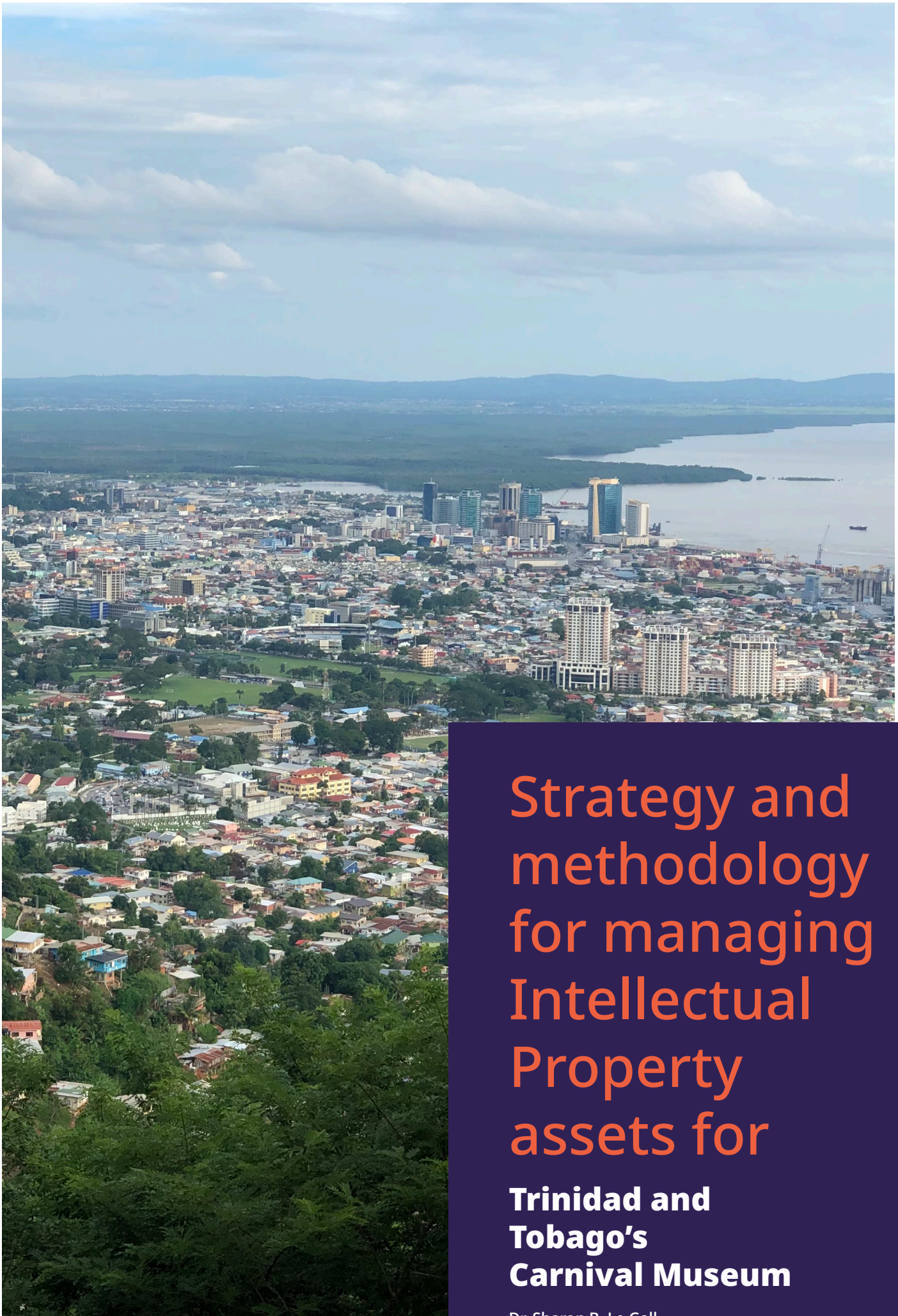

Strategy and methodology for managing Intellectual Property assets for

Trinidad and Tobago's Carnival Museum

Dr. Sharon B. Le Gall
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Preface

Carnivals are natural sites of cultural and artistic expression and by extension, Intellectual Property. Trinidad and Tobago's Carnival, one of many pre-Lenten festivals, is no exception.

Trinidad and Tobago Carnival has three main components – Calypso and Soca music, Masquerade, locally referred to as "Mas", and the Steel Pan (which has been designated as the country's national instrument). New music and Mas(querade) are produced every year for this pre-Lenten festival which is largely overtaken and replaced by the music and masquerade for the Carnival celebrations in subsequent years.

There have been attempts to preserve and archive the cultural expressions of the national Carnival festival through largely government-led initiatives and individual private collections. One such government initiative is the Carnival Institute of Trinidad and Tobago (the Carnival Institute) which was created by Cabinet Minute No.261 on February 4th, 1999 as a division of the National Carnival Commission (NCC) "mandated to collect information and artefacts related to Carnival and its arts, and to educate its practitioners, stakeholders and the general public about them." The Carnival Institute has over 3000 items, including audio recordings, audio-visual works, books, publications, photographic images and memorabilia relating to Calypso, Mas(querade) and the Steel Pan.

The Trinidad and Tobago Carnival Museum (the Carnival Museum) was conceptualized by the Trinidad and Tobago Carnival Bands Association (TTCBA) in collaboration with the NCC through the Carnival Institute. It was founded in March 2021. The Museum was organized around the annual Carnival festival with the goals of preserving the Carnival heritage for future generations, achieving cultural sustainability through Carnival activities, and realising economic development for the Carnival sector generally.

The Carnival Museum has entered into various Memoranda of Understanding with key stakeholders in the Carnival Sector. The Carnival Institute is a key stakeholder and has provided support to the Carnival Museum during its launch and subsequent exhibitions. Other key stakeholders include the Trinbago Unified Calypsonians' Organization (TUCO) and Pan Trinbago. Those organizations have agreed, in principle, to provide artefacts, memorabilia and information to the Carnival Museum.

The different components of the Carnival festival, whether in their contemporary or traditional expressions, attract different forms of Intellectual Property. By way of example, Calypso and Soca music may be protected by copyright; Mas(querade) may be protected by copyright, trademarks, and patents; and the Steel Pan musical instrument may be protected by industrial designs and patents.

The management of the Intellectual Property owned or controlled by the Carnival Museum will assist the Carnival Museum in reviewing and accounting for its Intellectual Property assets and those of third parties; and enable the Museum to leverage potential commercial opportunities.

This publication proposes an Intellectual Property Management Strategy for the Carnival Museum in Part I, and a Methodology for implementing such a Strategy in Part II. The Management Strategy comprises distinct but related components, namely, an Intellectual Property Inventory or Audit; an Intellectual Property Policy; Licensing Strategies; a Communications and Marketing Plan; and an Environmental Scan. Specifically, in addition to those standard components of an Intellectual Property Management Strategy for museums, it is proposed that there should be an Intellectual Property Training and Professional Services Strategy, based on the analysis of the data collected from stakeholders in the Carnival Sector, and requests made by some stakeholders surveyed.

The Methodology for implementing the Intellectual Property Management Strategy is presented in a separate part of this publication. It comprises multiple phases of execution, namely, a Needs Assessment (to determine the Intellectual Property policy and protection needs of the Carnival Museum and its key stakeholders); an Intellectual Property Audit or Inventory (to determine the Intellectual Property associated with the physical and digital museum exhibits); an Intellectual Property Policy framework (to guide the Carnival Museum in terms of ownership and use of Intellectual Property); and an Intellectual Property Licensing Strategy (to guide the Carnival Museum as it proposes to commercialise the Intellectual Property associated with the Carnival assets of the museum).

This publication is a timely and important initiative for Trinidad and Tobago since the cultural and Intellectual Property associated with the Carnival festival is vast, and in some instances, unquantified. While the Strategy and Methodology have been developed for the Carnival Museum, its utility extends beyond the museum. The processes and frameworks proposed can be useful for the Carnival Museum's key stakeholders as well as anyone involved in the creative processes associated with Carnival festivals in the Caribbean region and beyond.

Dr. Sharon B. Le Gall

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February 2024

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List of abbreviations

CATT
Copyright Act, 1997 (as amended) Trinidad and Tobago

CITT
Carnival Institute of Trinidad and Tobago

IP
Intellectual Property

IP Audit
Intellectual Property Audit

IP Policy
Intellectual Property Policy

NCC
National Carnival Commission

TTIPO
Trinidad and Tobago Intellectual Property Office

TUCO
Trinbago Unified Calypsonians' Organization

TTCBA
Trinidad and Tobago Carnival Bands Association

TTCBA-CITT
Proposal Trinidad and Tobago Carnival Bands Association and the Carnival Institute of Trinidad and Tobago Proposal – Request for Proposal for Repurposing of First Citizens' Charlotte Street Building

Strategy For Managing Intellectual Property Assets For Trinidad And Tobago's Carnival Museum[1]

Summary

- The Trinidad and Tobago Carnival Museum (the Carnival Museum) was conceptualized by the Trinidad and Tobago Carnival Bands Association (TTCBA) in collaboration with the National Carnival Commission (NCC) through the Carnival Institute of Trinidad and Tobago (Carnival Institute).
- This strategy for managing Intellectual Property Assets will outline proposed policies and solutions for the Carnival Museum. It is informed by data collected and analysis of that data in response to questionnaires distributed to key stakeholders in the Carnival Sector in Trinidad and Tobago, and information provided during a "Brainstorming Event" organized in June 2023.
- The Carnival Ecosystem comprises a network of public and private sector actors performing various functions to enable the annual hosting of Trinidad and Tobago Carnival. It includes policy makers, administrators, creatives and practitioners, public and private financiers, entertainment promoters, ancillary support service providers, and national, regional and international Carnival enthusiasts.
- The Carnival Museum is organized around the annual Carnival festival in Trinidad and Tobago with the goals of preserving the Carnival heritage for future generations, achieving cultural sustainability through Carnival activities, and attaining economic development for the Carnival sector generally.
- There are three principal components of Trinidad and Tobago Carnival, namely, Calypso and Soca, Mas (Masquerade) and Steel Pan. The representative organization for Calypso is the Trinbago Unified Calypsonians' Organization (TUCO). The representative organization for Mas (Masquerade) is the Trinidad and Tobago Carnival Bands Association (TTCBA). The representative organization for the Steel Pan is Pan Trinbago.
- These different components of Carnival may attract different forms of Intellectual Property and attendant rights, some of which may or may not require registration for eligibility. By way of example, (i) Calypso, soca and chutney soca music may be protected by copyright; (ii) Mas (Masquerade) may be protected by copyright, trademarks and patents; and (iii) the Steel Pan musical instrument may be protected by industrial designs and patents.
- The Copyright Act, 1997 (as amended), of Trinidad and Tobago, grants rights to the producers of "works of mas". However, such rights do not extend beyond Trinidad and Tobago except for Grenada where "works of carnival" are protected using similar language.
- The Carnival Museum has entered into various Memoranda of Understanding with key stakeholders in the Carnival sector. Those organizations have agreed, in principle, to provide artefacts, memorabilia and information to the Carnival Museum.
- The Carnival Institute is a key stakeholder and has provided support to the Carnival Museum during its launch and subsequent hosting of exhibitions. The principal form of Intellectual Property loaned to the Carnival Museum by the Carnival Institute is copyright. This does not preclude other forms of Intellectual Property such as

trademarks or confidential information being made available to the Carnival Museum.

- The assets loaned to the Carnival Museum have been displayed at the museum site. There are future plans to digitize Carnival assets and establish virtual museums.
- The rights to reproduce, publicly display, and communicate works (Carnival assets) to the public need to be negotiated with the Carnival Institute and other key stakeholders who have loaned Carnival assets to the Carnival Museum.
- The Copyright Act, 1997 (as amended), of Trinidad and Tobago provide for exceptions and limitations which allows for the use of copyright works without the authorization of the owner of copyright. However, those exceptions and limitations do not extend (as yet) to the activities of museums.
- The management of the Intellectual Property owned or controlled by the Carnival Museum will assist the Carnival Museum in reviewing and accounting for its Intellectual Property assets and those of third parties; and in leveraging potential commercial opportunities for the Museum.
- In general, Intellectual Property management can be divided into distinct components, including the Intellectual Property Inventory or Audit; the Intellectual Property Policy; Licensing Strategies; a Communications and Marketing Plan; and an Environmental Scan.
- Specifically, in addition to the standard components of an Intellectual Property Management Strategy for museums, there should be an Intellectual Property Training and Professional Services Strategy, based on the analysis of the data collected and requests made by some stakeholders surveyed.
- The following components of an Intellectual Property Management Strategy can be summarized as follows:
    - ***Intellectual Property Training and Professional Services Strategy:*** This strategy will be informed by a needs assessment exercise to determine the gaps in Intellectual Property awareness and expertise. The analysis of the information collected can guide the development of targeted training and consulting interventions for the Carnival Museum and the key stakeholders.
    - ***IP Audit:*** It is very important to know what are the tangible and intangible assets of the Carnival Museum. An inventory of the Intellectual Property assets held by the Carnival Museum is required, whether those assets were created inhouse, acquired or licensed. A checklist of questions may be developed to facilitate the audit exercise. Any Intellectual Property Audit conducted by the Carnival Museum, will comprise those assets that are owned and controlled by the Carnival Museum itself, and those assets that are donated, loaned or licensed to the museum by its key stakeholders and other parties. It should be noted that some stakeholders have more advanced systems of documentation from which the Carnival Museum may benefit, which will facilitate the ease with which the audit exercise will be carried out.
    - ***IP Policy:*** An Intellectual Property Policy guides administrators of the museum about the use of Intellectual Property that is owned by it or by third parties. It may include the following:
        - clear and consistent statements about ownership and use of assets created by the museum on the one hand, and third-party contractors on the other hand;
        - positions on whether the museum wants to be risk averse or proactive and innovative or adopt a combination of approaches where necessary;

- alignment with the Vision and Mission of the museum in terms of the kinds of commercial and non-commercials activities pursued by the museum;
- guidance about the diverse rights associated with the activities of the museum and the necessary approvals required for their use;
- conflict resolution strategies;
- record-keeping which will facilitate the creation of precedents to facilitate consistent decision-making;
- continuous review of the policy to ensure relevance.

- ***Licensing Strategy:*** A museum that proposes to engage in commercial licensing of Intellectual Property should develop a licensing strategy that provides a road map, with targets, objectives and revenue streams. A Licensing Strategy should be considered from the perspective of the owners of Intellectual Property and from the consumers of Intellectual Property. From the perspective of the owners, the Licensing Strategy must be aligned with the IP Policy. Such alignment would determine the specific Intellectual Property assets to be licensed, and the ways in which they should be licensed, in terms of the kinds of rights to be granted to the licensee. From the perspective of the consumers, the Licensing Strategy must be aligned with a communications and marketing plan to determine the targeted consumer demographics to achieve optimal financial benefit from licensing Intellectual Property assets. The content of a Licensing Strategy may vary and can include some or all of the following matters, namely,
  - determining and defining the relevant content and associated Intellectual Property to be licensed;
  - the uses that will be made of the relevant content and associated Intellectual Property;
  - guidelines for valuing the relevant content and associated Intellectual Property;
  - the rights to be negotiated;
  - the manner in which staff and users are to be educated about permitted use of the relevant content and associated Intellectual Property;
  - guidelines for monitoring use of the relevant content and associated Intellectual Property;
  - standard license fees;
  - sample clauses; and
  - references to educational material about Intellectual Property and licensing.

The Carnival Museum projects to be both Owners/Licensors and Users/Licensees of content. They would have to develop their Licensing Strategy with these two perspectives in mind. As a content owner, the Carnival Museum would require a licence agreement, as the Licensor, when a third party uses its assets and associated Intellectual Property. As a content user, the Carnival Museum would require a licence agreement, as a Licensee, when they use the assets and associated Intellectual Property of third parties.

As part of or separate from a Licensing Strategy, the Carnival Museum could develop a Digital Rights Management Strategy which will enable it to provide guidelines for using, controlling, tracking and providing access to content in the digital environment.

As part of a Licensing Strategy, consideration should be given to developing a schedule for maintaining Intellectual Property, specifically managing any renewals of registrations where necessary.

- *Communications and Marketing Strategy:* There should be effective communication within the Carnival Museum and externally to its key stakeholders and its intended target audiences. The content of internal communication can include the IP Policy and, when and where appropriate, business opportunities. The Communication Strategies and Marketing Plan should be aligned with the IP Policy and the Licensing Strategy. Every museum is unique. The Carnival Museum proposes to have very strong community relations. The Communications Strategy may include Community Outreach and Public Events. A Marketing Strategy can identify the different consumer demographics, the manner with which they should be communicated, and what they may be willing to consume as a museum experience.

- *The Environmental Scan:* An Environmental Scan will enable the Carnival Museum to track trends and occurrences in the Museum Sector. Any Intellectual Property Management Strategy should account for existing licensing practices and business relationships of comparable museums, nationally and internationally. Different museums utilize diverse approaches, for instance, some museums are dedicated to preserving historical facts. Others utilize separate entities to monetize its collections. The Carnival Museum proposes to adopt both preservationist and commercialization approaches to managing its collections. There is also a proposal for the Carnival Museum to incorporate community involvement. Based on these broad concepts and parameters, there may not be a comparable institution from which to model the activities of the Carnival Museum, and in this regard, consideration may be given to identifying the most appropriate and analogous institutions with which to establish partnerships. This may include research and educational institutions.

- While the various components of the Intellectual Property Management Strategy are presented as discrete and separate elements, they overlap and inform each other, and their operationalization may occur concurrently.

- Next steps: The Carnival Museum can take some of the steps outlined below immediately while a decision is made about further training and the acquisition of Intellectual Property expertise:

  - *At the level of the Carnival Museum:* An Intellectual Property Needs Assessment for the Carnival Sector is required which may include developing a separate and targeted exercise to determine levels of Intellectual Property awareness. The objectives of the Needs Assessment should be clearly identified and the necessary resources and capacity to complete the assessment should be determined. The target audience should be identified and facilities and processes for getting the necessary feedback should be established. Thereafter, the necessary intervention will be shaped. (This activity can be co-ordinated with the appropriate government office or department).

  - An audit of the previous and current collections of exhibits should be conducted by the Carnival Museum, whether those exhibits were donated, loaned or created inhouse. This will begin the process of mapping the Intellectual Property associated with those assets and documenting ownership of those assets. This exercise should be replicated by the key stakeholders if it has not been done already.

  - The framework of an IP Policy can be discussed by the Carnival Museum within the context of the Vision and Mission of the museum. As a starting point, the policy can include positions that the museum can take over ownership of Intellectual Property created inhouse or by third parties on behalf of the museum; the kinds

of activities the museum wishes to engage in (commercial and non-commercial); and how disputes can be resolved. This exercise should be replicated by the key stakeholders if it has not been done already.

- The framework for a Licensing Strategy can begin with identifying what Carnival assets are owned by the Carnival Museum (which ties into the IP Audit) and what Carnival Assets the Museum would like to access. Thereafter, there can be discussions about how those assets are to be used; the duration of use; the cost; and the generation of revenue from use. Once those basic discussions are engaged in, Intellectual Property issues can be infused into those discussions.
- The framework for a Communications and Marketing Strategy can include a determination of what should be communicated internally within the Carnival Museum, and externally to its stakeholders, and the forms such communication should take to reach the different audiences. A Marketing Strategy can initially identify the different consumer demographics, the manner with which they should be communicated, and what they may be willing to consume as a museum experience.
- The Carnival Museum should begin to research comparable institutions to determine the existing and appropriate trends to inform its own operations. This could lay the groundwork for establishing collaborations with other appropriate institutions.
- ***At the level of the government re policy:*** There should be the formulation of a national policy on ownership/custodianship of the Carnival Festival; and a formulation of a national policy on ownership/custodianship of traditional knowledge generally, and specifically as it relates to Carnival. This exercise should engage all the relevant stakeholders.
- ***At the level of the government re legislation:*** There should be a policy on the extent to which there are exceptions and limitations to Intellectual Property protection, specifically, copyright protection, that support the activities of museums. Note that this will not impact the commercial activities of the museum since those exceptions and limitations are primarily for private and/or non-commercial use.

- The Methodology for the implementation of the Intellectual Property Management Strategy, as the next potential installment of this project, comprises multiple phases of execution, namely,
  - a Needs Assessment (to determine the Intellectual Property policy and protection needs of the Carnival Museum and its key stakeholders);
  - an Intellectual Property Audit or Inventory (to determine the Intellectual Property associated with the physical and digital museum exhibits);
  - the development of an Intellectual Property Policy (to guide the Carnival Museum in terms of ownership and use of Intellectual Property); and
  - an Intellectual Property Licensing Strategy (to guide the Carnival Museum as it proposes to commercialise the Intellectual Property associated with the Carnival assets of the museum)

Part 1

Strategy For Managing Intellectual Property Assets For Trinidad And Tobago's Carnival Museum[1]

Introduction

The goal of this project is the preparation of a Strategy for Managing Intellectual Property Assets for Trinidad and Tobago's Carnival Museum (the Carnival Museum).[2] The Carnival Museum was conceptualized by the Trinidad and Tobago Carnival Bands Association (TTCBA) in collaboration with the National Carnival Commission (NCC) through the Carnival Institute of Trinidad and Tobago (the Carnival Institute).[3] It should be noted that the Carnival Institute was created by Cabinet Minute No.261 on February 4th, 1999 as a division of the National Carnival Commission "mandated to collect information and artifacts related to Carnival and its arts, and to educate its practitioners, stakeholders and the general public about them."[4] This draft strategy for managing Intellectual Property assets will outline proposed policies and solutions for the Carnival Museum. It is informed by data collected and analysis of that data in response to questionnaires distributed to key stakeholders in the Carnival Sector in Trinidad and Tobago,[5] and information provided at a "Brainstorming Event" held in June 2023.[6]

The Context

The Carnival Ecosystem comprises a network of public and private sector actors performing various functions to enable the annual hosting of Trinidad and Tobago Carnival. It includes policy makers, administrators, creatives and practitioners, public and private financiers, entertainment promoters, ancillary support service providers,[7] and national, regional and international Carnival enthusiasts. Government, private sector, communities, and individuals negotiate the terms on which they will collaborate to facilitate the hosting of Carnival.

The Carnival Museum is organized around the annual Carnival festival in Trinidad and Tobago with the goals of preserving the Carnival heritage for future generations, achieving cultural sustainability through Carnival activities, and economic development for the Carnival Sector generally.

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[1] *In this document, the term "Intellectual Property" is used interchangeably with "IP".*

[2] *The purpose of the Carnival Museum includes storage, collection and preservation of information, artefacts and memorabilia on Trinidad and Tobago Carnival. In December 2022, I signed a contract with the World Intellectual Property Organization (WIPO) to provide the following deliverables:*
- A Fact-Finding questionnaire
- A Report containing a review and systemization of collected information
- A Draft IP Management Strategy outlining policies and solutions
- A Final IP Management Strategy and dissemination to Carnival Stakeholders
Note that policies informing the collection and curation of Carnival Museum assets, while important, are outside the scope of this project.

[3] *"The Trinidad and Tobago Carnival Bands Association (TTCBA) in collaboration with the Carnival Institute of Trinidad and Tobago (CITT) brought together their collective resources to propose the formation of a Trinidad and Tobago Carnival Museum and Practitioner's Academy as the home for information, artefacts and memorabilia on Carnival:" see the "Trinidad and Tobago Carnival Bands Association and the Carnival Institute of Trinidad and Tobago Proposal – Request for Proposal for Repurposing of First Citizens' Charlotte Street Building" (TTCBA-CITT Proposal) at p.6.*

[4] *See the TTCBA-CITT Proposal, at p.6.*

[5] *For an overview of the "Questionnaire Design" and the rationale for selecting the "Questionnaire Recipients": see Sharon B. Le Gall, "Strategy for Managing IP Assets for Trinidad and Tobago's Carnival Museum – Analysis of Data Collected from Stakeholder Responses to Questionnaires", May 1st, 2023, at p.7.*

[6] *This event entitled a "Brainstorming session for experts – IP Strategy for the Carnival Museum" was organized by the World Intellectual Property Organization (WIPO) in cooperation with the Government of the Republic of Trinidad and Tobago through the Trinidad and Tobago Intellectual Property Office (TTIPO), the National Carnival Commission of Trinidad and Tobago (NCC), and the Trinidad and Tobago Carnival Museum (Carnival Museum). This event was held at the V.I.P. Room, Grand Stand, Queen's Park, Savannah, Port of Spain, Trinidad, on June 29th and 30th, 2023.*

[7] *Such as transport providers, infrastructure providers (for temporary structures to host events), and food and beverage providers (from micro to corporate suppliers).*

IP associated with Carnival (an overview)

There are three principal components of Trinidad and Tobago Carnival, namely, Calypso and Soca Music, Mas (Masquerade) and Steel Pan. The representative organization for Calypso is the Trinbago Unified Calypsonians' Organization (TUCO). The representative organization for Mas (Masquerade) is the Trinidad and Tobago Carnival Bands Association (TTCBA). The representative organization for the Steel Pan is Pan Trinbago. These different components of Carnival may attract different forms of intellectual property and attendant rights, some of which may or may not require registration for eligibility. By way of example, (i) Calypso, Soca and Chutney Soca music may be protected by copyright; (ii) Mas (Masquerade) may be protected by copyright, trademarks, and patents; and (iii) the Steel Pan musical instrument may be protected by industrial designs and patents.

The principal components of Trinidad and Tobago Carnival have contemporary and traditional aspects. In relation to Mas (Masquerade), there are what can be considered as traditional cultural expressions of Mas (Masquerade) that are not yet the subject of contemporary intellectual property laws but may be protected using laws related to unfair competition, the protection of confidential information, and trust law in the appropriate circumstances. Further, different sources of Carnival assets (whether they are individual/corporate or collective/community based) will have different IP eligibility and needs.

Works of Mas – some preliminary comments[8]

The Trinidad and Tobago Copyright Act, 1997 (as amended) (CATT), provides for the protection of a "work of mas" which is defined as

> 'an original production intended to be performed by a person or a group of persons in which an artistic work in the form of an adornment or image presented by the person or persons is the primary element of the production, and in which such adornment or image may be accompanied by words, music, choreography or other works, regardless of whether the production is intended to be performed on a stage, platform, street or other venue.'

Section 26(5) of the CATT provides that "in respect of…a work of mas, the original owner of copyright shall be the producer, unless provided otherwise by agreement". Further, section 3 of the CATT defines "producer" of a "work of mas" as "the natural person or legal entity by whom the arrangements necessary for the making of the…work of mas…are undertaken."

In my view, the inclusion of this category of works expands the range of possible owners of copyright to include what may be referred to as mas "bandleaders", that is, the individuals who make the necessary arrangements to "put the band on the road" so to speak. This category of copyright owner is not recognised beyond Trinidad and Tobago, except possibly in Grenada where "works of Carnival" are protected.[9]

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[8] *In this document, the terms "works of mas" and "mas" are used interchangeably.*

[9] *"Producers" in this context are characterised as being rewarded for their "entrepreneurial" efforts as opposed to their "creative" efforts. However, in relation to producers of micro mas bands for example, "producers" may also be "creators".*
See the Copyright Act, 2011 (Act No.21 of 2011, Grenada), s.3, which provides that a "work of carnival" means an original production intended to be performed by a person or a group of persons, in which an artistic work in the form of an adornment or image presented by the person or persons, is the primary element of the production, and in which such adornment or image may be accompanied by words, music, choreography or other works, regardless of whether the production is intended to be performed on stage, platform, street or other venue."
Section 6 (1) provides that "works of carnival" shall also be protected as derivative works and section 6(2) provides that protection shall be without prejudice to any protection of a pre-existing work incorporated in, or utilized for the making of such a work.
Section 28(6) provides that the owner of a "work of carnival" is the producer (unless provided otherwise by agreement) and "producer" is defined, in section 3, as "the natural person or legal entity by whom the arrangements necessary for the making of the…work of carnival…are undertaken.

"Works of mas" may be divided into two categories, namely "contemporary or conventional" works of mas and "traditional" "works of mas" for which the producers of such "works of mas" are afforded rights. "Works of mas" as a category of protected works "as a whole" is not recognised outside Trinidad and Tobago except Grenada, as mentioned above.

Although there is very limited protection for "works of mas" "as a whole" beyond Trinidad and Tobago, the constituents of contemporary or conventional "work of mas" may qualify for intellectual property protection, for example, the drawings for the particular costume worn by the individual may qualify as an artistic work; the "performers" of "mas" are protected[10]; the "choreography" used as part of the performance of the "mas" may qualify for copyright protection once it is original; and the words and or music accompanying the performance of the "mas" may qualify as literary or musical works, respectively, under copyright law. Therefore, their use in Berne members countries may be regulated. (Note that section 6 of the CATT, categorises "works of mas" as derivative works and as such, protection is afforded to "works of mas" without prejudice to any protection of a pre-existing work incorporated in or utilised for the making of such a work.[11])

Further, whether a "work of mas" is "contemporary/conventional" or "traditional" they can range from a simple costume or "dress" to an elaborate structure. As a simple costume or dress, a "work of mas" may be characterised as "clothing" which, in itself, may not qualify for copyright protection outside Trinidad and Tobago and Grenada (separate and apart from an artistic representation of such "clothing"). Alternatively, as an elaborate structure, a "work of mas" may be characterised as a three dimensional work or sculpture, for which there may be copyright protection internationally.

In relation to "traditional" "works of mas", the CATT provides protection for the producer of such "works of mas" since the legislation, on its face, makes no distinction between "contemporary or conventional" "works of mas" on the one hand, and "traditional" "works of mas", on the other. In relation to the constituents of traditional works of mas, the protection is less certain, whether in Trinidad and Tobago or internationally. International deliberations concerning the protection of traditional knowledge and traditional cultural expressions (the latter likely to incorporate "traditional mas") are ongoing.[12]

Exceptions and limitations for museums

There are instances in which, notwithstanding the use of intellectual property by third parties, the authorisation of the owner of intellectual property is not required. In relation to copyright law, the CATT provides that a quotation of a short part of a published work is permitted provided it is compatible with fair dealing and does not exceed the extent justified by the purpose, and it is accompanied by an indication of the name of the author, if the author's name appears on the work. Further, reproduction of a short part of a published work for teaching purposes by way of illustration is permitted, in writing or sound or visual recordings, provided that such reproduction is compatible with fair dealing and does not exceed the extent justified by the purpose.

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[10] *Performers of "works of mas" are protected (at least in theory) from the unauthorised fixation and reproduction of their performances (which with thousands of potential "performers" in "mas bands", seems almost impossible to enforce).*

[11] *See s.6(2) of the CATT.*

[12] *Note that I am making a distinction between the "work of mas" itself (that is, the underlying costuming, for example) and the "producer" of the "work of mas" who is afforded protection as an "individual producer" but the underlying works may be unprotected. Therefore, the CATT, does not protect traditional knowledge. It may protect the producer of the "traditional" "work of mas" but not the "traditional" "work of mas" itself. The idea behind traditional knowledge protection/traditional cultural expressions protection is to recognise collective creativity which the Trinidad and Tobago copyright legislation does not (as yet) protect. An analogy could be made with the protection for "performers" of traditional cultural expressions as opposed to the "traditional cultural expressions" themselves. This is how I interpret the section regarding protecting "works of mas" as they relate to "traditional" "works of mas". (By comparison, the underlying components of the "contemporary" "works of mas" as stated above, are protected because they have identifiable authors and creators and are original).*

Some of these exceptions may apply should the Carnival Museum engage in educational and training activities or in the preparation of curatorial notes for exhibitions. Other provisions relate to educational institutions, libraries and archives, of which the Carnival Museum may not be characterised.

Although the CATT does not include specific exceptions and limitations that apply to museums, the legislation of some countries provide exceptions for the use of works in the exhibition catalogues and in the exhibition of works in museums.[13]

Use of works in exhibition catalogues
The need for museums to exhibit and promote the works of their creators seem to be recognized in the exceptions and limitations provided by copyright laws of several countries where references are made to using works in catalogues.[14]

> "Museums advertise permanent and temporary exhibitions in all sorts of ways. Most commonly, they make posters, and reproduce the work for all standard museum purposes, including specifically (but not limited to) exhibition and collections catalogues (whether offered for sale through commercial channels or not), hand-outs, brochures, didactic labels, magazines, journals, newspapers, and the like. In many cases, museums will wish to advertise their exhibitions by means of a reproduction of certain objects in the collection." [15]

The exhibition of works
Some Copyright provisions permit the owner of the original version of a painting, sculpture or photograph to have the right to exhibit such item, unless expressly prohibited by the author in writing, at the time the original version was disposed of. Other provisions state that authors may not prohibit the displaying of the original version of a work belonging to a museum, art gallery or a similar public institution.[17]

It should be noted that exceptions and limitations to copyright laws generally apply in the context of non-profit activities and will not apply to the proposed commercial activities of the Carnival Museum.

Specific Forms of Intellectual Property Indicated in the Data Collected

The analysis of the data collected focussed on the following:

- The main intangible assets of the Carnival and collections embedded in the Carnival Museum
- How those intangible assets are used
- The documentation that existed about the Intellectual Property ownership of those intangible assets

[13] *See generally, "Copyright Limitations and Exceptions for Museums" prepared by Jean-François Canat and Lucie Guibault, in collaboration with Elisabeth Logeais; Standing Committee on Copyright and Related Rights, Thirtieth Session, Geneva, June 29 to July 3, 2015, SCCR/30/2, April 30th, 2015 (Canat, Guibault and Logeais,"Copyright Limitations and Exceptions for Museums") .*

[14] *See Canat, Guibault and Logeais, "Copyright Limitations and Exceptions for Museums" at p.25 where the laws of the following countries are referenced, namely, Belgium, Bosnia Herzegovina, Denmark, Estonia, Finland, France, Germany, Macedonia, Malta, Netherlands, Norway, Poland, Portugal, Serbia, Slovenia, Slovakia, Switzerland, Turkey and the United Kingdom.*

[15] *See Canat, Guibault and Logeais,"Copyright Limitations and Exceptions for Museums" at pp.24-25.*

[16] *Ibid., at p.26, referring to the Serbian Copyright Act, Article 37.*

[17] *Ibid., at p.26, referring to the Serbian Copyright Act, Article 37.*

The main intangible assets of the Carnival and collections embedded in the Carnival Museum
The Carnival Museum is in the process of building its own collections of Carnival assets. It has created videos of Carnival Bandleaders during the Covid Pandemic, and it has also recreated Carnival costumes that were no longer in existence. Those costumes were winning costumes of competitions entered by their owners. "The Story of Jouvay" was one of the museum's exhibitions in June 2023. It comprised works based on research done internally by the Carnival Museum, as well as donations and loans of exhibits from private individuals within the Carnival Industry.[18]

The Carnival Museum has entered into (and propose to enter into) various Memoranda of Understanding with key stakeholders in the Carnival Sector. Those organizations have agreed, in principle, to provide artefacts, memorabilia and information to the Carnival Museum.

The Carnival Institute, a key stakeholder, has provided significant support to the Carnival Museum. By way of example, that institute has provided collections for an exhibition about Trinidad and Tobago Carnival hosted by the Carnival Museum in 2022. Those collections comprised thematic wall hangings representing the main components of Carnival, costumes of various conventional and traditional Carnival characters; digital screens of audio-visual works of performances, including Calypso and Chutney Soca performances; and Steel Pan performances.[19]

Based on the above, the principal form of Intellectual Property loaned to the Carnival Museum by the Carnival Institute is copyright.[20]

How those intangible assets are used
The assets loaned to the Carnival Museum have been displayed at the museum site. There are future plans to digitize Carnival assets and establish virtual museums. This will entail communicating those assets to the public as understood in Copyright law. Further, brochures will be produced (whether in print or digital form) which would entail reproduction of the relevant Carnival assets.[23] Therefore, the rights to reproduce, publicly display, and communicate works (Carnival assets) to the public, need to be negotiated with the Carnival Institute and other key stakeholders who have loaned Carnival assets to the Carnival Museum.

The documentation that exists about the IP ownership of those intangible assets
The Carnival Museum is in the process of compiling inventories of the collections loaned to it for its previous, ongoing and upcoming exhibitions. It is also interested in acquiring document templates for the creation, acquisition or borrowing of Carnival assets and associated Intellectual Property.

In general, the stakeholders surveyed demonstrated varying degrees of documentary evidence of the Carnival assets in their possession, in some cases, indicating the provenance of items received by them, and concluding the appropriate contractual documents.

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[18] *This information was provided by Kenny Attai, Carnival Museum, 28th July, 2023.*

[19] *A listing of the collections comprising the 2022 exhibition at the Carnival Museum is contained in Sharon B. Le Gall, "Strategy for Managing IP Assets for Trinidad and Tobago's Carnival Museum – Analysis of Data Collected from Stakeholder Responses to Questionnaires", May 1st, 2023, Annex IV.*

[20] *This does not preclude other forms of Intellectual Property such as trademarks or confidential information being made available to the Carnival Museum.*

[21] *The Copyright Act, 1997, (as amended) Trinidad and Tobago, s.8(1)(g) provides for the right to public display of the original or a copy of the work.*

In addition, stakeholders representing practitioners or those who, themselves, are practitioners of the main components of Trinidad and Tobago Carnival, have utilized the Intellectual Property registration system to protect their goods and services and their professional names.[22] In large part, those registrations have been kept up to date. Some stakeholders have also included an educational component to the range of commercial goods and services that they offer. This aligns with the training and educational aspect of the Carnival Museum. Intellectual Property registrations are primarily owned by individuals and companies operating in the private sector. However, there are government/public supported institutes and commissions that have availed themselves of the Intellectual Property registration system. [25]

In relation to unregistered intellectual property, some stakeholders in the private and public sectors indicated that although they had not sought to register their trade names and logos, they have been using those names and logos for over a decade or more. In those instances, rights may have been acquired through long use.

Components of an IP Management Strategy for Museums

General

Intellectual Property management has been described as a "series of processes that help to identify, organize and enrich the understanding of a museum's collection". [26] The Management Strategy will assist the Carnival Museum in reviewing and accounting for its Intellectual Property assets; reviewing and accounting for the Intellectual Property of third parties to ensure authorized use and the avoidance of liability; and leveraging potential commercial opportunities.

In general, Intellectual Property management can be divided into distinct components, including the Intellectual Property Audit or Inventory (IP Audit or Inventory); the Intellectual Property Policy; Licensing Strategies; a Communications and Marketing Plan; and an Environmental Scan.[27]

In addition to the standard components of an Intellectual Property Management Strategy for Museums, there should be an Intellectual Property Training and Professional Services Strategy, based on the analysis of the data collected and requests made by some stakeholders surveyed.

Intellectual Property Training and Professional Services Strategy

Emerging from the interactions with the recipients of the questionnaire (which was designed to identify the Intellectual Property associated with Carnival assets, among other things), is a need for greater Intellectual Property sensitization and training so that they (the key

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[22] *The Copyright Act, 1997, (as amended) Trinidad and Tobago, s.8(1)(j) provides for the right of communication to the public of the work.*

[23] *The Copyright Act, 1997, (as amended) Trinidad and Tobago, s.8(1)(a) provides for the right of reproduction of the work.*

[24] *See email correspondence from the Trinidad and Tobago Intellectual Property Office dated 14th April, 2023 where a list of Trade Mark, Industrial Design and Patent registrations were provided.*

[25] *For more details of registered Intellectual Property associated with Carnival see "Sharon B. Le Gall, 'Strategy for Managing IP Assets for Trinidad and Tobago's Carnival Museum - Analysis of Data Collected from Stakeholder Responses to Questionnaires'", May 1st, 2023, at pp.11-13.*

[26] *See Rina Elser Pantalony,* ***Managing Intellectual Property for Museums - Guide*** *(World Intellectual Property Organization: Switzerland, 2013), at p.22.*

> *"In the past, museums identified their property and collections as tangible assets. For example, real estate or leasehold interests for the real property of the museum are managed by the administrative arm of the museum. The collection, on the other hand, is managed by the registrar or collections manager. With the advent of new technologies and the growing awareness of complex IP issues, new management processes are now recognized as necessary to manage the assets and liabilities that may not be readily apparent.:" Ibid.*

[27] *See Rina Elser Pantalony,* ***"Managing Intellectual Property for Museums"****, at p.22.*

stakeholders) would have the expertise to conduct audits of their own Intellectual Property inventories; develop policies regarding the creation, use and ownership of their Intellectual Property; and develop templates to support the operationalization of those policies. Some stakeholders surveyed have directly requested sensitization and training. Other stakeholders expressed a need for persons with the necessary skillset and experience to assist with the resolution of Intellectual Property issues. While the partner stakeholders are aware of the issues, either Intellectual Property training or the retaining of Intellectual Property services (or both) will enable them to better protect their rights and those of others.

An Intellectual Property Needs Assessment for the Carnival Sector is required which may include developing a separate and targeted exercise to determine levels of Intellectual Property awareness.[28]

Intellectual Property training would be useful for the Carnival Museum as well thereby building institutional capacity. Alternatively, the Carnival Museum may adopt a strategy of outsourcing the Intellectual Property Management function, based on an internal needs assessment exercise.

Professor Bowman, in his Review, re-emphasizes the need for Intellectual Property education for all stakeholders.[29] However, he strongly recommends that "the museum hire an IP officer who would be in charge of IP education for all employees..." [30]

IP Audit[31] - What do you own or control?

It is very important to know what are the tangible and intangible assets of the Carnival Museum. An inventory or audit of the Intellectual Property assets held by the Carnival Museum is required, whether those assets were created inhouse, acquired or licensed. Even where the rights holder is unknown, a notation of this fact should be made. The Intellectual Property inventory can be mapped against the general inventory of the museum's collections.

The IP Inventory or Audit should be divided into two categories: those assets that are inherent to the museum itself (that relate to the administration of the museum), and those Intellectual Property interests associated with the collections of the institution.[32]

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[28] *The objectives of the Needs Assessment should be clearly identified and the necessary resources and capacity to complete the assessment should be determined. The target audience should be identified and facilities and processes for getting the necessary feedback should be established. Thereafter, the necessary intervention will be shaped.*

[29] *See Professor Rob Bowman, Review of "Strategy for Managing Intellectual Property Assets for Trinidad and Tobago's Carnival Museum" (2023), at p.1 ("Bowman Review")*

[30] *See Bowman Review, at p.14.*

[31] *"If a museum is not aware of the IP assets it may own, or the terms and conditions of the IP assets it may have licensed, then it is likely that it will not be able to assess whether the museum is able to engage in... business opportunities": see Rina Elser Pantalony, "Managing Intellectual Property for Museums", at p.22.*

Diane Zorich, in her seminal work "Developing Intellectual Property Policies: A How To Guide for Museums" states that:

> *"The IP audit serves many functions. It tells you exactly what IP you have and where it came from. It also triggers actions that make a museum more accountable for its assets and helps facilitate creative projects using 'rediscovered' assets. In addition, it helps an institution monitor compliance with IP laws and avoids infringements": see Diane Zorich, Developing Intellectual Property Policies: A How to Guide for Museums, Canadian Heritage Information Network, Government of Canada, Ottawa, 2003 at p.28 referenced in Rina Elser Pantalony, "Managing Intellectual Property for Museums", at p.22.*

[32] *See Rina Elser Pantalony, **Managing Intellectual Property for Museums – Guide**", at p.33. "In addition, the inventory can be divided into IP interests associated with the collection and IP interests associated with the administration of the museum. The latter comprises the IP interests managed through the administration of the museum as a whole, such as its trademarks and names, the license of its location for use in films, any technology innovations developed by the museum, its business methods and finally the licensing or syndication of its publications": ibid., at p.23.*

A checklist may be created to facilitate the execution of the IP Audit.

Checklist questions

Administration

These questions relate to the Intellectual Property associated with the administration of the Carnival Museum, for example, registered trademarks (including the name, logo and building design of the museum). The building may be protected as a heritage site which may entail specific branding requirements. Further, listings (of donors, clients or suppliers, for example) and business strategies may be protected as confidential information.[33]

Questions related to the administration of the museum include the following:

- What, if any, Intellectual Property (for example, trademarks including logos, building or architectural designs) are owned by the Carnival Museum?
- What, if any, forms of confidential information are owned by the Carnival Museum?

Collections

Questions related to the museum collections include the following:[34]

- What, if any, assets (and corresponding Intellectual Property) have the Carnival Museum created?
- Is there any documentation associated with those assets?
- What, if any, assets (and corresponding Intellectual Property) do the Carnival Museum intend to create?
- Is there any documentation associated with the creation of future assets?
- What, if any, assets (and corresponding Intellectual Property) have the Carnival Museum acquired?
- Is there any documentation associated with those assets?
- What, if any, assets (and corresponding Intellectual Property) do the Carnival Museum intend to acquire?
- Is there any documentation associated with those future assets?
- What, if any, assets (and corresponding Intellectual Property) have the Carnival Museum licensed? [35]
- Is there any documentation associated with those licensed assets?
- What, if any, assets (and corresponding Intellectual Property) do the Carnival Museum intend to license?
- Is there any documentation associated with those future assets to be licensed?
- What, if any, assets (and corresponding Intellectual Property) have the Carnival Museum borrowed?
- Is there any documentation associated with those borrowed assets?

Content of the IP Audit

In addition to the actual works in the possession or control of the Carnival Museum, by name and/or by description, the IP Audit should provide the following information, namely, the nature of the Intellectual Property rights associated with the work (whether copyright, trademarks or confidential information); the ownership of the Intellectual Property rights; the duration of those Intellectual Property rights (to determine whether the rights are still subsisting or have expired); information about persons responsible for managing those rights (which may be the owners or their agents); limitations on the use of the works and associated Intellectual Property (for instance, the owner may have restrictions on and certain sensitivities about their work being distributed online or without their prior informed consent); known risks in reproducing and distributing the content without permission

[33] *Persons responsible for the administration of the Carnival Museum may be better positioned to identify the assets associated with the museum itself, and possible Intellectual Property.*

[34] *Persons responsible for the collections will be better placed to identify Intellectual Property associated with those collections*

[35] *"In addition, former and current licensing agreements may provide a lot of information such as rights already licensed for particular uses, the coordinates of those who hold the rights so that they may be contacted if necessary, the limitations that right holders requested and the fees paid for the rights to reproduce or distribute the IP in question. Exhibition agreements also provide key information concerning IP because the licensing provisions could have been incorporated into the exhibition agreements as opposed to being found in separate documents": see Rina Elser Pantalony, "**Managing Intellectual Property for Museums**", at p.23.*

(including in circumstances where ownership is unclear or unknown); and fees paid and earned in relation to the use of the Intellectual Property associated with the work.[36]

The collections displayed or to be displayed at the Carnival Museum will be sourced through various Memoranda of Understanding with key stakeholders in the Carnival sector (as stated above), who have agreed, in principle, to provide artefacts, memorabilia and information to the Carnival Museum. Also, the Carnival Museum is in the process of developing its own collections as stated above.

Any IP Audit conducted by the Carnival Museum, will comprise those assets that are owned and controlled by the Carnival Museum itself, and those assets that are donated or loaned to the museum by its key stakeholders. It should be noted that some stakeholders have more advanced systems of documentation from which the Carnival Museum may benefit which will facilitate the ease with which the audit exercise will be carried out.

IP Policy – What guides decisions about what you own or control? Positions reflected in the Policy

An Intellectual Property Policy guides administrators of the museum about the use of Intellectual Property that is owned by it or by third parties. It should provide clear and consistent statements about ownership and use of assets created by employees of the museum on the one hand, and private contractors on the other. In this regard, the IP Policy should be linked to the IP Audit.

If the Carnival Museum wants to be risk averse in terms of avoidance of Intellectual Property infringement, then this can be reflected in the IP Policy. If the Carnival Museum wants to be "innovative" and "proactive" regarding, for example, recognizing the Intellectual Property in communal/collective traditional heritage when using the traditional aspects of Carnival, then this can be reflected in the IP Policy. This latter approach will encourage and build respect for, and value of, communities that preserve Carnival traditions even though there is no legislative or policy framework (as yet) for their protection.

The IP Policy should provide guidance on whether a particular business opportunity is within the purview of the Carnival Museum's **Vision** and **Mission**. The **Vision** as stated in the "Trinidad and Tobago Carnival Museum – The Home for Carnival" Presentation (the "TTCM WIPo Presentation") is to create

> "[A] Space to experience the 'spirit' of the Trinidad and Tobago Carnival" (Slide 8)
> "A space where the visitor can experience the 'spirit' of Trinidad and Tobago Carnival through the creative celebration of freedom and coming together of communities, cultures and people" (Slide 9).

The **Mission** of the Carnival Museum is "to collect, research and preserve information and artefacts of Trinidad and Tobago Carnival" (Slide 10).

The IP Policy should provide guidance on the kinds of rights that are associated with different activities of the museum, for example, the rights associated with, and the necessary approvals required for, hosting a virtual museum in addition to a physical viewing of the museum's collections *in situ*. It should be noted that the Carnival Museum's proposed activities include collecting, researching and preserving information and artefacts related to the Trinidad and Tobago Carnival and related cultural practices. The museum also wishes to create access to and disseminate knowledge through training, workshops, exhibitions, lectures and films, live performances, audio-visual works, printed publications and community outreach through analog and virtual platforms (Slide 11).[37]

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[36] *See Rina Elser Pantalony, "**Managing Intellectual Property for Museums**" - Guide, at p.24. "Several experts in the field suggest that the inventory should record past fees paid, fees earned and known risks in reproducing and distributing the content without permission. Fees and risk information represent an overall valuation of the IP assets:" ibid.*

[37] *See "Trinidad and Tobago Carnival Museum – The Home for Carnival" Presentation (the "TTCM WIPO Presentation").*

The IP Policy should provide guidance on how conflicts are resolved (including recommendations for alternative dispute resolution approaches).

The policy should encourage record-keeping of decisions made around Intellectual Property issues to add to the institutional body of knowledge around Intellectual Property management and practice. An IP Policy, if followed, ensures consistency in decision-making.[38]

Further, there should also be a review of the policy from time to time to ensure that it is current and relevant.

In summary, an IP Policy should include the following:

- guidance about the use of Intellectual Property that is owned by the Carnival Museum or by third-parties;
- positions on whether the museum wants to be risk averse or proactive and innovative or a combination of approaches where necessary;
- alignment with the Vision and Mission of the museum in terms of the kinds of commercial and non-commercials activities pursued by the museum;
- guidance about the diverse rights associated with the activities of the museum and the necessary approvals required for their use;
- conflict resolution strategies;
- the creation of precedents for decision-making through record-keeping;
- continuous review of the policy to ensure relevance.

Creation of an IP Policy is an ongoing process and should involve, in its creation, all the personnel in the museum responsible for collections, curation, publications (print and digital), conservation, and education and outreach. Consideration may be given to external Intellectual Property professional support, where appropriate and necessary.[39]

As a result of the reliance of the Carnival Museum on collections from its key stakeholders, in some instances, it is necessary for those stakeholders themselves to have IP Policies of their own. Most of the stakeholders surveyed did not have an internal IP Policy and only one of them had an informal unwritten policy.

Licensing Strategy – How do you use what you own and control?

A museum that proposes to engage in commercial licensing of Intellectual Property should develop a licensing strategy that provides a road map, with targets, objectives and revenue streams.[40] A Licensing Strategy should be considered from the perspective of the owners of Intellectual Property and also from the consumers of Intellectual Property. From the perspective of the owners, the Licensing Strategy must be aligned with the Intellectual Property Policy. Such alignment would determine the specific Intellectual Property assets to be licensed and the manner in which those assets should be licensed in terms of the kinds of rights to be granted to the licensee.[41] From the perspective of the consumers, the Licensing Strategy must be aligned with a communications and marketing plan to determine the targeted consumer demographics to achieve optimal financial benefit from licensing Intellectual Property assets.

The Licensing Strategy should have a short-, mediumo and long term-view. Further, the duration of licenses, their expiration, and negotiation of renewal of terms, should be managed to ensure that there is no overload of human and financial resources (in that multiple licences expire or require renegotiation at the same time) and there is a continuous

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[38] *See Rina Elser Pantalony, "Managing Intellectual Property for Museums – Guide", at p.26.*

[39] *Ibid., at pp.26-28.*

[40] *Ibid., at p.33.*

[41] *Ibid., at p.28, referring to Lesley Ellen Harris, "A Canadian Museum's Guide to Developing a Licensing Strategy" 2004, https://publications.gc.ca/Collection/Co61-33-2004E.pdf Accessed on 21st June, 2023).*

flow of revenue. As part of a Licensing Strategy, consideration should be given to developing a schedule for maintaining Intellectual Property, specifically managing any renewals of registrations where necessary. [39]

The content of a Licensing Strategy may vary and can include some or all of the following matters, namely,

- determining and defining the relevant content and associated Intellectual Property to be licensed;
- the uses that will be made of the relevant content and associated Intellectual Property;
- guidelines for valuing the relevant content and associated Intellectual Property;
- the rights to be negotiated;
- the manner in which staff and users are to be educated about permitted use of the relevant content and associated Intellectual Property;
- guidelines for monitoring use of the relevant content and associated Intellectual Property;
- standard license fees;
- sample clauses; and
- references to educational material about Intellectual Property and licensing.[42]

The Carnival Museum projects to be both Owners/Licensors and Users/Licensees of content. They would have to develop their Licensing Strategy with these two perspectives in mind. As a content owner, the Carnival Museum would require a licence agreement, as a Licensor, when a third party uses its assets and associated Intellectual Property.[43] As a content user, the Carnival Museum would require a licence agreement, as a Licensee, when they use the assets and associated Intellectual Property of third parties.

Specifically, Professor Bowman advises that it is important that the Carnival Museum owns its museum logo which "will be used in every communication, advertisement, publication and on a lot of the merchandise that the museum should be selling both in the gift shop and online. Consequently, it is absolutely essential that the logo is multi-coloured and has an eye-popping design. It should ideally capture the very spirit of carnival and spur must-buy impulse spending from visitors to the museum." [44]

> "The Stax Museum of American Soul Music currently sells 10 different shirts, 5 different ball caps, 2 different coffee mugs, drinking glasses, shot glasses, duffle bags, computer cases, fanny packs, cooking aprons, oven mitts, license plates, jackets, key chains, pens, umbrellas, cushions, and blankets all with the Stax logo, museum name and/or photographs of the building. All revenue from these sales go straight to the museum as the museum owns the IP in every one of these designs. This represents an extremely profitable use of built-in IP."[45]

Professor Bowman further recommends that

> "...wherever possible, the museum includes in agreements pertaining to all purchases or donations of items for display in the museum (including documents) that the museum either acquires the IP rights or negotiates at the time of purchase or donation agreement details regarding remuneration, should the museum wish to use images of these materials on items for sale in the gift shop and/or online."[46]

As part of or separate from a Licensing Strategy, the Carnival Museum could develop a Digital Rights Management Strategy which will enable it to provide guidelines for using, controlling, tracking and providing access to content in the digital environment. Such a strategy is important since the Carnival Museum's Vision includes a physical as well as a virtual museum. Digital content can be marked as owned by a particular person or organization; information

can be tagged to content to inform the user about the owner; users can be informed about the limitations on use of the content; and the owner can track use of its content. Access can be barred completely or limited to users with licences which may be based on a fee or otherwise free.[48] In addition, consideration should be given to use of Collections Management Software to manage the rights and reproductions' information about artefacts in museum catalogues with fields of information comparable to what is required when conducting IP Audits.[49]

Professor Bowman recommends that consideration should be given to affording free access to digital content on the Carnival Museum website with portals for donations, corporate funding, and links to merchandise for purchase. "Practice seems to indicate that monetizing access to content on websites for museums causes resentment and alienates visitors. Instead, the digital presence of the museum should be completely free, but it must include a portal for donations and corporate funding as well as active pages selling the gift shop's merchandise." [50]

Communications Strategies and Marketing Plan – How do you generate interest?

There should be effective communication within the Carnival Museum and externally to its key stakeholders, as well as the museum's intended target audiences. The content of internal communication can include the IP Policy and, when and where appropriate, business opportunities. The Communication Strategies and Marketing Plan should be aligned with the IP Policy and the Licensing Strategy.

Every museum is unique. The Carnival Museum proposes to have very strong community relations. The Communications Strategy may include Community Outreach and Public Events. "This will involve the participation of communities whose culture is presented in the Museum. It will also include Public Lectures, Workshops, Seminars, [and] Film Screenings, both at the Museum and in the communities themselves. [Further,] communities, groups and individuals will be invited to curate temporary exhibitions or events..." [51]

In addition, Professor Bowman recommends that there should be the ability for users to contribute content and co-create Carnival experiences on the Carnival Museum website. This will contribute to creating an online community environment. "One of the most exciting aspects of current technology for websites is inviting user content. I can imagine the TT Carnival Museum soliciting people's stories about each year's carnival or contributing stories about their favourite carnival experiences over the years, While many such user-contributed stories will be simply fun to read, others will potentially be rich contributions to ongoing knowledge of past and present carnival events and activities, Effectively, visitors to the museum website will be co-contributors to the museum's mission of building and preserving knowledge about Trinidad and Tobago's carnival. This is an exciting new form of knowledge creation." [52]

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[48] *Ibid., at p.30.*

[49] *Ibid., at p.29.*

[50] *See Bowman Review, at p.11.*

[51] *See the TTCBA-CITT Proposal, at p.9.*

[52] *See Bowman Review, at p.11.*

A Marketing Strategy can identify the different consumer demographics, the manner in which potential consumers should be communicated with, and what they may be willing to consume as a museum experience.

Professor Bowman suggests the creation of different sections of the museum website to target different demographics. "...[B]oth children and family sections [should] be constructed on the website and ... these sections ...[should be] highly interactive. The kinds of resources for students and teachers...could also be housed on the website, which would ultimately save the costs of printing materials. Websites, of course, can house multi-media content (as long as the museum owns or has cleared the IP rights) which makes the experience that much richer, particularly for younger audiences."[53]

Professor Bowman advocates for the use of a variety of digital strategies to communicate with audiences worldwide. Those strategies could be used to further the museum's educational mission, to invite contributions and collaborations with the public, to sell merchandise, and to advertise the museum. To do anything else, would be to create a 20th century, instead of a 21st century museum."[54]

The Environmental Scan – Who are your peers? Are collaborations possible?

An Environmental Scan will enable the Carnival Museum to track trends and occurrences in the Museum Sector. Any Intellectual Property Management Strategy should account for existing licensing practices and business relationships of comparable museums, nationally and internationally.

Further, different museums utilize diverse approaches. Some museums are dedicated to preserving historical facts while others utilize separate entities to monetize their collections. The Carnival Museum's Mission includes the collection, research and preservation of the artifacts of Trinidad and Tobago Carnival. There is also a proposed strategy to commercially leverage the Intellectual Property Assets of the museum through licensing and digitizing content. The Carnival Museum proposes to adopt both preservationist and commercialization approaches to managing its collections.

The Carnival Museum Concept envisages a "living", "evolving" space where the stories of Carnival are told. The museum space will be "interactive "and experience-driven".[55] There is also a proposal for the Carnival Museum to incorporate community involvement. Based on these broad concepts and parameters, there may not be a comparable institution from which to model the activities of the Carnival Museum, and in this regard, consideration may be given to identifying the most appropriate and analogous institutions with which to establish partnerships. This may not be limited to other museums but may include research and educational institutions.

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[53] *See Bowman Review, at p.11.*

[54] *Ibid., at p.12.*

[55] *See "Trinidad and Tobago Carnival Museum – The Home for Carnival" Presentation (the "TTCM WIPO Presentation") Slide 13.*

Concluding Thoughts

While the various components of the Intellectual Property Management Strategy are presented as discrete and separate elements, they overlap and inform each other, and their operationalization may occur concurrently.

In addition to an Intellectual Property Management Strategy and its various components, a Museum Management Strategy as well as a Heritage Management Strategy, may be required.

The following section entitled "Next Steps" suggests initiatives that the Carnival Museum can take immediatley, for the most part, as presently constituted. This would lay the foundation for subsequent interventions which entail either Intellectual Property training for its members and staff and/or the engagement of Intellectual Property Experts (among other forms of training and acquisition of expertise) to guide the processes so that the commercialization and management goals of the museum can be fulfilled.

Next Steps

At the level of the Carnival Museum

- An Intellectual Property Needs Assessment for the Carnival Sector is required which may include developing a separate and targeted exercise to determine levels of Intellectual Property awareness. The objectives of the Needs Assessment should be clearly identified and the necessary resources and capacity to complete the assessment should be determined. The target audience should be identified and facilities and processes for getting the necessary feedback should be established. Thereafter, the necessary intervention will be shaped. (This activity can be co-ordinated with the appropriate government office or department).
- An Audit of the previous and current collections of exhibits should be conducted by the Carnival Museum, whether those exhibits were donated, loaned or created inhouse. This will begin the process of mapping the Intellectual Property associated with those assets and documenting ownership of those assets. This exercise should be replicated by the key stakeholders if it has not been done already.
- The framework of an IP Policy can be discussed by the Carnival Museum within the context of the Vision and Mission of the museum. As a starting point, the policy can include positions that the museum can take over ownership of Intellectual Property created inhouse or by third parties on behalf of the museum; the kinds of activities the museum wishes to engage in (commercial and non-commercial); and how disputes can be resolved. This exercise should be replicated by the key stakeholders if it has not been done already.
- The framework for a Licensing Strategy can begin with identifying what Carnival assets are owned by the Carnival Museum (which ties into the IP Audit) and what Carnival Assets the museum would like to access. Thereafter, there can be discussions about how those assets are to be used; the duration of use; the cost; and the generation of revenue from use. Once those basic discussions are engaged in, Intellectual Property issues can be infused into those discussions.
- The framework for a Communications and Marketing Strategy can include a determination of what should be communicated internally within the Carnival Museum, and externally to its stakeholders, and the forms such communication should take to reach the different audiences. A Marketing Strategy can initially identify the different consumer demographics, the manner in which those consumers should be communicated with, and what they may be willing to consume as a museum experience.
- The Carnival Museum should begin to research comparable institutions to determine

the existing and appropriate trends to inform its own operations. This could lay the groundwork for establishing collaborations with other appropriate institutions which may include research and educational institutions.

- Professor Bowman recommends that "the museum hire an IP officer who would be in charge of IP education for all employees and of developing a clear IP strategy, an Intellectual Property Inventory or Audit; an Intellectual Property Policy; a Licensing Strategy; a Communications and Marketing Plan; and an Environmental Scan." [56]

At the level of government re policy

- A formulation of a national policy on ownership/custodianship of the Carnival Festival;
- A formulation of a national policy on ownership/custodianship of traditional knowledge generally and specifically as it relates to Carnival.

At the level of government re legislation

- A policy on the extent to which there are exceptions and limitations to intellectual property protection, specifically, copyright protection, that support the activities of museums. Note that this will not impact the commercial activities of the museum since those exceptions and limitations are primarily for private and/or non-commercial use.

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[56] *See Bowman Review, at p.14.*

Part 2

Methodology for managing intellectual property assets for Trinidad and Tobago's Carnival Museum

Introduction

Part II of this document contains a proposed methodology for implementing an Intellectual Property Management Strategy for the Carnival Museum, and includes templates and frameworks for relevant agreements associated with the proposed activities of the museum.

The following outlines the methodology from an IP perspective in the following phases:

Phase 1 – Needs Assessment

- An Intellectual Property Needs Assessment for the Carnival Museum and its key stakeholders should be conducted.
- This can be done using a simple questionnaire which may be completed by the Carnival Museum and its key stakeholders. The data collected from this questionnaire will determine what is required in terms of a training intervention or a professional services intervention.
- The Trinidad and Tobago Intellectual Property Office/Trinidad and Tobago Intellectual Property Training Centre may already have this information or may be in the process of collecting it.
- Sample Questions can be found in **Annex I.**

Phase 2 – IP Audit or Inventory

- An IP Audit or Inventory should be conducted for the existing and previous exhibitions held by the Carnival Museum. This can be done by conducting an inventory for the physical exhibits and then determining the kinds of intellectual property associated with those exhibits.
- The Inventory should include information about (i) ownership of Intellectual Property; (ii) the nature of the Intellectual Property (whether copyright, trademarks, or confidential information); (iii) whether the Intellectual Property is still in force; and (iv) the duration of the Intellectual Property rights and their expiration date.
- A sample Audit/Inventory Sheet can be found in **Annex II.**

Phase 3 – IP Policy

- An IP Policy should be developed by the Carnival Museum. The framework of an IP Policy can be discussed by the Carnival Museum within the context of the Vision and Mission of the museum. As a starting point, the policy can include positions that the museum can take over ownership of Intellectual Property created inhouse and/or by third parties on behalf of the museum; the kinds of activities the museum wishes to engage in (commercial and non-commercial); and how disputes can be resolved. This exercise should be replicated by the key stakeholders if it has not been done already.
- A framework for an IP Policy with a brief description of the kinds of provisions in the policy is contained in **Annex III.**

Phases 1, 2 and 3 can occur simultaneously and will be the preparation for the other aspects of the IP Management Strategy, namely the Licensing Strategy and the Communications and Marketing Plan.

Phase 4 – IP Licensing

- A museum that proposes to engage in commercial licensing of Intellectual Property should develop a licensing strategy that provides a road map, with targets, objectives and revenue streams.[58] A Licensing Strategy should be considered from the perspective of the owners of Intellectual Property and also from the consumers of Intellectual Property. From the perspective of the owners, the Licensing Strategy must be aligned with the Intellectual Property Policy. Such alignment would determine the specific Intellectual Property assets to be licensed and the manner in which they should be licensed in terms of the kinds of rights to be granted to the licensee.[59] From the perspective of the consumers, the Licensing Strategy must be aligned with a communications and marketing plan to determine the targeted consumer demographics to achieve optimal financial benefit from licensing Intellectual Property assets.
- In **Annexes IV, V, VI** and **VII**, sample framework documents covering the kinds of activities the Carnival Museum may be engaged in can be found. They include frameworks for (i) a standard Licensing Agreement; (ii) a Merchandising Agreement (since the Carnival Museum proposes to operate a gift shop); (iii) an Assignment of IP (since the Carnival Museum may be sellers or purchasers of IP assets); and (iv) a Commissioning Agreement (since the Carnival Museum may request the creation of certain works for its exhibitions).[60]
- A Sample Licensing Agreement Framework can be found in **Annex IV.**
- A Sample Merchandising Agreement Framework can be found in **Annex V.**
- A Sample IP Assignment Framework can be found in **Annex VI.**
- A Sample Commissioning Agreement Framework can be found in **Annex VII.**

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[58] *See Rina Elser Pantalony, "Managing Intellectual Property for Museums – Guide", at p.33.*

[59] *Ibid., at p.28, referring to Lesley Ellen Harris, "A Canadian Museum's Guide to Developing a Licensing Strategy" 2004, https://publications.gc.ca/Collection/Co61-33-2004E.pdf Accessed on 21st June, 2023).*

[60] *These frameworks for sample agreements are drafted in general terms and in outline format. They are for information purposes only. It is recommended that the appropriate expertise is sought when engaging in contractual negotiations.*

ANNEX I

Questionnaire

Introduction

The Trinidad and Tobago Carnival Museum ("the Carnival Museum") was founded in March 2021 by the Trinidad and Tobago Carnival Bands Association (TTCBA) and the Carnival Institute of Trinidad and Tobago (CITT). It is located at the former head office of the Trinidad Co-Operative Bank ("the Penny Bank") located on the corner of Duke and Charlotte Streets, Port of Spain, Trinidad.

The Carnival Museum is organized around the annual Carnival festival in Trinidad and Tobago with the goals of preserving the Carnival heritage for future generations, achieving cultural sustainability through Carnival activities, and attaining economic development for the Carnival sector generally.

The purpose of this questionnaire is to determine the levels of awareness of Intellectual Property related to the Carnival sector.

1. Do you work in the Carnival Sector? Yes, No.

2. Are you a creator in the Carnival Sector? Yes, No

3. Are you an administrator in the Carnival Sector? Yes, No

4. What is your level of intellectual property knowledge? A. Good B. Average C. I have no knowledge

5. Copyright protects a. music; b. brand names; c. inventions (Select the correct answer or answers)

6. Trade marks protect a. songs; b. names and slogans; c. inventions (like engines) (Select the correct answer or answers)

7. Patents protect a. inventions (like engines); b. music; c. brand names (Select the correct answer or answers)

8. Would you like to know more about intellectual property? Yes, No, Not at this time.

9. Are you interested in intellectual property training? Yes, No, Not at this time.

ANNEX II

Sample Inventory Sheet[61]

Artist Name	Type of Work	Copyright Owner and Contact Information	Copyright Expiration	Public Domain?	License and Duration of Term	Restrictions on Use	Electronic Rights?

[61] *See Rina Elser Pantalony, "Managing Intellectual Property for Museums – Guide", at p.24.*

ANNEX III

IP Policy framework

Preamble/Introduction

This can state the Vision and Mission of the Carnival Museum and the purpose of the IP Policy.

Intellectual Property Rights

There should a statement about the kinds of intellectual property rights the Carnival Museum has or proposes to have on loan, acquired, licensed, or sold.

Ownership of Intellectual Property Rights

There can be a statement regarding the ownership by the Carnival Museum of work created by employees of the museum as part of the employee's duties of employment. There can also be a presumption of ownership by the Carnival Museum, of work commissioned and funded by the Carnival Museum, unless there is a statement to the contrary in writing in the commission agreement.

Collections

One of the Carnival Museum's goals is to collect and display the diverse components of Trinidad and Tobago Carnival, namely Calypso and Soca, Mas and Steel Pan. A statement can be included that in the process of this, every effort will be made to respect the author's moral rights of attribution and integrity, and consult authors prior to making any changes to their work (except where the author elects to waive their moral rights). Moral rights include the right to be named as author and the right to the integrity of the work (that is, to prevent changes to the work which would be prejudicial to the honour and reputation of the author).

In addition, all economic rights necessary to permit the use of the collections, in any mode, including digital modes, will be acquired prior to such use.

Contracts with Third Parties

There should be statements regarding the requirement of contracts in writing with any third parties who produce work for the Carnival Museum. Those contracts should address ownership of the economic and moral rights associated with the work. Where ownership of the work created by a third party for the Carnival Museum belongs to the third party, consideration may be given to acquiring a royalty-free, non-exclusive, worldwide and irrevocable license to use and reproduce the work in any media for education and research purposes.

Use of Carnival Museum Resources

There may be a statement requiring all employees and volunteers of the Carnival Museum, to obtain prior written permission before use of the resources of the museum.

Workshops and Training

The Carnival Museum proposes to engage in training and other educational activities. Statements should be made about the ownership and use of IP created for and during these activities.

Community Outreach

The Carnival Museum proposes to engage in outreach activities in communities. There should be a statement regarding respect for the IP of communities.

Conflict resolution

A statement can be made about the ways in which conflicts can be resolved, for example, by utilising alternative dispute resolution strategies such as mediation, including WIPO Mediation http://ipo.gov.tt/ipo-news/alternative-dispute-resolution/

Precedents

Records of Carnival Museum decisions should be kept to ensure consistency. Statements to this effect may be included in the policy.

Policy Review

To ensure the currency of the policy, there should be a statement about ongoing review of positions expressed in the policy.

IP Information

The IP Policy may contain links to useful information and supporting documents to facilitate the implementation of the policy, including:

- Trinidad and Tobago Intellectual Property Office (TTIPO): http://ipo.gov.tt/
- IP Diagnostic Tool: https://www.wipo.int/sme/en/
- WIPO's services offered through TTIPO's: http://ipo.gov.tt/general/wipo-services/
- TTIPO's IP Library: http://ipo.gov.tt/ip-library/library-information/
- National Intellectual Property Training Centre (NIPTC): http://ipo.gov.tt/niptc/national-intellectual-property-training-centre/
- IP Studies: http://ipo.gov.tt/general/relevant-studies/
- IP Brochures: http://ipo.gov.tt/general/all-brochures/
- IP Manuals: http://ipo.gov.tt/general/ip-manuals/
- IP Resources: http://ipo.gov.tt/ip-library/research-resources/

ANNEX IV

IP Licensing framework[62]

Some basic questions and information which the agreement should address include:

- Who are the parties to the agreement?
- What content is being licensed?
- Who owns the content?
- How will the content be used?
- How long will the content be used?
- In what format(s) will the content be used?
- How much will the content cost?
- What rights are being licensed (i.e., what uses will be made of the content)?
- Warranties from the content provider.

The Carnival Museum may be the Licensor or the Licensee.

THIS AGREEMENT is made the___DATE__day of___MONTH__, 20 _____

PARTIES

1. [NAME OF LICENSOR of [ADDRESS]_____(the LICENSOR); _and

2. [NAME OF LICENSEE/TRINIDAD AND TOBAGO CARNIVAL MUSEUM] of ADDRESS_____ (the LICENSEE)

THE PARTIES AGREE

DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1 In this agreement, the following terms shall have the following meanings except when it is clear that a different interpretation is necessary from the context:

Agent...

Collections...

Exhibit...

Fee...

Rights...

Term...

Territory ...

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 words and expressions defined in the relevant intellectual property legislation of [Trinidad and Tobago] shall have the same meanings in this Agreement;

1.2.2 words importing the singular number shall include the plural and vice versa;

1.2.3 words importing any particular gender shall include all other genders;

1.2.4 references to persons shall include bodies of persons, whether corporate or incorporate;

1.2.5 words importing the whole shall be treated as including a reference to any part of the whole.

1.3 References in this Agreement to clauses and schedules are to clauses of and schedules to this Agreement, except where otherwise expressly stated.

1.4 Headings are used in this Agreement for the convenience of the Parties only and shall not be incorporated into this Agreement.

BACKGROUND

2. Background

RIGHTS AND OBLIGATIONS

3. Grant of Rights; 4. Licensor's Obligations; 5. Licensor's Warranties and Indemnity; 6. Licensee's Obligations; 7. Reservation of Rights

FEES

8. Payment of the Fee

MORAL RIGHTS

9. Moral rights

GENERAL PROVISIONS

10. Force majeure; 10. Entire Agreement; 11. Joint and Several; 12. Proper Law and Jurisdiction; 13. Dispute Resolution; 14. Notices; 15. No Modification; 16. Waiver; 17. Severance; 18. Survival of Terms; 19. Confidentiality; 20. Binding effect; 21 Assignment; 22. No partnership

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DRAGON

ANNEX V

Merchandising agreement framework[64]

In circumstances where the Carnival Museum proposes to operate a gift shop and sell products based on carnival assets, a merchandising agreement may facilitate this.

Some basic questions and information which the agreement should address include:

- Who are the parties to the agreement?
- What work is being licensed?
- Who owns the work?
- How will the work be used and what products will be created using the work?
- How long will the work be used?
- How much will it cost to use the work?
- What rights are being licensed?
- Warranties from the creator of the work.

THIS AGREEMENT is made the___DATE__day of___MONTH__, 20 _____

PARTIES

1.__[NAME OF LICENSOR_____of [ADDRESS]_____(the LICENSOR); _and

2.__[NAME OF LICENSEE/TRINIDAD AND TOBAGO CARNIVAL MUSEUM] of _____ADDRESS_____(the LICENSEE)

THE PARTIES AGREE

DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1 In this agreement, the following terms shall have the following meanings except when it is clear that a different interpretation is necessary from the context:

Agent...

Intellectual Property...

Minimum Guaranteed Royalty...

Rights...

Royalties...

Specifications...

Term...

Territory...

[64] *Framework adapted from the Encyclopaedia of Forms and Precedents Vo.21(2):11/2022 "Merchandising agreement – owner of intellectual property to license rights enabling licensee to produce products based on intellectual property", para.1026.*

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 words and expressions defined in the relevant intellectual property legislation of [Trinidad and Tobago] shall have the same meanings in this Agreement;

1.2.2 words importing the singular number shall include the plural and vice versa;

1.2.3 words importing any particular gender shall include all other genders;

1.2.4 references to persons shall include bodies of persons, whether corporate or incorporate;

1.2.5 words importing the whole shall be treated as including a reference to any part of the whole.

1.3 References in this Agreement to clauses and schedules are to clauses of and schedules to this Agreement, except where otherwise expressly stated.

1.4 Headings are used in this Agreement for the convenience of the Parties only and shall not be incorporated into this Agreement.

BACKGROUND

2. Background

RIGHTS AND DURATION

3. Grant of Rights; 4. Reservation; 5. Term

ROYALTIES

6. Royalties and accounts

QUALITY CONTROL

7. Licensee's obligations as to conformity to specification and quality

INTELLECTUAL PROPERTY

8 Use and protection of Intellectual Property; 8.1 Copyright material; 8.2 Trade marks; 8.3 Provisions relating to all Intellectual Property; 9. Licensee not to use the Licensor's name; 10. Licensee's obligations as to marketing;

PROTECTION OF INTELLECTUAL PROPERTY

11. Action against third parties;

TERMINATION

12. Termination; 13. Termination consequences

WARRANTIES AND INDEMNITIES

14. Warranties and indemnities

INSPECTION OF THE LICENSEE'S PREMISES

15. Inspection

RESERVATION OF RIGHTS

16. Reservation of Rights

GENERAL PROVISIONS

17. Force majeure; 18. Entire Agreement; 19. Joint and Several; 20. Proper Law and Jurisdiction; 21. Dispute Resolution; 22. Notices; 23. No Modification; 24. Waiver; 25. Severance; 26. Survival of Terms; 27. Confidentiality; 28. Binding effect; 29 Assignment; 30. No partnership

AGREED by the Parties...

ANNEX VI

IP AssignmentFramework[65]

IP interests can be acquired or purchased outright. The type of instrument or agreement necessary to effect an outright purchase of IP is referred to as an assignment.

Some basic questions and information which the assignment should address include:

- Who are the parties to the assignment?
- What creative work is being assigned?
- Who owns the creative work?
- How much will the creative work cost?
- Warranties from the individual or individuals who created the work. [66]

The Carnival Museum may be the Assignor or the Assignee.[67]

THIS ASSIGNMENT is made the___DATE__day of ___MONTH__, 20 _____

PARTIES

1. [NAME OF ASSIGNOR]_____of [ADDRESS]_____(the ASSIGNOR); and

2. [NAME OF ASSIGNEE]_____of ADDRESS_____ (the ASSIGNEE)

THE PARTIES AGREE

DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1 In this Assignment, the following terms shall have the following meanings except when it is clear that a different interpretation is necessary from the context:

Fee...

Rights...

Term...

Territory...

Work...

1.2 In this Assignment, unless the context requires otherwise:

> **1.2.1** words and expressions defined in the relevant intellectual property legislation of [Trinidad and Tobago] shall have the same meanings in this Agreement;
>
> **1.2.2** words importing the singular number shall include the plural and vice versa;
>
> **1.2.3** words importing any particular gender shall include all other genders;
>
> **1.2.4** references to persons shall include bodies of persons, whether corporate or incorporate;
>
> **1.2.5** words importing the whole shall be treated as including a reference to any part of the whole.

1.3 References in this Assignment to clauses and schedules are to clauses of and schedules to this Assignment, except where otherwise expressly stated.

1.4 Headings are used in this Assignment for the convenience of the Parties only and shall not be incorporated into this Assignment.

BACKGROUND

2. Background

ASSIGNMENT

3. Assignment

WARRANTIES AND INDEMNITY

4. Warranties and Indemnity

MORAL RIGHTS

5. Moral rights

REPRODUCING THE WORK

6. Reproductions or copies of the Work

GENERAL PROVISIONS

7. Entire Agreement; 8. Joint and Several; 9. Proper Law and Jurisdiction; 10. Binding effect

AGREED by the Parties...

WAGE OF
DEATH

ANNEX VII

Commissioning agreement frameworkk[68]

The following agreement framework is written in the context of the Carnival Museum engaging in the commissioning a work.

Some basic questions and information which the commission should address include:

- Who are the parties to the agreement?
- What creative work is being commissioned?
- Who will own the commissioned work when it is created?
- How much will the commissioned work cost?
- Warranties from the individual or individuals who created the commissioned work.

THIS AGREEMENT is made the___DATE__day of ___MONTH_ , 20 _____

PARTIES

1._____[NAME OF ARTIST]_____of

__[ADDRESS]_____(the Artist); _and

2._____[NAME OF COMMISSIONER/TRINIDAD AND TOBAGO CARNIVAL MUSEUM] of _____ADDRESS_____ (the Museum)

THE PARTIES AGREE

DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

Completion Date...

Fee...

Work...

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 words and expressions defined in the relevant intellectual property legislation of [Trinidad and Tobago] shall have the same meanings in this Agreement;

1.2.2 words importing the singular number shall include the plural and vice versa;

1.2.3 words importing any particular gender shall include all other genders;

1.2.4 references to persons shall include bodies of persons, whether corporate or incorporate;

1.2.5 words importing the whole shall be treated as including a reference to any part of the whole.

[68] *Framework adapted from the Encyclopaedia of Forms and Precedents Vo.21(2):11/2022, "Agreement – client commissions artist to paint picture to order" para.1001.*

1.3 References in this Agreement to clauses and schedules are to clauses of and schedules to this Agreement, except where otherwise expressly stated.

1.4 Headings are used in this Agreement for the convenience of the Parties only and shall not be incorporated into this Agreement.

BACKGROUND

2. Background

CREATION OF THE WORK AND COMPLETION OF THE WORK

3. Artist to create the Work; 4 Death or incapacitation of Artist before completion

FEE

5. Payment of the Fee

ASSIGNMENT

6. Assignment of Intellectual Property in the Work

MORAL RIGHTS

7. Moral rights

PROTECTION OF RIGHTS

8. Further Assurance

GEBERAL PROVISIONS

9. Force majeure; 10. Entire agreement; 11. Reservation of rights; 12. Joint and Several; 13. Proper Law and Jurisdiction; 14. Dispute Resolution; 15. No Modification; 16. Waiver; 17. Severance; 18. Confidentiality

AGREED by the Parties...

2024
Dr. Sharon B. Le Gall
Project Consultant