

TEACHERS SERVICE COMMISSION



INTELLECTUAL PROPERTY POLICY

2023



VISION

A motivated, ethical and globally competitive teacher



MISSION

To regulate, maintain and manage the teaching service through sound policies and operational excellence for quality teaching and lifelong learning.



CORE VALUES

- Professionalism
- Customer focus
- Integrity
- Innovativeness
- Team spirit



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PREFACE

In the execution of its mandate to regulate the teaching profession and undertake teacher management functions, the Commission has embraced research and use of information, communication and technology to improve on service delivery and learning outcomes. As a result, the Commission generates various publications and innovations that require legal protection.

This calls for the establishment of a comprehensive policy framework to regulate the entire spectrum of innovation in the Commission. The Policy sets out the scope, objectives and principles for developing and securing innovation and creative works emanating from the Commission and its employees. Further, this Policy will enable the Commission, its employees and stakeholders derive benefits that accrue with the registration of intellectual property rights.

The implementation of this Policy will enable the Commission actualize its vision to create a conducive environment for employees to exploit individual talents, skills and expertise to generate incisive publications, material and other creative works as well as securing the Commission's investment in intellectual property development.

It is my hope that the policy will be instrumental to the realization of the Commission's resolve to harness a liberal, dynamic and highly

motivated workforce focused on reshaping the teaching profession through innovation and ingenuity.

A handwritten signature in black ink, appearing to read 'Jamleck Muturi John', with a long horizontal stroke extending to the right.

DR. JAMLECK MUTURI JOHN, EBS
COMMISSION CHAIRMAN

FOREWORD

The teaching profession in Kenya is currently faced with socio economic and political changes, technological advancements and global challenges. To navigate these challenges, the Commission and its entire workforce has embraced research, innovation and ICT for knowledge generation, curriculum implementation and service delivery. In doing so, both teachers and the Secretariat Staff have developed a number of literary works and other innovations which have re-engineered service delivery and curriculum implementation.

As a result, the Commission's employees have received national, regional and global recognition for their creativity and innovation. The formulation of the intellectual property policy is therefore a deliberate decision by the Commission aimed at creating awareness to employees on the need to invoke the provisions of the law to protect their intellectual property.

Further, the policy provides for an elaborate regime for management of research and innovation by individual employees, team of employees and the Commission as a whole. This policy will also serve as a crucial tool in guiding future management of intellectual property and related issues at the Commission.

I wish to thank the members of the secretariat who worked round the clock to ensure that this policy becomes a reality.



DR. NANCY NJERI MACHARIA, CBS
SECRETARY/CHIEF EXECUTIVE

ACRONYMS

IP:	Intellectual Property.
IPRs:	intellectual property rights .
IPMC:	Intellectual Property Management Committee
LL&IR:	Labor Legal and Industrial Relations
MTA:	Material Transfer Agreement
NDA:	Non-Disclosure Agreement
TSC:	Teachers Service Commission



DEFINITION OF TERMS

Assign:	Means to transfer property to another person/ entity.
Domain:	Means a distinct subset of the internet with addresses sharing a common suffix or under the control of a particular organization or individual.
Employees:	Means teachers and secretariat staff.
Individuals:	Means employees and contracted parties.
Intellectual Property:	Means rights given to a person over the creations of their minds. These rights usually give the creator an exclusive right over the use of his/ her creation for a specified period of time.
Invention:	Means creative ability or discovery of something or process.
License:	Means contract under which the owner of a patent or other form of intellectual property transfers certain rights in the intellectual property to another party.



License Agreement:	Means an agreement by which a person grants permission to use his industrial property rights.
Performing Arts:	Means forms of creative activity that are performed in front of an audience, such as drama, music, and dance.
Patent:	Means an exclusive right granted for an invention which is a product or a process that provides a new way of doing something or that offers a new innovative and useful technical solution to a problem.
Prototypes:	Means a first or preliminary version of a device from which other forms are developed.
Publications:	Means preparation and issuing of books, modules magazines among others.
Royalties:	Means payments that buy the right to use someone else's property.
Software:	Means programs and other operating information used by a computer
Stakeholder:	Means a person with an interest or concern in something



Sponsor:	Means a person or organization that pays for or contributes to the costs involved in staging a sporting or
Teaching Methodologies:	Means a set of practices and principles used by teachers to make the process of teaching and learning highly effective for learners.
Technovation Certificate:	Means a certificate issued to an employee pursuant to Section 94(a) and 95 of the Industrial Property Act.
Trademark:	Means a symbol, word, or words legally registered or established by use as representing a company or product.



1.0 INTRODUCTION

Teachers Service Commission (the Commission) is established under **Article 237 (1)** of the Constitution of Kenya 2010 to regulate the teaching profession. In executing its mandate, the Commission has developed various policies and procedures to guide in the implementation of its mandate. **Article 40** of the Constitution and **Section 3** of the TSC Act, grants the Commission the right to acquire and own property of any description.

In exercising this right, the Commission has been empowered, to acquire, hold and dispose off movable and immovable property. Intellectual property thus forms part of such property that the Commission or individual employees may own.

Intellectual property rights are the rights issued upon a person over the creations /inventions of their mind. These rights usually give the creator an exclusive right over the use of his /her creation for a certain period of time. The protection of intellectual property thus becomes important as it holds such high value in today's knowledge-based economy.

2.0 RATIONALE

The teaching service being knowledge-based in nature provides a wide latitude for expression of thought and sharing of ideas by practitioners, employees and stakeholders. This has led to generation of literary works, utility models, invention and innovations. It is therefore critical that new ideas, and systems that will emanate from each innovation are protected.

This policy is designed to establish procedures for the development, ownership, management and use of intellectual property at the Commission.

3.0 SCOPE

This intellectual property policy covers the handling of Intellectual Property of the Commission or which are generated by its employees and that which is to be employed by the Commission. The purpose of the Policy is to encourage creativity. In the context of this policy, Intellectual Property shall include: software, publications, teaching methodologies, performing arts, Domain names, sound or visual recordings, multimedia presentations, utility models, machines, devices, prototypes, designs, drawings and plans among others.

4.0 OBJECTIVES OF THE POLICY

The objective of this Policy is to provide a comprehensive framework for management and protection of Intellectual Property rights at the Commission.

The specific objectives are:

- a. To protect the intellectual property rights of the Commission and its employees.
- b. To promote creativity and innovativeness at the Commission so as to enhance national development.
- c. To protect economic resources and other investments made by the Commission in the development of Intellectual Property.
- d. To establish the role and responsibilities of the Commission, the inventors and other stakeholders thereby



minimising areas of conflicting interests between the parties.

- e. To facilitate the sharing/ transfer of innovations and inventions by the Commission and the dissemination of knowledge for the national and global community.
- f. To ensure that any financial and material benefits arising from the innovation/invention are distributed in a fair and equitable manner that recognizes the respective contribution of the innovators/inventors/creators and the Commission as well as any other stakeholders.

5.0 POLICY STATEMENT

The Commission is committed to offer a conducive environment to promote innovation and creativity. This policy will inspire innovative thinking among its employees and enable ownership and efficient management of Intellectual Property and innovations made at the Commission.

6.0 AUTHORITY

This Policy derives its authority from:

- a. The Constitution of Kenya 2010
- b. The TSC Act 2012
- c. Industrial property Act 2001
- d. Copyright Act, No. 12 of 2001
- e. Trademark Act, Cap 505

7.0 INTELLECTUAL PROPERTY MANAGEMENT COMMITTEE

The Commission is committed to managing efficiently and effectively any Intellectual Property arising out employees work, it shall therefore establish an Intellectual Property Management Committee (IPMC). Members of this Committee shall be appointed by the Commission Secretary.

8.0 COMPOSITION OF IPMC

The IPMC shall comprise of:

- a. The head of the division in charge of Research and Data Collection;
- b. A member from the directorate of LL&IR;
- c. A member from the directorate of admin Services; and
- d. Two technical officers from the relevant service area.

9.0 ROLES OF THE IPMC

- a. Create awareness on intellectual property management
- b. Receive, analyze and recommend the registration of Intellectual property.
- c. Maintain a register of all registered intellectual assets of the Commission.
- d. To establish guidelines to deal with areas of conflict of interest in the ownership of intellectual property rights.
- e. To provide guidelines on the transfer and licensing of any intellectual property held by the Commission.

- f. To grant approval and advise the creators, innovators or inventors concerning the publishing of material related to their innovations or inventions.
- g. To continuously monitor and evaluate the implementation of this Policy and recommend amendments when need arises.

10.0 DISCLOSURE OF INVENTIONS

- 10.0.1. A disclosure of an invention shall be understood as a formal description of an invention that is confidentially made by the inventor to the Commission for purposes of protection.
- 10.0.2. Upon discovery, an inventor may promptly report to the chairperson of the IPMC in writing.
- 10.0.3. The disclosure shall include the following information:
 - a. Invention or the Innovation title
 - b. Name(s) of all sponsors and the degree of their contribution to the invention. All the investors through their signatures must confirm this statement.
 - c. A detailed description of the invention.
 - d. Dates of conception and realization of invention.
 - e. Any other information and/or agreement entered into relevant to the invention.

11.0 OWNERSHIP OF IPR

This policy outlines when and under which conditions the IPRs shall be owned by the Commission, co- owned by the Commission and owned by employees.



11.1. OWNERSHIP BY THE COMMISSION

- 11.1.1. The Commission shall own all Intellectual Property that is conceptualized, discovered made and/or created by an employee in the course of their employment and responsibilities or as a result of participation in the Commission's programs where there is a significant use of the Commission's resources including: Data, facilities, time or funds.
- 11.1.2. Where the invention/innovation is of exceptional importance the employee may be recompensated in accordance with the existing rewards and Sanctions policy in place at the Commission and taking into consideration his/ her salary and the benefit derived by the Commission from the said invention/ innovation, subject to Clause 10.4 herein.
- 11.1.3. 'Exceptional importance' in the context of this policy refers to an invention /innovation that inter alia: has a significant impact on the operations of the Commission, is cost effective, efficient, user friendly and promotes self-service.
- 11.1.4. The Commission shall own all intellectual property that is made, discovered or created by anybody who is specifically contracted by the Commission for that purpose and where there is a significant use of the Commission's resources including: data, facilities, time or funds, unless otherwise provided by written agreement between such individual(s) and the Commission.



- 11.1.5. When an employee of the Commission undertakes an innovation/ invention to resolve a specific problem in the area of Information Communication and Technology for the use of the Commission in the normal execution of its functions but which, innovation/invention is not put to immediate use by the Commission, the officer maybe issued with a Technovation Certificate.
- 11.1.6. This shall also extend to all contractors who have a legal relationship with the Commission.
- 11.1.7. Any innovator, inventor or creator shall surrender any such invention and all supporting documents to the Commission.
- 11.1.8. Where the Commission does not exploit an invention after grant of IPR, the Commission may reassign or licence the property to the inventor at the latter's request.

11.2. JOINT OWNERSHIP OF INTELLECTUAL PROPERTY

- 11.2.1. To promote creativity and innovation, the Commission shall on a case-by-case basis allow joint ownership of Intellectual Property. Jointly owned Intellectual Property shall be determined by the relative contributions of each party.
- 11.2.2. Where the Commission is involved in collaborative research with an employee or contractor the intellectual property may be jointly owned and the distribution of royalties shall be governed by the contractual arrangements between the parties; and

- 11.2.3. Any financial benefits accrued from such an invention shall be shared based on the proportionate contribution or as agreed by the parties concerned.

12.0 ROYALTY DISTRIBUTION

- 12.2.1. The following principles shall apply relating to the distribution of royalties that are realized after commercialization of the Commission's IP:
- 12.2.2. Revenues received as a result of Licensing Agreements in the form of cash royalties and/or equity holdings. "Revenues" shall not include funds received for research support.
- 12.2.3. The parties' direct costs, shall be reimbursed from gross revenue prior to distributing royalties to innovators.
- 12.2.4. The direct costs shall include expenses and any other charges resulting from the application for granting or maintenance of the intellectual property rights and any other expenses in connection to licencing, collection of income, and intimation (if any). Additional expenses may be charged before royalty distribution for proof -of -concept funding, IP.
- 12.2.5. In the event of multiple innovators/inventor or creators:
- 12.2.6. they will agree among themselves as to the distribution of the income accruing from such creation and innovation; and



- 12.2.7. Distribution of the innovator's/inventor's/creator's share shall be made only upon receipt of a signed agreement between the innovators//inventors/creators.
- 12.2.8. The innovator's/inventor's personal share shall survive termination of affiliation with the Commission and in the event of death of the innovator/inventor shall accrue to his or her estate.
- 12.2.9. Sharing Ratios
- 12.2.10. The net royalty income shall be distributed as follows: -
- 12.2.11. Where there are third parties involved in the innovation/invention the sharing ratios will be as follows: -
- 12.2.12. Innovator/inventor – Up to a maximum of 60%
- 12.2.13. Commission – a minimum of 30%
- 12.2.14. Others – Up to a maximum of 10%
- 12.2.15. TOTAL 100%
- 12.2.16. In case there is no third party involved in innovation/ invention, the sharing ratio will be as follows: -

Inventor/Innovator – Up to a Maximum of 40%

Commission – A minimum of 60%

TOTAL 100%



13.0 WAIVER OF COMMISSION RIGHTS TO INTELLECTUAL PROPERTY

- 13.2.1. The Commission will waive Intellectual Property rights to the innovator, inventor or creator if the Commission's Board resolves not to protect such rights.
- 13.2.2. The Commission through its Board may waive intellectual property rights upon request by the inventor or creator of any such Intellectual property.
- 13.2.3. The Commission shall be deemed to have waived its right to an invention, innovation or creation where it fails to express interest in its protection within three years.

14.0 INTELLECTUAL PROPERTY AGREEMENTS

The Commission shall formulate appropriate agreements and other related contractual documents, for the management of intellectual property rights such as:

15.0 Material Transfer Agreements

Upon the innovation, invention or creation of an intellectual property pursuant to clause 9 hereinabove, the employee and/or contractor shall surrender all materials relating to the same.

An inventor, innovator or creator shall sign a Material Transfer Agreement (MTA) confirming that they have surrendered all information and material to the Commission for purposes of obtaining the IPR.



15.1. Non-Disclosure Agreements

Any person accessing proprietary information must sign a Non Disclosure Agreement (NDA) with the Commission before access is permitted.

Where an innovator, inventor or a creator ceases to be an employee of the Commission they shall be required to sign a NDA.

15.2. Licencing Agreements

License agreements entered into by the Commission will include provisions, as appropriate, regarding due diligence in patent or copyright protection and commercialization of the innovation, reports on efforts and success in commercialization, access to records to ensure compliance with the terms of the agreement, retention of the Commission's rights to use the innovation and extent of authority for subsequent licensing or reassignment.

16.0 IMPLEMENTATION

This Policy shall take effect on the date it is approved by the Commission.

17.0 DISPUTE RESOLUTION

If a dispute arises from the Committee's decision with regard to the ownership of intellectual property, Parties shall resort to alternative dispute resolution mechanisms.

18.0 POLICY REVIEW

The Policy shall be reviewed every 5 years and/or within such other time as need arises.

