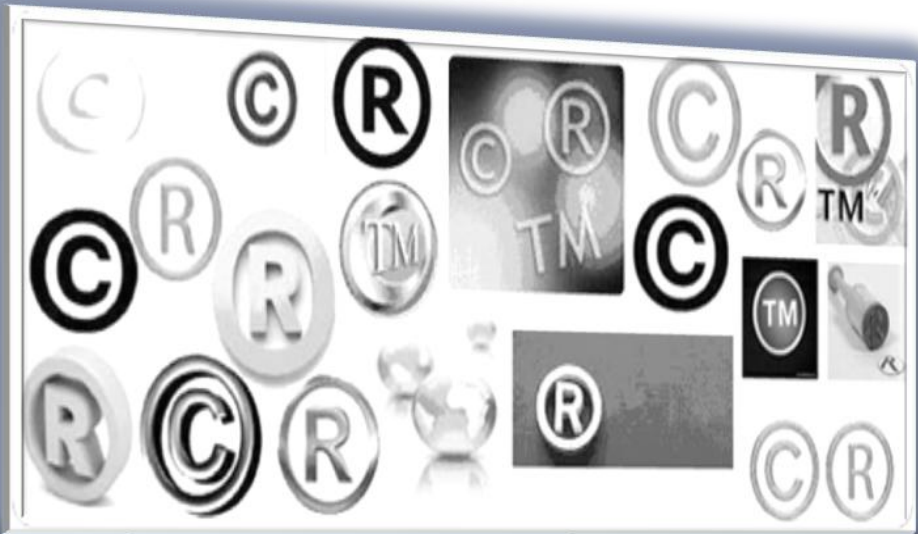




# INTELLECTUAL PROPERTY POLICY







**CARIBBEAN EXAMINATIONS COUNCIL**

**INTELLECTUAL PROPERTY POLICY**

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**The CXC “logo”, Caribbean Examinations Council<sup>®</sup>, Caribbean Advanced Proficiency Examination<sup>®</sup>, Caribbean Secondary Education Certificate<sup>®</sup>, Certificate of Secondary Level Competence<sup>®</sup>, Caribbean Vocational Qualification<sup>®</sup>, CXC<sup>®</sup>, CSEC<sup>®</sup>, CAPE<sup>®</sup>, CCSLC<sup>®</sup> and CVQ<sup>®</sup> are registered trade marks of the Caribbean Examinations Council.**

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## 1. INTRODUCTION

In today's fiercely competitive, knowledge-based economy, intellectual property (IP) is a central component of adding value to business. Companies from the smallest start-up to the biggest global conglomerates, virtually all industries and even entire national economies, are increasingly depending on IP for leadership and growth.

The Caribbean Examinations Council (the Council) is aware that the value of its IP and its potential for providing opportunities for future profit may have been underestimated in the past. However, there is now greater appreciation that IP can become a valuable asset when it is properly protected and leveraged, and where there is demand for IP-protected products and/or services.

The Council is also aware that the promotion of IP products or services will be a new challenge. Towards this end, it is committed to systematically implementing the steps required for protecting, managing and enforcing its IP so as to distinguish its assets in the market, ensure quality, and realise commercial results from the ownership and proper management of its IP portfolio.

The Council is also devising an IP strategy in alignment with its marketing strategy which involves the establishment of commercial partnerships and allows the consumer to be better able to distinguish, at a glance, its products and/or services and associate positive attributes to them.

The achievement of the abovementioned objectives necessitates the implementation of an IP Policy which governs the ownership, management and use of IP whether owned and/or generated at, for, or by the Council, its staff as well as by resource persons and students, and establishes guidelines for publishing arrangements and other critical components of the Council's IP strategy.

This Policy:

- covers all types of IP as defined herein with special attention being given to trade marks and copyright works based on the Council's current IP portfolio;

- extends to agreements involving the creation, use, ownership and/or commercialisation of IP entered into by the Council with its staff as well as with external parties;
- applies to IP generated by the Council's staff as well as by resource persons and students.

This Policy, along with its attendant procedures and guidelines, supersedes all previous practices or guidelines operating in any arm of the Council in relation to IP. Accordingly, such previous practices or guidelines shall cease to have effect to the extent that they are inconsistent with this Policy.

This Policy should be construed in accordance with the laws of the respective Participating Territory in which it is being implemented **SAVE AND EXCEPT THAT** in the case of a multi/cross-jurisdictional conflict or an adverse interpretation, the Laws of Barbados will be the governing laws of this Policy.

## 2. DEFINITIONS

Certain terms are used in this Policy with specific, defined meanings. These definitions may not necessarily conform to customary usage.

**CAPE®** is a registered trade mark of the Council and refers to the **Caribbean Advanced Proficiency Examination®** which is also a registered trade mark of the Council.

**CCSLC®** is a registered trade mark of the Council and refers to the **Caribbean Certificate of Secondary Level Competence®** which is also a registered trade mark of the Council.

**Conflict of Interest** includes any situation where an individual or entity has competing professional or personal obligations, or personal or financial interests that could adversely affect the impartiality of the decisions and/or actions taken by the individual or entity.

**Copyright** means a group of legal proprietary rights that gives the rights owner control over how a work is used, disseminated and commercialised. Copyright comprises a number of exclusive rights, including the right to make or authorise others to make copies or derivatives of a work, to publish or distribute the work, or to perform or broadcast the work. Any one



of these rights can be licensed separately through licensing agreements or sold separately through transfers/assignments of copyright ownership.

**Copyrightable subject matter** (or copyright works) means original works of a literary, artistic, musical or dramatic nature and includes computer programs, databases, and typographical arrangements of published editions, films and sound recordings.

**Creator** means any person(s) who creates an item of intellectual property.

**CSEC<sup>®</sup>** is a registered trade mark of the Council and refers to the **Caribbean Secondary Education Certificate<sup>®</sup>** which is also a registered trade mark of the Council.

**CXC<sup>®</sup>** is a registered trade mark and the trade name of the Council.

**Examination question** means any question or part thereof that has been circulated by the Council, in any form, as part of an assessment exercise.

**Intellectual Property (IP)** means creations of the human intellect including any patentable invention, procedures, mechanisms, copyrightable subject matter, distinguishable brand or mark, designs, trade secrets, know how and other proprietary material.

**Intellectual Property Rights (IPRs)** are the forms of legal protection given to creators of IP.

**Participating Territories** means the 16 territories, the governments of which are Members of the Council: Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, the Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and the Turks and Caicos Islands.

**Publisher** means a person or firm that is involved in the publishing of education-related books and other relevant print and electronic materials and resources, whether through investment in, and/or management of, the technical process of publishing or otherwise.

**Registrar** means the chief executive officer of the Council.

**Resource persons** means educators, examination personnel, and technical experts who are not normally employees of, but have a professional relationship with, the Council and who may receive appointments to provide services to the Council on an ad hoc basis.

**Reviewer** means a person who is assigned to analyse and give a critical report of a specific manuscript or work.

**Significant use of the Council's resources** means un-reimbursed use of IP, space, materials, expertise, computational facilities, or human resources of the Council. The use of these resources must be important to the creation of the IP. Mere incidental use does not constitute significant use.

**Staff** means any employee of the Council whether on the establishment, or on a contractual, temporary or part-time basis. Resource persons who make significant use of the Council's resources are considered as staff with respect to any IP arising from such use.

**Student** means any candidate registered for any of the Council's examinations.

**The Council** means the Caribbean Examinations Council (CXC).

**Trade mark** means a sign, comprising or including a word, a name, a symbol, a device, image, design, slogan, colour or a combination of any of these that indicates the source of goods or services and distinguishes goods or services from those of others in the same field. The owner/assignee/licensee of a trade mark has exclusive rights to control how it is used and is entitled to remedies where a third party uses the mark or a confusingly similar mark in the course of trade in connection with identical or similar goods or services. Any reference herein to trade marks means and includes a reference to service marks.

**In general:** As used in this Policy, the masculine gender includes the feminine gender, singular or plural, wherever appropriate.

### 3. IP STRATEGY GOALS

This Policy reflects the following goals:

- To create a working environment that encourages the generation of new knowledge and knowledge-based products by staff, resource persons and students.
- To facilitate certification among a wide cross-section of Caribbean society.
- To encourage the wide development of products and resource materials able to increase access to examinations and certification within the region.
- To motivate the development and dissemination of IP by providing appropriate financial rewards to creators and to the Council.
- To ensure financial returns from the development of IP in a manner consistent with the vision and mission of the Council.

The overall principles relating to the Council, its members and the region at large are based on the following:

- The mission of the Council continues to be the production of syllabuses, examinations and related services.
- IP is generated within the Council and there exists a commitment to disseminate it.

The overall principles relating to the Council's staff, resource persons and students are based on the following:

- IP is created by individuals, or groups of individuals, who are entitled to choose the course of disclosure; intellectual freedom of individuals is a higher priority than possible financial rewards.
- While creators are generally entitled to the ownership of IPRs and are allowed to retain such ownership or otherwise derive benefit from the commercial exploitation of their IP, the Council is entitled to the ownership of IPRs in respect of IP created by staff in the normal course

of their employment and to share in financial rewards for IP created through significant use of its resources.

- There should be incentives for all parties to collaboratively pursue financial rewards consistent with the expressed goals and objectives of this Policy.
- Since it is often difficult to meaningfully assess risks, resources and potential rewards, negotiated agreements are to be encouraged whenever possible.

#### **4. IP STRATEGY OBJECTIVES**

The IP strategy objectives are as follows:

- **Consolidate Market Position:** Actively secure IPRs protection to effectively differentiate products and services.
- **Provide Quality Assurance:**
  - Protect consumers by ensuring quality of licensed products.
  - Protect the Council by ensuring that its name and marks are not falsely associated with unauthorised products and services.
- **Ensure Business Flexibility:** Work to develop a strong IP portfolio to ensure and enhance business flexibility and obtain favourable terms in collaboration agreements.
- **Secure Business Profitability:** Aggressively pursue IP opportunities, including efforts to generate revenue from licensing and royalty fees.
- **Align Business, Research & Development and IP Strategies:**
  - Secure, maintain and utilise IPRs (trade marks and copyrights).
  - Implement measures to ensure respect for IPRs, including those of third parties and competitors.
  - Carry out thorough management of information.

## 5. LEVERAGING IP OPPORTUNITIES

The strategies to leverage IP opportunities are as follows:

- Business Strategy Planning: Provide support for new business creation from an IP perspective in cooperation with the Business Development Unit.
- Strategic Alliances: Pursue collaborative arrangements with regional and international partners.
- Licensing: Pursue licensing agreements with relevant third parties.
- Standardised Promotion:
  - Implement educational programmes to raise IP awareness, including information management among staff.
  - Establish an internal IP working group to standardise promotional activities among staff.

## 6. PUBLISHING

### 6.1. Purpose

The policies outlined in this Section are intended to cover all aspects of the Council's publication interests, including *inter alia*:

- past examination question papers including CSEC<sup>®</sup> and CAPE<sup>®</sup>;
- schools' reports;
- syllabi (specimen papers and mark schemes);
- self-study guides;
- teacher resource materials;
- syllabus-support material (SBA/IA);
- e-learning student and teacher support resources;
- statistical digests;
- endorsement of texts;
- annual reports, magazines and newsletters.

The objective is to establish partnerships for the production, marketing and distribution of high-quality resource materials to increase access to examinations and certification within the Caribbean region.

## **6.2. Establishing Partnerships**

Interested parties may submit proposals to establish a partnership to publish resource materials in one or any combination of the categories at Section 6.1.

## **6.3. Trade Mark Use**

The use of the Council's trade marks must adhere to the established usage guidelines at Section 8 of this Policy.

## **6.4. Advertising**

Advertising of works derived from these ventures should adhere to guidelines provided by the Council.

## **6.5. Ethics**

The Council prohibits anyone from using or referring to their affiliation with the Council for personal gain especially with regard to published works, commercial ventures or promotional activities, except where prior written permission has been granted by the Registrar. See also Section 9 of this Policy.

The confidentiality of all manuscripts at all stages of the publishing process is to be ensured. Information must not be given to third parties prior to publication.

When a manuscript contains copyright works (including photographs, literary excerpts, textual material, tables, figures, maps and charts) that are not the author's copyright or original creation, it is the obligation of the author, subject to normal publishing practice, to secure written permission from the copyright holder.

Reviewers of manuscripts are responsible for unbiased, objective, critical analysis of the said manuscripts, and also for completing their tasks within the specified time. To avoid any potential conflict, they should disqualify

themselves from any evaluation of manuscripts in which they may have an interest.

Unless the contents have been updated and revised significantly, a publication under an agreement cannot be published otherwise.

On receipt of convincing evidence of plagiarism, duplicate publication, or falsification of data, a retraction would be initiated.

## **6.6. Endorsement of Texts**

Textbooks are some of the most important resources to support teachers' delivery of quality instruction and to help students achieve their full potential. To support the development of high-quality resources, protect the consumer rights of students and parents, and pursue new business opportunities, the Council will be undertaking reviews of materials and offering endorsements where appropriate.

Detailed guidelines for the approval of publications for endorsement are available in a separate document.

## **7. COPYRIGHT**

### **7.1. Purpose**

All copyrightable subject matter owned by the Council is protected by copyright laws in each Participating Territory and throughout the world by virtue of International Conventions and Treaties, and may be reproduced only under specific licensing agreements from the Council pursuant to the guidelines of this Policy set forth herein.

This Section outlines the procedures for seeking copyright permission from the Council.

All copyright licences granted by the Council are non-exclusive and non-transferable.

## 7.2. Restricted Acts

The Council publishes and owns the copyright to a range of works, whether in the typographical arrangement of the works or in the content, and therefore has the “exclusive right” to perform certain “restricted acts” in relation to those works. These include:

- copying an entire work or a substantial portion thereof;
- publishing, issuing or distributing copies of an entire work or a substantial portion thereof to the public;
- posting the works or a substantial portion thereof on a website;
- making an adaptation (including translation or other derivatives) of the entire work or a substantial portion thereof, or doing any of the above activities in relation to an adaptation;
- authorising any other person to do any of the restricted acts listed above.

Substantiality is determined by what the Council considers qualitatively substantial and not necessarily in terms of the quantity of the work used.

## 7.3. Granting of Permission

In order to obtain permission to do any of the restricted acts in relation to the Council’s copyright works, an application must be submitted to the Registrar specifying those materials for which copyright permission is being sought.

The Council will consider granting permission for third-party use of portions of its copyright works or to make copies of the works pursuant to the following conditions:

- The application is submitted by the applicant specifying the following:
  - the portions of the given material(s) the applicant is interested in reproducing;
  - the proposed use of the reproduced materials;



- a description of the publication, title, dimensions, format of production (bound or electronic), target audience, country of production and distribution;
- the quantities to be produced;
- Proofs for clearance are submitted prior to final printing.
- Acknowledgement of the Council's ownership and granted permission to use the material is made in the published work on the copyright page.
- The required fee for the use of the material is paid to the Council in advance.
- The permission is limited to the specific work or publication, and to the one edition in the case of hard copy; and to the one website or CD-ROM in the case of electronic media, as named in the application to the Council.
- Institutions making copies of the Council's materials by reprographic means will be subject to a charge determined by the collective management organisation, Jamaican Copyright Licensing Agency (JAMCOPY) or its affiliates on the Council's behalf.
- Materials must not be altered in any way from the original form.
- Materials must not be falsely attributed to the Council.

Subject to the Council's approval, schools may be permitted to photocopy in their entirety, question papers which are out of print for use by their students but not for sale.

At the discretion of the Council, fees for materials available for licensing may be waived for research purposes. Individuals or institutions requesting permission to use the Council's materials for this purpose will be asked to provide detailed information on the research. Upon completion of the research, the person or institution which was granted permission must provide the Council with two copies of the final research report.

## **7.4. Collaboration with JAMCOPY**

The Council has joined JAMCOPY as a means of protecting its copyright. JAMCOPY was established in 1998 to manage the reprographic reproduction rights of its members. This includes photocopying, facsimile, xerography, copying onto microfilm and duplicating.

Through an agreement authorising the agency to act on its behalf, JAMCOPY will monitor the reprographic reproduction of the Council's printed materials - syllabuses, past papers, study guides and other resource materials. The Council has no such capacity or mechanism on its own. JAMCOPY will then issue licences to individuals or institutions who that to reproduce the Council's materials. The licences will specify the terms and conditions under which the individuals or institutions may copy the materials.

As a result of bilateral agreements with similar organisations in Trinidad and Tobago and in Barbados, whatever rights are under the protection of JAMCOPY will also be protected in Trinidad and Tobago, Barbados and 25 other countries where JAMCOPY has agreements with equivalent organisations. Efforts are underway to establish a similar copyright management organisation for the OECS countries.

## **7.5. Copyright Restrictions**

The Council prohibits the reproduction of its past examination papers or any part thereof where examination questions are to be:

- published with model answers;
- quoted in works which consist wholly or mainly of practice tests, revision exercises, questions and question papers;
- altered (that is, edited, re-worded or restructured) in any form;
- published in multiple-choice format.

Additionally, the Council prohibits prominent references to its copyrighted works for promotional purposes.

Required disclaimer(s) and credit line(s) will be provided by the Council and must be included in all third-party materials on the copyright page. If materials are presented in a language other than English, the credit line(s) and disclaimer statement(s) must appear in English as well as in the country's language.

## 7.6. Copyright Exceptions

Nothing in this Section should be construed as prohibiting any uses that are permitted by virtue of any statutory exceptions to copyright as granted by the laws of the Participating Territories such as fair dealing with a work for the purpose of private study, research, criticism or review.

## 8. TRADE MARKS

### 8.1. Purpose

In order to protect its name and those of its products and services, the Council registered several trade marks. By licensing these marks, the Council asserts ownership over its name and any other mark, logo, seal, design, symbol, internet domain name or any combination of these which have come to be associated with the Council.

The following constitute CXC's registered trade marks:

- *Caribbean Examinations Council*<sup>®</sup>
- *Caribbean Secondary Education Certificate*<sup>®</sup>
- *Caribbean Advanced Proficiency Examination*<sup>®</sup>
- *Caribbean Certificate of Secondary Level Competence*<sup>®</sup>
- *Caribbean Vocational Qualification*<sup>®</sup>
- *CXC*<sup>®</sup>
- *CSEC*<sup>®</sup>
- *CAPE*<sup>®</sup>
- *CCSLC*<sup>®</sup>
- *CVQ*<sup>®</sup>
- The CXC "logo".

As proprietor of these registered trade marks, the Council has exclusive rights to use, or authorise the use of, the trade marks in conjunction with the goods or services under which the marks have been registered. "Use" includes affixing a trade mark to goods or associating it with services;

exposing such goods for sale, putting them on the market or offering such services to the public; and advertising such goods or services.

Third parties may only use the Council's trade marks in accordance with the following usage guidelines.

## 8.2. Trade Mark Usage Guidelines

1. Neither "CXC" nor the CXC logo is authorised for use on any material without prior written authorisation by the Council.
2. The name "**Caribbean Examinations Council**" and "**CXC**" are not only trade marks used to identify the Council's products and services; they also serve as the institution's name. When using either of these marks for informational purposes in referring to the institution, they must be used as nouns and no registered symbol "®" is required. However, this is not applicable to commercial or promotional use.
3. Trade marks are adjectives used to modify nouns; non-adjectival use over time may result in marks becoming generic or deemed to be abandoned. The Council's trade marks must therefore not be used as nouns or verbs except where exemptions are provided by the Council, neither should they be pluralised nor used in the possessive form.
4. The first or most significant occurrence of the Council's trade mark(s) should be marked as appropriate with the required attribution in the form of the registration ® symbol, whether on the text cover, welcome screen or home page.
5. The Council's trade marks must be used in ways that distinguish them from surrounding text. They may be CAPITALISED, underlined, *italicised*, placed in "quotation marks", or depicted in **boldface** type whenever they appear in printed or electronic media.
6. The Council's trade marks must not be translated or transliterated into another language.

7. Additionally, third parties must **NOT** use the Council's trade marks:
- in a manner which causes confusion among the public and which suggests a relationship with the Council. The use must be referential only, for example "BROWN'S MATHEMATICS for CSEC<sup>®</sup> Examinations".
  - in their business name, Internet domain name or website address, or as part of a brand name for any product or service.
  - on any product names that may be confusingly similar to any of the Council's products.
  - on, or in connection with, any obscene or pornographic materials, or in a manner that may be disparaging, defamatory or libellous to the Council or any of its products. Use of the Council's trade marks must reflect favourably on both the Council and its products.
  - in any manner that directly or indirectly expresses or implies the Council's sponsorship, affiliation or endorsement of their product.
8. Further, third parties **MUST**:
- give their name and logo more prominence than the Council's trade mark(s) on their own publications, products/services.
  - use the applicable generic term for the product along with the respective trade mark the first time it appears on the product and as often as is reasonable thereafter, for example "Mathematics for CSEC<sup>®</sup> examinations".
  - appropriately display a notice of attribution on their products as follows:

*[Identify trade mark(s)]* is a/are registered trade mark(s) of the **Caribbean Examinations Council (CXC)**.

- include, as appropriate, a disclaimer of sponsorship, affiliation, or endorsement by the Council, for example:

“BROWN’S MATHEMATICS for CSEC<sup>®</sup> Examinations” is an independent publication and has not been authorised, sponsored, or otherwise approved by the **Caribbean Examinations Council**.

These notices of registration and non-affiliation must also be reflected in the marketing and advertising of these products and services.

### 8.3. Examples of Improper Trade Mark Use

Some examples of improper use of the Council’s marks are shown below.

Example	Comment
“Zoology for CSEC” [assumed name of a textbook]	“CSEC” is being used as a noun instead of an adjective and there is no registered symbol “®” following the trade mark.
“CXC <sup>®</sup> Zoology” [assumed name of a textbook]	“CXC” is being used in the name of a third party’s product.
“Pass CSEC <sup>®</sup> ” [assumed name of a study guide]	“CSEC” is being wrongly used alone; it should be used only as an adjective followed by a generic term.
www.cxceams.com [assumed name of a website]	The domain name uses “CXC” in a manner that could confuse the consumer into thinking there is an association with “CXC”.
“This series of study guides will be of use for students studying for CXCs”	“CXC” is pluralised which is not part of its proper use.
ACME CXC Workshop for Teachers [assumed name of a workshop]	“CXC” is being used as an adjective to describe a product of ACME.

## 9. CONFLICT OF INTEREST

The maintenance of the Council's integrity is of paramount importance to the Council as it seeks to discharge its mandate and is held accountable by regional governments and the public at large for its actions. Accordingly, the Council's concerns related to conflicts of interest cannot be restricted to members of staff, but must also extend to resource persons.

In an effort to ensure that all resource persons perform their duties in an unbiased manner, with the highest integrity, free of suspicion, and fair and impartial, this conflict of interest policy has been adopted for the Council's resource persons, effective 20 April 2010.

A conflict of interest may be defined as any situation in which an individual, due to his or her professional position or capacity, is able to take advantage of or influence a situation or opportunity for personal benefit whether or not such benefit includes financial reward. When this situation occurs, an individual's professional judgement may be compromised, or appear to be compromised, and impede the individual's ability to fulfill his or her duties in an impartial manner.

### 9.1. Examples of Actual or Potential Conflicts of Interest

Examples of situations which give rise to actual or potential conflicts of interest by resource persons are as follows:

- reference to their association with the Council through the use of its trade name and/or logo in publications or other works.
- involvement in some way in the preparation of published materials which are related to the subject for which they have been appointed by the Council to serve.
- communication to other persons for personal gain, information pertaining to the work of the Council which is obtained through association with the Council.

## 9.2. Conflict of Interest Guidelines

The Council's resource persons are expected to avoid conflicts of interest, whether actual or potential. The following guidelines are not exhaustive but are indicative of the Council's position:

1. Resource persons must not use their affiliation with the Council for personal gain especially with regard to published works, commercial ventures or promotional activities, except where permission has first been granted in writing by the Council and such permission shall not be unreasonably withheld. This prohibition remains in effect for three (3) years after the termination of services to the Council.
2. Resource persons are required to disclose to the Council, any involvement in the preparation of published materials which are related to the subject area for which they have been appointed by the Council to act as resource persons.
3. Resource persons must not disclose to third parties or use for personal gain, any information, confidential or otherwise, which may be entrusted to them or which they have acquired access to solely through their association with the Council.

Resource persons are expected to complete a Statement of Compliance and Disclosure (available at [www.cxc.org](http://www.cxc.org)) should they be aware, or have reasonable grounds to believe, that actual or potential conflicts of interest exist.

## 10. IP OWNERSHIP AND PROTECTION

### 10.1. Ownership Provisions

This Section states the policies concerning ownership of IP created by, at, or for the Council.

#### 10.1.1. Externally-Sponsored Work

IP created as a result of work conducted under an agreement between an external sponsor and the Council that specifies the ownership of such IP shall be owned as specified in the said agreement.



If the Council fails to notify a creator, effectively and in advance, of limitations imposed on his IPRs by external sponsorship agreements, the creator is entitled to receive from the Council, fifty per cent (50%) of the net proceeds to the Council resulting from any commercialisation of his IP.

#### 10.1.2. Internally-Sponsored Work

When the Council provides funds, resources or facilities for a particular project to the extent of significant use, it may also choose to designate itself as sponsor of that work and may declare itself the owner of IP resulting from the said work. In such cases, the Council must specify in advance the disposition of any IPRs arising from the project and, where necessary, secure any underlying IPRs by assignment from the relevant creators.

If the Council fails to notify a creator, effectively and in advance, of limitations imposed on his IPRs by internal Council sponsorship, the creator is entitled to receive from the Council, fifty per cent (50%) of the net proceeds to the Council resulting from any commercialisation of his IP.

#### 10.1.3. Individual Agreements

IPRs for work which is the subject of a specific agreement between the Council and the creator(s) thereof shall be owned as indicated in the said agreement. Such agreements by the Council and third parties are encouraged.

In the case of copyright works, where under any such agreement the Council is the owner of the copyright, the said agreement shall also contain a waiver by the creator(s) of any moral rights subsisting in the work(s) and the Council will not be obliged to credit the creator(s) of the work(s) whenever the work is reproduced or otherwise exploited by the Council.

#### 10.1.4. IP Created by Staff

IP created by staff shall be owned by the Council if the said IP was created within the normal scope of their employment or through significant use of the Council's resources. Staff will, where required, execute any relevant documents effecting/perfecting the transfer of the ownership of IP to the Council and a waiver of any moral or related rights in respect of any resulting copyright work.

#### 10.1.5. IP Created by Resource Persons

Resource persons who make significant use of the Council's resources will be treated as staff with respect to any IP arising from such use and will, where required, execute any requisite documents effecting/perfecting the transfer of ownership of IP to the Council and a waiver of any moral or related rights in respect of any resulting copyright work.

#### 10.1.6. IP Created by Students

IP in respect of any materials produced by students in pursuance of the Council's examinations shall be owned by the Council, without limitation. These include, but are not limited to: articles, non-fiction, novels, short stories, poems, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other similar audio-visual works, sound recordings, computer software or databases.

All examination material shall clearly outline for the student's acknowledgement that by taking the Council's examinations the student is surrendering his initial copyright, if any, in the resulting work to the Council, without limitation.

If the Council fails to notify and obtain the student's acknowledgement as outlined above, the creator is entitled to receive from the Council, fifty per cent (50%) of the net proceeds to the Council resulting from any commercialisation of his IP.

#### 10.1.7. Consulting Agreements

Work done by staff as consultants to outside firms is presumed not to involve un-reimbursed significant use of the Council's resources or time. In such cases, the rights to IP created under consulting agreements are retained by the outside firms or the individual as specified by the terms of the consulting agreement.

IP in respect of work done by staff related to their capacity as staff of the Council shall be owned by the Council and staff will, where required, execute any relevant documents effecting/perfecting the transfer of the ownership of IP to the Council and a waiver of any moral or related rights in respect of any resulting copyright work.

### 10.1.8. General

Unless governed by Section 10, subparts 10.1.1, 10.1.2, 10.1.3, 10.1.4, 10.1.5 or 10.1.6, and in keeping with the intellectual traditions at the Council, the creator retains all rights to his IP.

## **10.2. IP Protection**

### 10.2.1. General

The Council will undertake best efforts to secure IPRs protection for the IP generated by staff and non-staff, and shall determine, subject to legal advice, which IPRs must be secured in relation to its materials.

### 10.2.2. Creator's Obligation to Disclose

The creator of any IP that is, or might be, owned by the Council under this Policy is required to make reasonably prompt written disclosure of the work to the Council's Registrar at the time when legal protection for the creation is contemplated, and such disclosure must be made before the IP is sold, used for profit or disclosed to the public.

## **10.3. IP Commercialisation**

### 10.3.1. General Principles

The Council undertakes to properly manage its IP portfolio and to achieve the maximum potential returns from the use and commercial exploitation of its IP in the context of its mandate.

Whenever the Council undertakes commercialisation of its IP, it shall do so, where feasible, in a fashion that provides for the widest possible dissemination and for non-exclusive licensing at competitive royalties-fee levels; gives consideration to more favourable licensing for non-profit educational institutions; and seeks to encourage small businesses in its Participating Territories.

### 10.3.2. Revenue Sharing

The Council shall, subject to Section 9.1 above, determine the extent to which the creator of the materials should share in the benefits of any commercialisation.

### 10.3.3. Revenue Use

The Council's share of any proceeds under this Policy will be used to reimburse itself for expenses for commercialisation of IP. Any additional return to the Council will be used to further the development of the staff of the Council.

## **11. TREATMENT OF THIRD-PARTY IP**

### **11.1. General Principles**

The Council respects the IPRs of all creators and owners, and aims to foster institution-wide compliance with applicable IP laws and to implement best practices in the recognition and proper treatment of IPRs.

This Section is binding on the staff of the Council who will be subject to disciplinary action for knowingly disregarding the policies herein. Disciplinary action will be determined consistent with other disciplinary actions under policies of the Council relating to the conduct of employees.

### **11.2. Protected Material**

All material subject to IP protection is to be utilised by the staff of the Council in a manner which does not infringe the IPRs of third parties.

Protected material credited to third parties should only be used with permission where the Council seeks to embody those works or portions of such works in material being generated by, or for, the Council, or to copy the works for distribution within or outside of the Council.

Staff must take all reasonable steps to seek the requisite licence, permission or clearance from the respective IPRs owners prior to using the material, particularly where the use involves a modification, adaptation and/or reproduction of a substantial portion of the material. The source of the material should be acknowledged.

## **12. POLICY ADMINISTRATION AND REVIEW**

### **12.1. Establishment of the IP Monitoring Team**

An internal committee called the Intellectual Property Monitoring Team (IPMT) shall be convened to carry out such administrative functions as are required for the proper implementation of the Policy.

#### **12.1.1. Composition**

The IPMT shall be led by the Registrar and Senior Manager, and comprise of other members of staff as deemed necessary.

#### **12.1.2. Reporting**

The IPMT shall report to the Administrative and Finance Committee on behalf of Council.

#### **12.1.3. Procedures**

The IPMT shall schedule meetings as it deems fit to monitor the implementation of the Policy and to attend to other matters relating thereto.

#### **12.1.4. Conduct**

All members of the IPMT shall maintain the confidentiality of information disclosed to them in connection with any IP-related issues, agreements or contracts in connection with the Policy. The IPMT, in carrying out its functions, shall rely on legal advice whenever the situation warrants.

### **12.2. Functions of the IPMT**

The IPMT shall manage the administration and implementation of the Policy, and be responsible for its periodic review and revision. The Policy shall be reviewed at the end of its first year of implementation and thereafter as determined by the Council.

Specific tasks of the IPMT shall include the following:

- Managing the implementation of the Policy in the Participating Territories and with the various stakeholders.
- Clarifying the application of the Policy in various circumstances.
- Assessing the operability and effectiveness of procedures and guidelines attendant to the Policy.
- Resolving any IP disputes properly referred to it under the Policy.

In managing the implementation of the Policy the IPMT shall, among other things:

- Consider whether the internal procedures for permissions/rights clearance for use of the Council's IP enable third parties to obtain permission with efficiency.
- Consider whether the disclosure obligation of staff and other measures taken to identify the generation of IP by, or at, the Council are effective in ensuring that potentially valuable IP is not overlooked.
- Ensure that decisions concerning acquiring or securing IPRs in respect of the Council's materials are taken in a timely fashion.
- Take account of the Council's use of the IP of third parties to ensure compliance with the Policy and that, in the normal course of the Council's activities, any third party rights are cleared prior to use.

### **13. POLICY MONITORING**

Each National Committee of the Council will be responsible for monitoring the implementation of the Policy in their respective Territories. In relation to the IPMT, the Heads of each National Committee will be responsible for the following:

- Reporting to the IPMT on the implementation of the Policy whenever called upon to do so.

- Referring to the IPMT, any issues affecting the use, management and protection of the Council's IP including licensing, and marketing and other commercialisation strategies.
- Referring or reporting to the IPMT, any matters which appear, based on the functions of the IPMT, to require the IPMT's review, assessment or determination, including but not limited to:
  - identifying activities in its operations which could result in valuable IP;
  - processing non-routine requests for permission/rights clearance for use of the Council's copyright material and/or trade marks by third parties;
  - finalising proposed licensing arrangements, contracts and agreements which have IPRs as a component or which affect the Council's IP in any way;
  - resolving IP ownership disputes;
  - addressing complaints about infringement of the Council's IP.

## **14. RELATED POLICIES**

This Policy shall be applied in conjunction with all other policies of the Council and, in particular, with those policies concerning, and ethics in, undertaking research and preparing documentation.

## **15. RESOLUTION OF DISPUTES**

Any difference between the creator and the Council arising out of the interpretation or application of this Policy and which is not settled by negotiation or other agreed mode of settlement shall be referred to a tribunal for determination.

The tribunal shall consist of three arbitrators at the instance of either party: one to be appointed by the creator, one to be appointed by the Council and the third, who shall be chairperson of the tribunal, to be chosen by the two arbitrators. The tribunal shall sit in Barbados.

Within six weeks, if either party fails to appoint an arbitrator or the two fail to agree on the third, the Secretary-General of the Caribbean Community (CARICOM) Secretariat shall make the appointments.

The tribunal shall make a determination within six months of the date of its constitution. The chairperson shall settle all procedural questions and a majority vote shall effect the final and binding decision.

## 16. CONTACT DETAILS

For further information regarding this Policy, please contact:

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