it is the 'motion' in its relation to the dancer's facial expressions that affords scope for creative aesthetic excellence. This aspect is underlined by Kothari (1979) as 'Abhinaya'. As Kothari says.' A creative dancer enhances the impact of the poetry with the art of abhinaya which a connoisseur, the sahridaya, relishes' (p39-46). While Kothari (a performing arts scholar and dance connoisseur) sums up his concept of creative aesthetic expression in this manner, the legendary Bharatha Natyam Dancer Yamini Krishnamurthy offers a philosophical approach to creativity. For Krishnamurthy, 'creativity' is an artiste's process of self- realization 'that involves the twin dimensions of internal self awareness and external expression, as perceived by the spectator' (Yamini Krishnamurthi and Renuka Khandekar, 1995, p X).

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<sup>2</sup> While the technical virtuosity element in Western Ballet has its roots in the athleticism of the Italian School of Ballet, the creative aesthetic element of the dance form is considered to be the offshoot of French Romantic Era Ballet

<sup>3</sup> The epitome of the creative aesthetic expression in early 20<sup>th</sup> century Western Ballet was Anna Pavlova. Nurtured by Petipa and Fokine. 'her quivering arms and simple leg movement's en pointe portrayed the image of frail beauty'. This statement conveys that the element of creative aesthetic expression in Classical Ballet is centrally defined by the beauty and aesthetics of motion (Illarinov, Boris, et al ,2008, p 78).

The space for elaboration in 'Abhinaya' provides scope for creative aesthetic expression in Indian classical dances. This enables an artiste of Indian classical Dance to transcend the canons of choreography. However the 'elaborateness' of 'Abhinaya' may or may not be related to long time frames of acting. In the case of the Koodiyattom play *Ascharya Choodamani (or 'Wonderful Crest Jewel')*, the detailing of a single Act goes over a prolonged period of 41 nights (Baumer and Brandon, 1993), while in Bharatha Natyam, Rukmini Devi Arundale had demonstrated many years ago, that a high degree of creative aesthetic expression can be captured through the 'genius of compression' that does not let off anything even from a 'long, discursive and descriptive poem' like Kalidasa's *Kumarasambhavam* (Leela Samson, 2010, p 139)<sup>4</sup>.

### **Creativity in Classical Performing Arts: Repertoire Widening Vs Repertoire Deepening**

The foregoing discussions bring out examples of how creativity can be distinguished from technical virtuosity both in Classical Ballet as well as in Indian dances. The essence of creative aesthetic expression in both forms of dances can be related to the poetic dimensions of dance. In a repertory theatre (where the same company of artistes perform in different plays throughout a performance season), it is likely that the creative aesthetic expression assumes the form of the 'genre' of the theatre. Indeed the 'genre' of a great theatre's dance style suffuses all the plays contained in its repertoire (or its performance portfolio). Thus, the Mariinski's Theatre's 'House version' of *Swan Lake* has its unique choreographic element which can be distinguished from that of the Bolshoi Theatre's version of the same Ballet. The version of 'Raymonda' as rendered by the Paris Opera (a la Nureyev) or the New York City Ballet Theatre (a la Balanchine) would be different in style from the Russian theatres mentioned earlier.

The style or genre of a theatre can be distinguished in terms of nature of motions, sequence of motions and elaborations of sequences in a Ballet or dance. Indeed there could be even differences in the stage plan, costumes, backdrops and appurtenance for the same ballet/dance across theatres, though in terms of the story line and characters, all versions tend to be the same. Very often, as in the case of Russia's Mariinski theatre, the technical style of the theatre gets imparted by Ballet Academies which train and nurture talent at a young age. Thus the St Petersburg based 'Vaganova Ballet Academy', which serves as the Mariinski Theatre's training academy and recruitment ground for young artistes, serves as the vehicle of the Mariinski technical genre. This is on account of the fact that the lead choreographers of Mariinski have served as lead teachers at the Academy<sup>5</sup>.

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<sup>4</sup> It is stated that Rukmini Devi Arundale, at the behest of Anna Pavlova, took upon herself the task of cleansing the traditional 'sadhira' dance of the Devadasis of its sringara and eroticism. She coined the term 'Bharata Natyam' by which the dance form is known today.

<sup>5</sup> Indeed the French born star choreographer, Marius Petipa, the premier maître de ballet at the Mariinski Theatre, who created forty-six original full-length ballets during his 60 year life with Mariinski, was the leading teacher in Vaganova from 1847. He was later on followed by another genius, Mikhail Fokine from the same theatre. Fokine donned the lead Ballet Teacher's role in Vaganova for nearly 12 years and until

Establishing a 'theatre specific genre' of 'dance style' is a passage in time. Choreographers, dance teachers and outstanding artistes, contribute to the process as much as stage and backdrop designers. The genre is acquired imperceptibly. This is because a 'genre' is not just an outstanding creative moment - it represents a system of 'creative aesthetic expression' that is unique and is of distinctive 'quality'. Creative aesthetic expression originates as a series of 'deviant sparks' in a choreograph or a dance sequence to begin with. It then stretches along to suffuse a play or a theater's repertoire over a period of time. By contrast, 'technical virtuosity' is accumulated faster, through rigorous background training. 'Technical virtuosity' is a *sine qua non* for any new choreographic score to get enlisted in the repertoire of an established theatre.

Thus the repertoire is the artery of a classical dance theatre. It symbolizes 'genre', 'identity' and 'diversity' insofar as a theater is concerned. More fundamentally, repertoire is what provides economic sustenance to a theatre.

As a matter of fact, every big theatre, that has to rely on State subsidies or on market forces for sustenance, is compelled to achieve 'economies of scale' in its operations. Economies of scale are attained when a theatre undertakes performances of the ballets / dances that figure in its repertoire on a regular basis. Alternatively, under compulsion from its financier, a theatre may seek to expand its repertoire to incorporate new choreographic pieces to keep itself afloat. Sometimes this process of incorporating new pieces in its repertoire may be at the behest of its financing agency<sup>6</sup>.

The process by which a theatre or a dance form attempts to increase the aesthetic content of existing ballets/ dances in its repertoire is termed by us as 'repertoire deepening' while the process of incorporating new choreographic pieces to its repertoire is defined by us as 'repertoire widening'. The experiments attempted with the Soviet Ballet in Russia (from 1917 to 1980s) involved 'repertoire widening', a process that was motivated by ideological considerations (viz, Communist Philosophy). As suggested earlier, in the pre Soviet phase, at the beginning of the 20<sup>th</sup> century there was a similar experiment with 'repertoire widening' that

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an year before Russia's Bolshevik Revolution. (<http://vaganovaacademy.com/A/AYVaganova>). The most distinguished pedagogy of the School came from Agrippina Vaganova, the distinguished Russian Ballerina turned teacher, who wrote the classic 'Basic Principles of Classical Ballet' in 1934., a book which is considered to be the magnum opus on the technique of Russian Ballet.

<sup>6</sup> The economies of scale problem are compounded by the fact that the fixed and sunk costs of performing arts theatres are high. Fixed costs include costs incurred on management personnel and artistes (including those who are on short-term contracts). Interestingly, it is common for rehearsal costs to be treated as sunk costs by a performing arts theatre. On the top of it, if a theatre has a permanent structure (building and stage) for performance (such as Mariinski, Bolshoi, Paris Opera), it has to carry the burden of running the structure. This adds to the Baumol's 'cost disease' problem. Schechner (2003, p14) therefore is right, when he considers great Theatres to be economically, 'non self supporting' Performance Spaces. Caves (2002, p 213) sums up the problem differently, As Caves states, 'The fixed costs of a performing arts organization can be divided into those associated with management and those who are with the artistic side of the enterprise. Management costs are labor costs for personnel dealing with the business side of the arts – planning, hiring, bookings, finance and so on – and the artistic director will also be part of the management team. Office and other running cost also come in this category. Yet even when the company is permanent, individual performers and other artistes, such as conductors or choreographers may be hired on short-term contracts for specific productions. Rehearsal time costs include the costs on labor time and space rentals. However, rehearsal costs are sunk costs as they are specific to particular productions.'

was attempted under the aegis of *Ballet Russes* Company of Sergei Diaghilev. Ballet Russes showcased Russian Ballet in France (Paris) and in West Europe. The *Ballet Russes* Company was imbued by nascent nationalism and cultural expansionism which in turn underlay the foreign policy of Czarist Russia in the pre-Revolution phase<sup>7</sup>.

These trends of Repertoire Widening noticed of the Russian Ballet during the Czarist and Soviet periods were undertaken at the behest of the State, which formed the predominant source of funding for Ballet and Opera theatres<sup>8</sup>.

Repertoire widening as was practiced in Soviet Russia involved the introduction of new choreographic creations of high technical virtuosity. The dimension of 'creative aesthetic expression' that goes with genre development and 'repertoire deepening' was less visible in the new creations. Even today the 'new creations of the Soviet period' do not enjoy the viewership premium of the Petipa classics.

Coming to Indian Dances, notably that of Koodiyattom in the 20<sup>th</sup> century, the opposite trend of Repertoire Deepening is noticed. Koodiyattom, the dying, ancient art form of Kerala in India was revived in 1970s with the support of State Funds. State support for Koodiyattom in the 1970s aimed to support initiatives that aimed to excavate lost texts and choreographic pieces, polish them and refine their aesthetic content. This represented a serious effort to deepen the traditional Koodiyattom repertoire.

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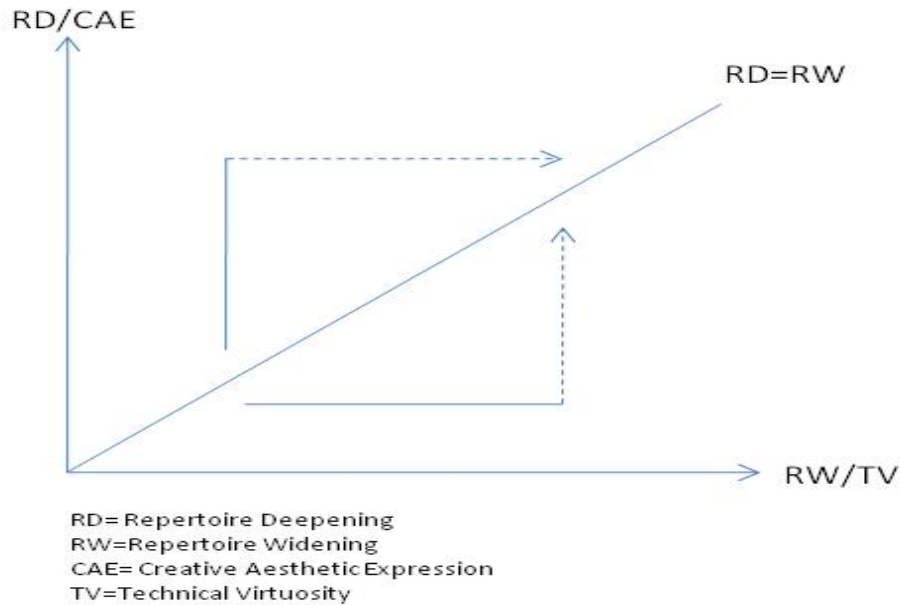
<sup>7</sup> Illarinov, Boris, et al, 2008; Also see Homans (2010) for a scintillating discussion on Ballet Russes and the Soviet Ballet in the 20<sup>th</sup> Century. Illarinov, Boris, et al mention 'Petrouchka' and 'Chopiana' (renamed as Le Sylphides in the West) to be 'new creations' attempted by Fokine for Ballet Russes in the pre-Soviet phase, while Homans (2010) lists 'The Fountain of Bakhchisarai', 'Red Popy' and the 'Tractor Ballets' series, as stellar examples of new creations attempted in the Soviet period to suit the Art Policy of Stalin (as expounded by his lieutenant Zhdanov) (ibid). In this paper, we term these initiatives as examples of 'repertoire widening' that were tried out to serve ideological purposes.

<sup>8</sup> This is not to deny the role of private capital in financing Russia's performing arts theatres in the Czarist phase. Notable cases of privately financed theatres, include those set up by the Moscow based Railway magnate, Savva Mamontov. Mamontov's private Opera in Moscow in 1885 is stated to have outshone and eclipsed the Bolshoi. Until his fall in 1898, on account of corruption charges of diverting Railway funds to patronize his opera ventures, Mamontov was rated as the greatest private patron of performing arts in Russia (See Figes, 2002 for a brilliant recount).



**Figure 1**

**Repertoire Deepening vs Repertoire Widening**



The contrast in approaches to Repertoire Management between Russian Ballet and Koodiyattom is captured in Fig 1. The reclining 'L' shaped curve in the top Panel in Fig 1, represents the case of Koodiyattom in India in the period after 1970s. The vertical line of the reclining L curve in the top panel indicates 'Repertoire Deepening' attempted for Koodiyattom in the 1970s in Kerala (India), while the horizontal line of the inverted L curve on the top panel indicates that there have been incipient trends towards 'repertoire widening' noticed for Koodiyattom at the turn of the current century. This trend might have been necessitated by the need to take Koodiyattom to the masses, in the wake of UNESCO recognition for the dance form (See Box 1).

The inverted 'L' shaped curve in the bottom Panel represents the case of Russian Ballet in the pre Soviet and Soviet phases. The lower Panel indicates 'repertoire widening' in the pre Soviet and Soviet phases. There is some evidence of 'Repertoire Deepening' (and genre development) in the 21<sup>st</sup> century in leading Russian Ballet theaters, following the liberalization of theater management in post- Communist Russia. The efforts of Bolshoi and Mariinski to seek private sponsorships for their shows and festivals, and to 'deepen the aesthetics' of their conventional and new ballet scores are indications to this effect. Finally, the 'big push' accorded by both theatres to show case their 'home productions' in West Europe and USA in the preceding decade, also indicates 'Repertoire Deepening'.

## **Locating, delineating and Protecting Creative Aesthetic Expression**

An individual (or an organization) who (which) produces creative content needs to make a systematic effort to track, assess, archive and protect her (its) creative content. Indeed many organizations archive their products but do not grade or sift their content to segregate their uniquely creative content from the products that are characterized by normal creativity. And this unique content may not just lie in the narrow visual depiction of an artiste's motion. As Adorno states (1986, p146) states, 'Every experience of works of art has to go beyond the visual aspect. If art were only visual and nothing else, it would be an insignificant event, an effect without a cause'. It is the ability of an art form to evoke feelings in the spectator that is important. This may arise from a high quality visual image and the poetics of creative dancing. Alternatively it may evolve from cognate associations with elements of the cultural landscape including native health and treatment systems that stress on holistic sensibilities (Damodaran, 2002).

The real problem in dance forms such as the Classical Russian Ballet or Koodiyattom, is that the creative aesthetic expression of an artiste evolves over a long period of time, through repeat performances. In the short run, the element of 'creative aesthetic expression' largely remains subsumed under a ballerina's / dancer's larger image as a technically profound artiste. The need to tease out the creative and innovative contribution of a performer as distinct from her 'image' as a technically accomplished artiste, is a felt necessity as this helps us understand the basis of an artiste's real image and her self actualization.

There is also an image of the theatre that the artiste/ballerina works for. This may lie in the special manner and style characterizing its repertoire, which may in turn be associated with the innovations attempted by its choreographer on given and long existing ballet 'script'. An example is Rudolf Nureyev's choreographic version of 'La Baydere' which is different in style from the Petipa original. This change may be further enriched by the creative aesthetic expression that artistes/ ballerinas display in the course of enacting the dance.

The technical virtuosity of Koodiyattom possibly lies in its technique of 'pranamayakosa' (play of breath) and the resultant elasticity of performance displayed by the artiste (Gopalakrishnan, op.cit, p 110). The locus of creative aesthetic expression in Koodiyattom lies in the considerable scope the dance form provides to the artiste (not choreographer) for 'imaginative fancy' (ibid,p 24). This, in turn, is facilitated by the 'bare minimum acting text' that is available to the performing artiste (ibid, p 23-24). Thus there appears to be greater latitude for creative aesthetic expression by a Koodiyattom artiste as compared to a ballet artiste. The latter could suffer under the weight of a 'tight' and 'closely metered' choreographic script.

The key issue is how to delineate and protect creative aesthetic expression in a dance form?

Protection of creative content is to some extent, achievable through Intellectual Property Rights (IPRs). In the case of media products and performing arts, IP protection helps to prevent creative content from dilution through alternative 'look the same products'. This, in turn, serves to enhance the special identity and brand value of the creator and prevent the erosion of cultural heritage. Protection of creative content enhances the loyalty and goodwill that readers, spectators or fans may have for creators of literary and artistic content.

Copyrights are IPRs that protect creative /artistic expression and content. Conventionally speaking, documents and writings, that are less than 70 to 100 years, are protected by copyrights, while older and traditional creative expressions are protected by non IPR rights that include heritage rights (Damodaran,2009 and UNESCO,2012). Thus very old documents and manuscripts that are related to works of art and lie outside public domain (but have outlived their copyright protection tenure) can be preserved, digitalized and protected as heritage resources. For performing arts, it is possible to use protection devices to abstract the creative aesthetic expressions and creative turns. Thus, high quality digital recording of performances and digital splicing of its key aspects, can throw up the creative turns and spins of an artiste, which is not otherwise evident to a lay spectator of a live performance. Such systems can, by capturing and highlighting the re-adaptations and improvements made on a classical choreographic script by another choreographer or artiste, be helpful in delineating the element of creative aesthetic expression; in a dance by distinguishing it from its 'technical virtuosity' element. Indeed outstanding pieces of cinematic documentaries related to classical dance forms that have been produced in digital formats (such as Adoor Gopalakrishnan's 'Koodiyattom') can form an invaluable basis for de-ciphering 'creative aesthetic expression' in a Koodiyattom sequence<sup>9</sup>.

However IP and non IP based protection systems when extended to works of art could violate the normative principle that treats arts as a public good. As Towse (2008) argues traditionally, cultural economics has disregarded 'copyrights' due to the existence of entrenched models that envisage financing of theatres by the State through subsidies and financial assistance schemes. Indeed the economic rationale for state support for arts was made by three notable economists viz, Jevons, Robbins and Baumol. Jevons considered cultural goods to be public goods that merited State support, on account of their potential as 'crime reducing products'. For Jevons, State support for cultural goods was a social investment. Lionel Robbins also held the view that Arts provided collective benefits, thus meriting public patronage<sup>10</sup>. Baumol on the other hand,

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<sup>9</sup> For instance in the Koodiyattom documentary directed by Adoor Gopalakrishnan, the Himakaranam' Sequence enacted by Margi Madhu (Act V of Ashokavanikankom ) Sakthibhadra's Ascharyachoodamani, forms a delectable slice of creative aesthetic expression that has been captured by the camera. Indeed such is the state of digital technology that it overturns what Benjamin (1973) refers to as the stigma of 'mechanical reproduction' by almost helping to retain the aura of the original work

<sup>10</sup> William Baumol was Lionel Robbin's PhD student

advanced the notion of 'cost disease' (or Baumol's Law) as affecting performing arts, mass media and libraries (Baumol and Bowen, 1966). The law states that since costs to supply works of art are high, one had to raise prices on products of art. This would however, choke demand for art products, which is not desirable. Baumol's argument was used by the Welfare Economists to justify State support for art forms.

Market based solutions have also been advanced by economists to economically sustain art forms. These include relying on IPRs and pricing systems. However Varian (2005) see no case for copyrights ,as in his view value realization for art products can be better achieved through price discrimination. However Towse's own point is that copyrights and subsidies should not be seen as mutually exclusive entities, since creators need to enjoy copyrights over works produced, even when their operations are supported by State subsidies.

In reality, the latest trend in theatre management in parts of Europe and in Russia, is to rely on composite business models that permit economic freedom for the artiste to valorize her creativity, while at the same time optimizing the theatre's own generic brand image and the country's heritage wealth. Thus a performing arts theatre of great repute and pronounced genre, relies on its generic trade mark for creating its collective brand equity, while also permitting its super star artistes to build and protect their personal brand. To top all this, a theater sometimes seeks state assistance (in the form of capital investments on fixed capital assets) for architecting its image makeover, thus also optimizing its status as a National or International Heritage Resource. The case in point is the large dose of State assistance being provided to meet the capital expenditure incurred on the technologically advanced, 'state -of-art' Mariinski II Ballet and Opera Theatre in St Petersburg and on the rejuvenated Bolshoi Ballet theatre in Moscow.

Indeed, given the tight Heritage Protection approach of Government of the Russian Federation, and the rise of 'civilizational discourse' in Russia's Foreign Policy ( Tsygankov,2009) , it is to be supposed that four forms of IP rights could obtain over the creative resources of a Classical Russian Ballet Theatre that has a deep historical background. These are copyrights, Generic Trade Marks and Individual Trade Mark and finally 'Heritage'<sup>11</sup>.

By contrast in India, classical dances that are hoary or 'ancient', have witnessed a different trajectory when it comes to its creative aesthetic resources. Thus, as mentioned earlier, Koodiyattom underwent revival and rejuvenation in the latter part of the 20<sup>th</sup> century thanks to

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<sup>11</sup> Trademarks are IPR assets that add strength to a creator's brand value. Trademarks are an invaluable tool for protecting the goodwill enjoyed by an artiste or a theatre, while copyrights help to protect creative content. However while copyrights protect all forms of creative content, it does not confer any special position for uniquely placed creative content. Similarly a brand represented by a Trade Mark is not necessarily a symbol of unique creativity. Indeed a brand may not reflect any intellectual repertoire at all on account of the predominance of commercial factors

financial assistance extended by the State. Enhanced flow of resources ensued following the UNESCO recognition for the art form in 2001, with the funds channelized through the Koodiyattom Kendra set up by the Central Sangeet Natak Academy in Trivandrum (See Box 1). As Throsby (2010) observes, the inclusion of an item in the world heritage list, raises its profile and makes it easier for Governments to allocate funds to support the capital and operating expenditures involved in managing the heritage resource. This is precisely what has happened to Koodiyattom as well. However, despite considerable 'repertoire deepening' attempted for Koodiyattom in the period 1970-2000, there was no effort to protect the creative cultural and intellectual resources of Koodiyattom . Things have only marginally changed after UNESCO recognition. Even today, it is doubtful whether there has been any effort to utilize any IP tool, other than the 'heritage tag' to sustain the creative content of this art form. Part of the reason is that not many new choreographies have been created in Koodiyattom , though there have been efforts in recent times to widen the repertoire through re-choreographing Shakespearean plays like 'Macbeth' within the traditional canon/ metre<sup>12</sup>. If such instances of 'repertoire widening' gains momentum, it is likely that new tools for protecting creative content and creative expression may gain greater traction for Koodiyattom. Similarly if more imaginative digitalization is attempted, it may be possible to locate, delineate and protect creative aesthetic expressions that sprout from a repertoire deepening process.

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<sup>12</sup> Margi Madhu, the Guru of 'Nepathya' School and one of the leading Koodiyattom artistes today, choreographed and staged the Koodiyattom version of 'Macbeth' in Kalakshetra, Chennai in 2011.

### **Box 1: State Subsidy Model: Heritage Conservation Case Koodiyattom**

Koodiyattam, the classical Sanskrit dance form of Kerala, is stated to be over 2000 years in age, though its codified origins can be traced back to 10th century A.D. Koodiyattom has three strands of tradition, viz 'that of Bharatha, the temple culture and the *Kavu* tradition' (Paulose, 2006, p109-110) . From its temple theatre precincts, Koodiyatoom moved outside, to non temple 'stages' in the 1950s and 1960s. Koodiyattom's traditional repertoire included plays of almost all the playwrights in Sanskrit with the exception of Kalidasa and Bhavabhuti (ibid). This has been partly due to the fact that 'Kalidasa's language with its rich poetic nuances, does not lend very easily to choreographic treatment (ibid). Koodiyattom draws upon the plays of Bhasa, Harsha, Kulashekharavarman, Neelakantha and Bodhyana. The technical virtuosity element of the dance form lies in '*Vayu Kotukkal* (or infusing breath), which in turn, can be traced to the pshyco-physical gymnastic tradition of Kalarippayattu, Kerala's traditional martial art. However the foundations of creative aesthetics in Koodiyattom lies in this technical prowess inducing emotions, expressions and action (Nair, Appukuttan,D (1994). In fact, Koodiyattom is a reservoir of creative aesthetic expression 'since actors deviate from the basic text and compose their own *alama* verses to introduce the character' (Paulose,op.cit, p 160). As Paulose proceeds, 'Koodiyattom underwent dynamic metamorphosis, adjusting to its theatre typology' (Paulose, op.cit, p161).

The saga of Kootiyattom from relative obscurity to an internationally recognized art form can be traced to the year 1991 when the Sangita Nataka Academy under Chairpersonship of renowned playwright and arts scholar, Girish Karnad, initiated a major programme for strengthening the art form through performance incentives for artistes. In addition grants were provided for the study of art texts. The process ensured a major expansion in repertoire whereby lost Ankas, namely Mayaseetha Anka, Agni Pravesa Anka and Dharmashala Anka were 'excavated', polished and reintroduced.

Two maestros, viz Ammanur Madhava Chakyar and D Appukuttan Nair led this drive. The dance form as captured by the documentary film of the renowned film director Adoor Gopalakrishnan led to its international acclaim. In the year 2001, Koodiyattam was recognized by UNESCO 'as a 'Masterpiece of the Oral and Intangible Heritage of Humanity'. After this recognition there has been a clear move to take Koodiyattom to the masses. In recent times, many changes have been noticed in Koodiyattom, both by way of changes in 'Abhinaya' as well as in terms of repertoire widening.

Indeed by choreographing 'Macbeth', within the Koodiyattom metre, Margi Madhu has attempted 'Repertoire Widening'. In recent times, changes have crept into this ancient art form too. These are 'Abhinaya related', as they involve changes in gestures and body movements for women performers. There have also been changes in costumes in recent times (Margi Usha in Meedhu Miriyam Joseph (2012).

## Creative Commons

An intellectual property tool of great social impact is the idea of 'Creative Commons'. This concept which is attributed to Lawrence Lessig has found interesting applications in the music industry. 'Creative Commons' (CC) aims to solve some of the vexatious social costs (of deadweight loss) associated with copyrights (Volker Lehmann, 2005)<sup>13</sup>

The concept of 'creative commons' (CC) works on the idea of a Central Registry, which provides for flexible licensing regimes and 'easy to handle' search functions for works that are registered. This avoids the inefficiencies of copyright related licensing, opens protected materials to greater circulation, thereby increasing popularity and raising the possibilities of 'live shows' that are based on pooled sponsorships. This may optimize a band's brand value, while reducing the inefficiencies of a copyright regime.

Translated to the context of performing arts theatres, a 'creative commons' (CC) approach allows the theatre and its artistes to decide on how and under what terms they need to license their performances, than leave it to recording companies and DVD producer companies to decide the circulation of the products, through pricing strategies. The emphasis is on preventing digital conversion of performances through recording companies and sharing excerpts on a larger, quickly disseminating platform such as 'You Tube', which will increase the possibilities of greater demand for live performances by the artistes concerned, through realization of network externalities.

Our point here is that CC can serve to improve the brand power of a capital powered classical dance theatre on the one hand and that of its super star/ ballerina/ artiste on the other, thus enabling realization of economies of scale by the theatre.

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<sup>13</sup> See Lehman (2009) for an incisive discussion on the idea and scope of Creative Commons (CC) in relation to the music industry. According to Lehmann, the CC model offers a flexible solution for creators to trigger the length and scope of the copyright protection of her work. Given the economics of digital technology, Lehman argues that one should tell the artists that it is more beneficial for them to allow file sharing and encourage private use of their works, since it increases their popularity faster, better and finally more efficiently than any of the big music labels could do so far. The major inefficiency of deadweight loss that ensues from copyright monopoly is abolished by CC at least in the end-consumer market. Furthermore, the central registry system offered by Creative Commons (including the easy to handle search function for works that are licensed according to one's purposes) causes the transaction costs of copyright licensing to be significantly lowered. As Lehman says 'Compare simply the long and costly research one needs to find all the possible copyright holders and clear the respective rights, with a system like Creative Commons, which allows you to search exactly what you need in seconds, while the license is already granted.'

However as Lehman also says, it might be a problem to artistes, if others exploit their works financially without letting them participate. She argues that under CC 'musicians could still define their license by prohibiting commercial use'. Since 'a one size fits all' model would not suit every artiste, the Creative Commons regime provides artistes the freedom to choose a model that fits their needs. Musicians could abandon copyright protection in the end-consumer market by using a Creative Commons 'share alike' license and by registering their works with an online database. Such a measure, would, according to Lehman, decrease associated primary 'monopoly' and 'transaction' costs associated with copyrights. Furthermore by clearly labeling their music, artistes are able to solve the problems of uncertainty and wasteful enforcement costs (ibid).

## **Economics of Creativity and IP Management in Classical Performing Arts:**

It is argued by neo-classical economics that IP protection leads to 'Primary and Secondary Monopoly Costs (See Lehman, 2009, Varian, 2013). Primary Monopoly Costs create Dead Weight Loss (DWL), lead to high prices for products besides lowering consumer surplus. Secondary Monopoly Costs are costs associated with using protected materials for deriving new works or derivative works. Secondary monopoly costs include costs of licensing IP and related protected assets from its proprietors. Apart from license fees, secondary monopoly costs include transaction costs that are associated with identifying/ locating IP holders as well as the costs of negotiating and concluding contracts with them<sup>14</sup>.

The story of secondary monopoly costs is thus centrally related to IP 'licensing' costs, which is accentuated by the high transaction costs incurred in searching, locating and negotiating with the copyright owner. The absence of an international central registry for registering IP assets/ creations considerably increases transaction costs associated with licensing (Lehman op.cit). For performing art theatres, the high licensing and transaction costs involved in licensing original choreographs to produce adaptations, can act as a severe constraint. Under such circumstances, it is difficult not to agree with Akerlof that the costs of IP protection outweigh its benefits (Akerlof, 2002)<sup>15</sup>.

However there is scope for undertaking cross-licensing amongst big performing arts theatres which can help them to reduce their transaction costs and license fees. But this model can work best for large performing arts theatres that have their distinct genre. This is because productions by such theatres (that have the potential of being timeless classics in future), enjoy the advantage of continuous revenue streams for decades/centuries. Cross licensing of such works amongst theatres obviates secondary monopoly costs associated with long duration copyrights, thereby increasing consumer welfare, while at the same time promoting new adaptations based on different genres. This situation combines the virtues of both 'repertoire widening' and 'deepening'.

How does the primary monopoly cost affect classical performing arts theatres that go for Repertoire Widening (RW) or Repertoire Deepening (RD)? **Fig 2(a)** brings out the demand – pricing dynamics for theatres that go for RD. As may be seen in **Fig 2 a**, Dead Weight Loss (DWL) is pronounced, even when a RD theatre faces an increase in its fan base as expressed in a

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<sup>14</sup> Monopoly analysis is relevant to established classical dances and performing arts theatres as there are few large 'producers' and each theatre is distinguishable from the other in terms of its genre and evolution, thus enjoying a monopoly over its products.

<sup>15</sup> In dances, adapted works can be created even in the absence of material transfer agreements between the licensor and licensee. Indeed there is a quazi - Ekalavya (the unseen, unfortunate indirect disciple of Dronacharya in the Hindu epic Mahabharatha) effect - the adaptor of a classical choreographic piece like Petipa's 'Swan Lake' may create her script by just watching the performance of the original. Notwithstanding this advantage, the costs of producing and performing adaptations of original Ballets and Dances can be high, if licenses are not negotiated efficiently.



rightward shift of the original demand curve. The increase in fan base may happen due to increased appreciation of the Dance form and its positioning as a 'niche product' by the theatre.

In **Fig 2a**, the original number of performances fixed by a RD theatre or  $Q'$ , corresponds to the neo-classical equilibrium level where  $MR=MC$ <sup>16</sup>. As **Fig 2 (a)** further illustrates, the effort of a RD Theatre is to increase performances at the same price, though in the event of demand not increasing to the extent envisaged, the number of performances may not be as much as  $Q'$ . This results in higher prices for tickets to adjust for changes in MR brought about by the increased Demand Curve. In some cases, the monopoly position provided by Intellectual Property Rights such as Copyrights and Trademarks, enable realization of monopoly pricing systems<sup>17</sup>.

The main point highlighted in **Fig 2 a** is that pricing of performances by a repertoire deepening theatre, will be in the hatched region  $P_c X'$  of the increased Demand curve ( $D''$ ), as the effort of the theatre is to promote high quality, 'genre' ballets and dances (or niche art products) with high creative aesthetic expression - the idea being to target connoisseurs as its spectators. In such a scheme of things, the cost curves of the theatre may be irrelevant to pricing decisions. In other words, pricing decisions of a repertoire deepening theatre are generally insensitive to costs. Indeed where State assistance or grants from private philanthropic sources are forthcoming to absorb costs, the tendency of a repertoire deepening theatre will be to further move away from costs considerations in pricing decisions.

The ensuing analysis brings out these aspects.

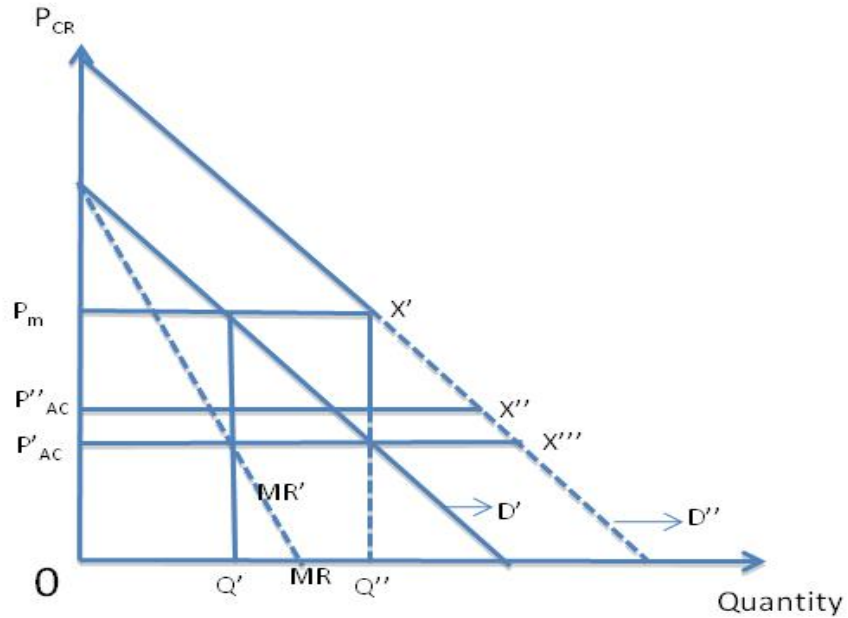
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<sup>16</sup> Here we assume a quadratic cost function for performing art theatres and hence a constant  $MC (=AC)$  curve.

<sup>17</sup> As Towse (2008) observes, what copyright and subsidy for arts have in common, is that they both offer incentives to artistes to increase their cultural production beyond the level the market would accomplish. It is in that sense that they are both tools of cultural policy. Subsidy offers a direct incentive through financial grants to arts organizations and individual creators. As the evidence of Koodiyattom in India shows ( see Box 1) , assistance provided by the Central Sangeet Natak Akademy (in the 1980s and later on from 2001 on a larger scale after the recognition of the dance form by the UNESCO ), entailed a minimum number of performances to be undertaken by different Koodiyattom schools. A copyright regime may not produce a similar effect. Copyrights being grant of monopoly to a theatre, tends to induce high product pricing and fewer performances (Towse,op.cit). Indeed Varian (2005) considers 'price discrimination' strategies to be better than copyright protection on account of its potential to avoid deadweight loss.

**Figure 2a**

**Demand-Pricing Dynamics of Repertoire Deepening**



We assume two (independent) variables that drive demand for classical dance performances, viz 'P' which is the 'price' of tickets and 't' or taste for classical dance performances. Let Equation (1) be the original demand function (or demand curve in bold in the diagram above) and Equation (2) be the increased demand function (or the semi-hatched demand curve in Fig 2a) for a Theatre that goes for Repertoire Deepening (RD).<sup>18</sup>

Thus

$$Q'_{RD} = \beta'_{RD} - \alpha_1 P_{RD} + \alpha_2 t'_{RD} \quad (1)$$

$$Q''_{RD} = \beta''_{RD} - \alpha_1 P_{RD} + \alpha_2 t''_{RD} \quad (2)$$

Where

<sup>18</sup> A rightward shift of the demand curve may occur in two ways. One, where the shift of the demand curve is parallel to the right of the original demand curve and two, where the rightward shift is not. In the former case, there is no change in consumer surplus from the pre- demand shift situation (Varian ,2013, p 238-241). However where monopolists play the 'product quality angle' to effect increase in demand for their products , an increase in demand will not entail a parallel shift of demand curve to the right- rather the demand curve will undergo a 'pivotal shift' to the right. The quantum of consumer surplus would then vary, depending on the angle of the pivot (ibid). In the cases, illustrated in Figs 2 (a) and (b), a parallel, rightward shift in the demand curve is envisaged. This implies that theatres that focus on Repertoire deepening (RD) or Repertoire Widening , take to the 'increased demand' path, only after optimally developing their stock of 'creative aesthetic expression' or 'technical proficiency in new plays'. Indeed this situation obtained in the case of Koodiyattom in its renaissance phase in the 1970s. It was only when Koodiyattom presented itself in its creative richness in the 1980s that many Kathakali (the rival and more popular art form of Kerala) lovers and connoisseurs , turned towards Koodiyattom for deeper appreciation, aesthetic delight and 'Ananda (state of deep satisfaction and happiness)'. However Koodiyattom, as a dance form, has always been subsidized by the State. Indeed as mentioned earlier, the funding conditions of the Central Sangeet Natak Academy, require Koodiyattom theatres/ schools that are funded by the Academy to conduct a minimum number of 'free performances' in public places.

$$\beta''_{RD} > \beta'_{RD} \quad (3)$$

$$t''_{RD} > t'_{RD} \quad (4)$$

The pricing system adopted by a Repertoire Deepening Theater would follow the range :

$$P_{RD} \geq P_{MRD} \quad (5)$$

Where further

$$\Delta P_{CR} P''_{AC} X'' \quad (6)$$

Equation (6) represents the consumer surplus potentially enjoyed by the theatre goers, which could have been skimmed by the theatre through the pricing schema represented at (5). However as the instance of Koodiyattom in India indicates ( Box 1 ),the repertoire deepening (RD) process which was undertaken in the 1970s, was funded by the State ( first, by the State Government and later the Central Sangeet Natak Akademy of the Government of India in the 1990s) .This compelled theatres to have performances done for free, despite the high creative aesthetic content of the offerings. However, had the RD process in Koodiyattom been funded privately, Equation (6) would have been almost entirely tapped by Koodiyattom theatres through third order price discrimination. Thus Equation (6) in many ways represents the latent brand value of Koodiyattom in India following its renaissance in 1970s. This assumption is logical since a ‘brand’ as a symbol of goodwill, represents willingness to pay (WTP) for the product concerned. Viewed this way, Equation (6) represents the outward boundary of the range of WTP possibilities that the Koodiyattom theatre could have realized from its spectators and fans<sup>19</sup>.

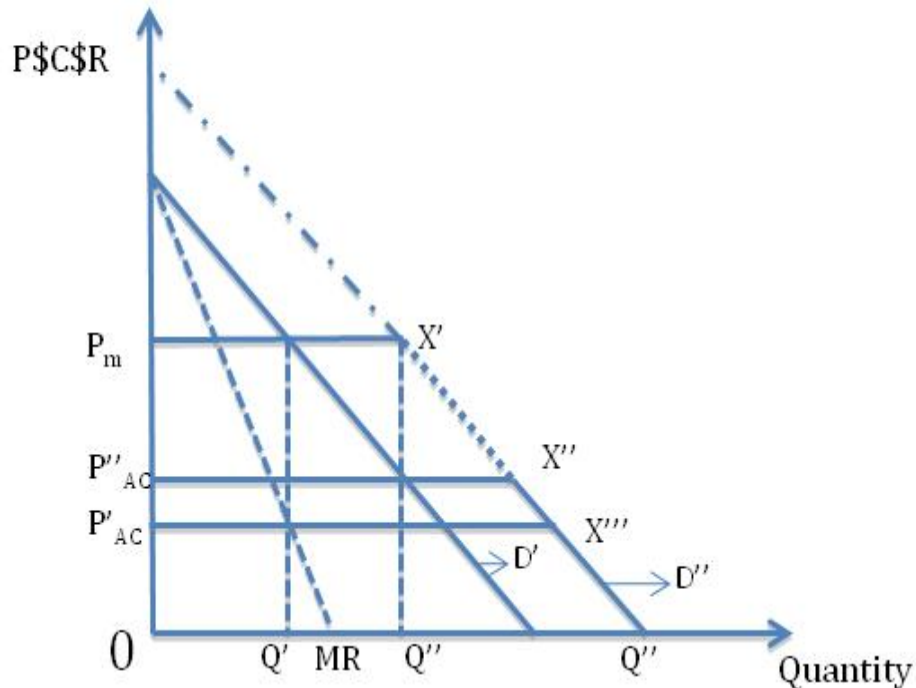
**Fig 2 b** illustrates the demand-pricing dynamics for a theatre that goes for ‘Repertoire Widening’ (RW). The original (bold) Demand Curve in the Figure yields an equilibrium price ‘P<sub>m</sub>’. Since the objective of the theatre is to widen its repertoire by going for new plays, the effort is to take the performances to a wider group of lay spectators and create a new set of ‘lay’ loyal fans for the theatre. As argued earlier an RW theatre can develop Ballets or dances that are proficient in ‘technical virtuosity’, though lagging in mind in terms of ‘creative aesthetic excellence’. This is understandable since ‘creative aesthetic expression’ is a capital asset that is accumulated over time.

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<sup>19</sup> ‘Brand Finance’, the world’s renowned Brand valuation agency calculates a brand’s value by finding the present value of the estimated future cash flows attributable to the brand—based on what a company without a trademark would have to pay to license it through a third-party broker. In essence , this methodology involve gauging the Willingness to Pay (WTP) of a buyer for a given Trademark (or its underlying Brand)

**Figure 2b**

**Demand-Pricing Dynamics of Repertoire Widening**



Thus the demand pricing dynamics of an RW theatre differs from that of an RD theatre. As the mass base of spectators widens (and the demand curve shifts parallel to the right), the number of offerings (performances) increases, with prices moving down from  $P_m$  level, until the point of  $P=AC=MC$  is reached ( which is the hatched portion  $X'X''$  of the increased demand curve  $D''$ ). In the event of the ticket prices being subsidized by the State, the minimum price charged by a theatre will be  $P''_{AC}-X''$ <sup>20</sup>.

In the event of the incremental costs of RW process getting subsidized by the State, the theaters may charge prices in the zone  $P_m-X' - P'AC-X'''$ , (on the demand curve  $D''$ ) through appropriate Price discrimination policies.

As in the case of RD case discussed above, we assume two (independent) variables that drive demand for demand classical performances, viz 'P' or 'price' of tickets and 't' or taste for classical dance performances. Let Equation (7) be the original demand function (or demand

<sup>20</sup> Varian (2005) argues that the lower costs of production and distribution for music albums (induced by digitalization) create incentives for artistes to offer their products at lower prices than before. Current evidence also points to the fact that digitalization in music has brought down costs incurred on orchestra and studio recordings. However for visual arts like dances, where the primary value derives from the poetics of visuality, the urge may still be to price the offerings high, on account of higher operational and sunk costs associated with dance shows. This may happen, even in cases where State subsidies absorb a theatre's fixed costs.

curve in the diagram above) and Equation (8) be the increased demand function (or demand curve) for a Theatre that goes for Repertoire Widening (RW).

Thus

$$Q'_{RW} = \beta'_{RW} - \alpha_1 P_W + \alpha_2 t'_{RW} \quad (7)$$

$$Q'' = \beta''_{RW} - \alpha_1 P_{RW} + \alpha_2 t''_{RW} \quad (8)$$

$$\text{Where } \beta''_{RW} > \beta'_{RW} \quad (9)$$

And

$$P_M > P \geq P_{M_C} \quad (10)$$

In terms of the derivation above, Trapezium  $P_M X' X'' P''_{AC}$  in **Fig 2b**, can be considered to be the latent brand value of the theater, assuming that the process of RW is state subsidized. Note that the Deadweight Loss arising from RW is less (compared to RD) particularly when the process is subsidized by the State<sup>21</sup>.

The above derivation is intuitive given the fact that the new choreographs that are rich in technical virtuosity cater to the masses and not to connoisseurs. This was particularly true of the new choreographic pieces attempted during the Soviet period in Russia<sup>22</sup>.

### **Repertoire Trajectories and the Challenges of Intellectual Property Management**

Both 'Repertoire Deepening' (RD) and 'Repertoire Widening' (RW) have their implications on IP Management by a classical performing arts theatre. RW entails use of copyrights over choreographic pieces and performing rights. However when it comes to RD, the range, depth and scope of IP rights that can be employed by the theatre concerned is greater. Apart from Copyrights, the scope for Trade Marks (that represent the Brand Value acquired by a theatre) and Design Protection, also get to be important. Indeed in recent times, the role of Trade Marks has been central for a Big Ballet Theatre like Mariinski in Russia that has been working hard at 'repertoire deepening'. A cursory survey of the Mariinski theatre shows that there are two types of trade marks (or underlying brands) that are protected – one, the Theatre Trade

<sup>21</sup> Interestingly as the twin Demand –Pricing analysis attempted in Fig 2 indicate, RD is not cost sensitive as compared to RW

<sup>22</sup> As Teece et al (1997) have rightly argued, path dependencies are crucial in guiding the investment decision of a firm. This could hold for performing arts theatres that are less regulated. However where State policies dictate the repertoire of a theatre (as was the case with Koodiyattom and Soviet Ballet) the 'path dependent behavior' of a theatre gets uprooted. Thus the changed cultural policies of the State, induced 'repertoire widening' for Russian Ballet in the 20<sup>th</sup> century. Similarly the slant of State Policy towards 'repertoire deepening' in respect of Koodiyattom, led Kerala's performing arts theatres like Kalamandalam (with its predominant Kathakali focus) to revive Koodiyattom in its traditional splendor and depth, despite the 'path dependency' of 'repertoire widening' tried out for Kathakali in the 1970s

Mark/Brand and the personal brand/ Trade Mark of its super- artistes who, through their performances, contribute to the development of the not only their own genre and brand value but also that of the theatre. Added to the pack are heritage related property rights over classical performing arts, that the State seeks to promote and nurture. (These rights do not fall within the pantheon of IP Rights as we understand of them today.)

However if history is any indication of Ballet theatre management styles in the past, Russian Ballet, both during the Soviet period and before, had almost exclusively emphasized the role of Heritage based rights. The same held for Koodiyattom in India, where the emphasis has been on State or Inter-State based Rights like Heritage, than on private proprietary rights<sup>23</sup>.

On the other hand, the predominant emphasis in US or European based Classical Performing Arts theatres, is on Proprietary ( Theatre based or Individual ) IP Rights such as Trade Marks, Copyrights and Digital Rights (over Digital Versions of Performances) and less on Non IP rights like Heritage.

Fig 3 illustrates the challenges of IP Management facing Theatres that go for RD. Curves A and C in Fig 3 illustrate, the two extremes of Proprietary IPRs and Heritage Rights. While curve 'A' represents the typical case of a US or European based Classical Performing Arts theatre, curve 'C' represents the extreme case of heritage based rights (as was the case of Soviet Ballets and Koodiyattom ) where only State or Inter-State based Rights like Heritage obtain<sup>24</sup>. A more balanced perspective happens if a middle path like Curve ('B') obtains, where proprietary IP rights balance 'Heritage based rights'. This middle path is akin to a 'Creative Commons' path, whereby a balance is obtained between an artiste's / theatre's proprietary IP rights and the State' Heritage rights over the art form. The Creative Commons path, which, while permitting optimal expansion of an artiste's freedom to articulate her brand identity, also gives prominence to the Heritage rights of the State.

Here again, as Fig 3 brings out, the effort should be to attain the point B'' in Curve B than remain at the state B'. This is because B' implies lower levels of both Proprietary and Collective IPRs. (This is evident from the lower circumference of the hatched arcs that connect B' to points in A and C as compared to hatched arcs of B''). A low level regime of Creative Commons like B' obtains, when both heritage rights and proprietary rights, act to restrict each other, to the ultimate detriment of both. Excessive State restrictions on theatre artistes performing in shows

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<sup>23</sup> The only possible IP rights obtaining over the revived and re-adapted intellectual capital of Koodiyattom (such as excavated and polished choreographies like Kalyanasaughantikam, Agnipravesankam, Jadayudhangam, Kaliyankam and Pancharathram (see Sudha Goplakrishnan,p 145-147 ) are Copyrights. One is yet to come across use of Trade Marks by a Koodiyattom School/ Theatre in Kerala in the same manner as Russian Ballet Theatres have made use of this IP. Similarly no Koodiyattom artiste, despite her/his high artistic proficiency, can ever rival Mariinski's Valery Gergiev or Diana Vishneva in 'personal' Brand Value.

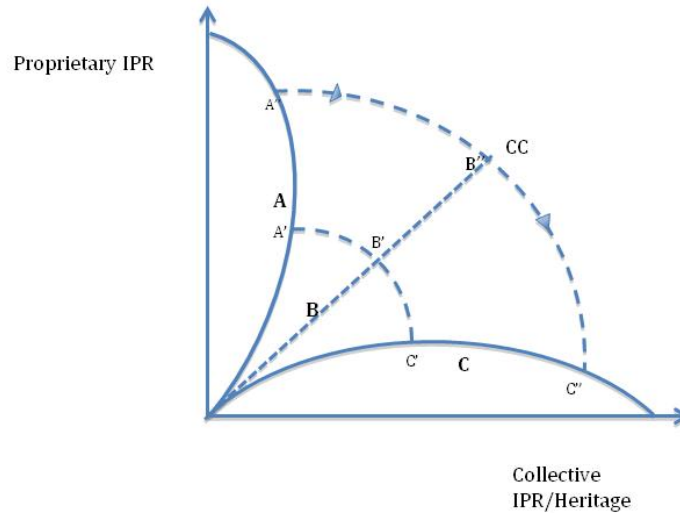
<sup>24</sup> Heritage rights are old but evolving and hence they are not 'anachronisms'. They provide for improvisation and new forms of creative aesthetic expression

conducted by theatres in other countries and restrictions on non- theatre solo performances by the theatre's Dancers and Conductors represent instances of restrictions and checks imposed by the State on individualization of IP Rights by artistes. This is not a desirable trend, since artistes facing such restrictions fail to gain from trans- repertorial and trans-theatre performances that would have otherwise helped them to add to their range of creative aesthetic expression. This is also detrimental to the State since its quest for optimizing its heritage potential is also inhibited.

B", on the other hand, means optimal freedom to artistes to perform in the production of other theatres, take up solo performances of non repertoire plays in one's own theatre and in other theatres, which in turn helps to hone their 'creative aesthetic expression', apart from contributing fundamentally to the Theatre's genre and the country's heritage resources.

**Figure 3**

**IP Management Trajectories Arising from Repertoire Deepening**



The following analysis of IP Management Trajectories that confront classical performing arts theatres as illustrated in Fig 3, serves to highlight the argument for a creative commons regime to promote the creative intellectual resources of a Classical Performing Arts Theatre.

Thus Curves A and C in **Fig 3** are represented below by Equations 11 and 12 (with the latter being the inverse function of the former) while Curve B in the Figure is represented by Equation (13)

$$A \text{ or } f' = \{(P_{ipr}, C_{ipr}) / C_{ipr} = P_{ipr}^2, P_{ipr} \geq 0\} \quad (11)$$

$$C \text{ or } f - 1 = \{(P_{ipr}, C_{ipr}) / C_{ipr} = \sqrt{P_{ipr}}\} \quad (12)$$

and

$$\text{where Curve B is } P_{ipr} = C_{ipr} \quad (13)$$

Curve B is then the Creative Commons solution for the new age Classical Performing Arts Theatre

where

$$B'' > B'$$



B” thus represents an Inclusive and a more optimal approach to IP Management that reinforces the two broad categories of rights over the creative resources of a Performing Arts Theatre.

### **Concluding Remarks**

The paper seeks to distinguish ‘creative aesthetic expression’ from ‘Technical Virtuosity’ in relation to classical dances in general and the Russian Ballet and Koodiyattom in particular. It is argued that Creative Artistic Expression is associated with development of genre, which in turn, happens when Repertoire Deepening is attempted by performing arts theatres. Creative aesthetic expression is both ‘artiste’ and ‘theatre’ driven and invites in its wake, serious challenges in managing the economic and creative resources of a Theatre. While the ‘demand-price’ dynamics associated with Repertoire Deepening theatres tends to promote dead weight losses on account of their narrow ‘connoisseur ‘ focus, the ‘demand-price’ dynamics of Repertoire Widening theaters that go for a mass fan base, creates pricing systems that are lower than classical monopoly prices but are above Average/ Marginal Costs. The fact that Repertoire widening theatres are low in creative aesthetic expression (and perhaps high in technical virtuosity) and cater to mass spectators, cause their pricing strategy to be sensitive to costs of production.

Repertoire deepening theatres, by virtue of their high brand and heritage value create major possibilities and challenges in IP management. Private proprietary IP rights such as Copyrights and Trade Marks compete with non IP rights like Heritage based rights for control over a theatre’s intellectual assets. Indeed these broad types of Rights could pull in opposite directions. This denies optimum realization of value from creative assets generated by a theatre. To obviate this situation, the paper argues for a modified Creative Commons system that optimizes both the artiste’s and the theatre’s brand value, while also promoting the Heritage value of the art form. In recent years, the evidence of technology flows from developed countries to performing arts theatres in Russia point to the importance of creative commons. The obfuscation of creativity by modern theatre technology creates a greater need than ever to delineate the creative aesthetic expression from technological based articulation and from technical virtuosity. Ironically, this task is best achieved by ‘technology’ itself.

In the light of the foregoing analysis of key issues confronting classical performing arts theatres, the paper seeks to provide an important policy related message for mature and genre based classical performing Art Theatres in India and elsewhere, This is about the important role that public cultural policies can play in promoting composite strategies for protection of creative resources. Enabling IP and Heritage policies on the one hand and variegated financing and governance systems, on the other, may hold the key to the problems faced by classical performing theatres in countries like India and Russia.

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