

**L'APPLICATION DE LA CONVENTION APOSTILLE AUX DIPLOMES
NOTAMMENT DELIVRES PAR LES « USINES A DIPLOMES »**

établi par le Bureau Permanent

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**THE APPLICATION OF THE APOSTILLE CONVENTION TO DIPLOMAS
INCLUDING THOSE ISSUED BY DIPLOMA MILLS**

drawn up by the Permanent Bureau

*Document préliminaire No 5 de décembre 2008
à l'intention de la Commission spéciale de février 2009 sur le fonctionnement pratique des
Conventions de La Haye Apostille, Notification, Preuves et Accès à la Justice*

*Preliminary Document No 5 of December 2008
for the attention of the Special Commission of February 2009 on the practical operation of the
Hague Apostille, Service, Evidence and Access to Justice Conventions*

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TABLE OF CONTENTS

I.	INTRODUCTION.....	4
II.	BRINGING DIPLOMAS WITHIN THE SCOPE OF THE CONVENTION	6
A.	Introduction.....	6
B.	Are diplomas public documents?	6
C.	Three categories of documents to which an Apostille may relate	7
D.	The public policy exception for certified copies	8
III.	STATE PRACTICE IN ISSUING APOSTILLES FOR DIPLOMAS	9
A.	Introduction.....	9
B.	Classification of Diplomas as public documents	9
1.	On the basis of whether the issuing institution is considered public or private	9
2.	On the basis of legal recognition of an institution or a course of study	10
C.	Procedures specific to diplomas	10
1.	Verification	10
2.	Certified copies only	12
IV.	ONLINE DIPLOMAS	13
A.	Online institutions.....	13
B.	Diploma mills	13
1.	Defining diploma mills	13
2.	Diploma mills and Apostilles	14
3.	Practices of States in dealing with on-line diplomas.....	15
4.	Case study: St Regis University (Summary).....	16
V.	CONCLUSIONS AND RECOMMENDATIONS	17
A.	General comments.....	17
B.	Preliminary draft recommendations	17
	Appendix 1: Case Study St Regis University	19

I. INTRODUCTION

1. This document examines the specific issues which arise from the application of the Apostille Convention to diplomas and other educational documents,¹ including those issued by diploma mills.² These issues merit discussion at the Special Commission meeting on the practical operation of the Apostille (and Evidence, Service and Access to Justice) Conventions to be held in The Hague in February 2009. This document seeks to inform those discussions.

2. Documents issued by educational institutions constitute one of the most common requests for an Apostille³ and the rate of request continues to increase. Diplomas are usually presented in foreign countries for one of three reasons: to attain either educational, work or migration opportunities. They are presented as recognition of prior education in order to obtain, for example, postgraduate positions, employment and various kinds of visas (such as skilled migrant or student visas). Both the value of qualifications and the volume of their use has increased along with the international mobility of qualified professionals.

3. The information provided in this document is mainly based on previous work of the Permanent Bureau, in particular the *2005 Questionnaire on Diplomas and other education documents within the framework of the Apostille Convention* (hereinafter 2005 Questionnaire) which received 28 responses outlining practice in relation to the issuance of Apostilles to diplomas.⁴ However, this working document does not seek to be a comprehensive overview of all relevant State practice. Nor does it deal with the actual recognition of diplomas as this goes beyond the scope of the Apostille Convention.⁵

4. The increasing prevalence of diploma mills represents one of the most sensitive and complicated issues to have arisen as a result of the application of the Apostille Convention to diplomas. Whilst the term is difficult to define, diploma mills can be characterised as institutions which issue diplomas as a result of payment rather than the academic requirements usually associated with such a qualification. Diploma mills often issue diplomas that are not worth the paper on which they are written. These institutions often attempt to legitimise the documents they issue through the application of an Apostille. Diploma mills themselves encourage the use of Apostilles with their qualifications as they supposedly lend an air of legality and validity to the diploma.⁶ This

¹ For the purposes of this document the term "diploma" covers all documents issued by an educational institution. Such documents include, but are not limited to: certificates (of attendance and achievement), grades, academic reports, diplomas, transcripts, degrees, professional certifications, records, primary, secondary and tertiary qualifications.

² For a full discussion of Diploma Mills, please see below at IV.B.

³ See responses by States to Question 8 of the Questionnaire relating to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention), Prel. Doc. No 3 of August 2008 (hereinafter 2008 Questionnaire). 2008 Questionnaire and Responses available in the "Apostille Section" of the Hague Conference website at < www.hcch.net >.

⁴ 2005 Questionnaire and Responses available in the "Apostille Section" of the Hague Conference website at < www.hcch.net >.

⁵ Whilst the Apostille Convention does not deal with recognition of diplomas there are several Conventions that do so, e.g., the *UNESCO Convention of 21 December 1979 on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region*; the *Council of Europe and UNESCO Convention of 11 April 1997 on the Recognition of Qualifications concerning Higher Education in the European Region*; the *UNESCO International Convention of 17 December 1976 on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean*.

⁶ A number of institutions which advertise on the internet and appear to be diploma mills offer to have Apostilles added to diplomas and transcripts, often at highly inflated prices. See for example Princely International University which offer "Apostils" [sic] as part of their accreditation, available at < <http://www.princelyiu.org/accreditation.php> > (last consulted 29 October 2008).

is despite the fact that in most of these cases all the Apostille does is authenticate a subsequent certification issued by a notary or equivalent authority, confirming that the copy of the diploma is indeed a true copy of the original diploma. In such cases the Apostille does not “look through the certification” and does not relate to the diploma itself (see the discussion below at II.C). There is a clear risk that such practices may eventually undermine the effectiveness and therefore the successful operation of the Apostille Convention.

5. Significant concerns have been raised by the way in which fraudulent qualifications are being used to manipulate migration systems and obtain visas such as student or highly skilled visas and thus gain entry to a country on a false basis. Particularly troubling is the possible use of diploma mill qualifications to circumvent migration controls, possibly by potential terrorists.⁷ Equally problematic is the use of fraudulent qualifications used to gain promotions and pay raises.⁸ Following the closure of one of the largest diploma mills, St Regis University,⁹ it was discovered that government employees had gained promotions on the basis of fraudulent qualifications.¹⁰

6. This document sets out the framework for the application of the Convention to diplomas. It then analyses, to the extent possible, existing State practice on the subject. It also examines the specific problems presented by diploma mills within the context of the Convention. The document concludes with a number of suggestions for recommendations to be discussed by the Special Commission in February 2009. The Permanent Bureau hopes that these proposals will assist the discussions of the Special Commission and eventually facilitate and clarify the application of the Apostille Convention to diplomas.

⁷ D. J. Schemo, “Diploma Mill Concerns Extend Beyond Fraud”, 29 June 2008, *New York Times*, available at < www.nytimes.com/2008/06/29/us/29diploma.html > (last consulted 28 October 2008).

⁸ C. Johnson, “Credentialism and the Proliferation of Fake Degrees: The Employer Pretends to Need a Degree; The Employee Pretends to Have One”, *Hofstra Labor & Employment Law Journal*, Vol. 23, 2006, Ohio State Public Law Working Paper Series No 79, Center for Interdisciplinary Law and Policy Studies Working Paper Series No 52.

⁹ See summary at IV.B.4 and Case Study (Appendix 1).

¹⁰ S. Chan, “Report Says 14 in Fire Dept. Used Fake Degrees”, 1 February 2007, *New York Times*, available at < www.nytimes.com/2007/02/01/nyregion/01fire.html > (last consulted 17 November 2008); City of New York Department of Investigation, DOI Statement on the discipline of 14 FDNY members for submitting bogus degrees in an attempt to earn promotions or appointments, 7 September 2007, available at < www.nyc.gov/html/doi/pdf/pr63fdnystatement_9082007.pdf > (last consulted 31 October 2008). At least 64 Government Employees were found to have questionable degrees see D. Carnevale, “Senators Call for a Crackdown on Diploma Mills”, 12 May 2004, *The Higher Education Chronicle*, available at < <http://chronicle.com/daily/2004/05/2004051203n.htm> > (last consulted 29 November 2008).

II. BRINGING DIPLOMAS WITHIN THE SCOPE OF THE CONVENTION

A. Introduction

7. This section explains how the Apostille Convention applies in relation to diplomas. The following is based on two fundamental principles of the Apostille Convention: that the Convention applies only to *public* documents (see below at B) and that the Convention applies to both *originals* of public documents and *certified copies* of documents (see below at C). At the outset, however, it is appropriate to recall the *limited effect of an Apostille*. An Apostille certifies only the authenticity of the signature, the capacity in which the person who signed the document has acted and, where appropriate, the identity of the seal or stamp which the document bears (Art. 3).¹¹ *Most importantly, the effect of an Apostille does not extend to the content of the public document to which it relates.* The general public is not always aware of the limited effect of Apostilles and diploma mills in particular seek to exploit this ignorance.

B. Are diplomas public documents?

8. As set out in Article 1, the Apostille Convention applies only to public documents.¹² Whilst the Convention does not provide a definition of “public documents”, it does provide a general, non-exhaustive list of categories of documents which are deemed to be public documents under the Convention (Art. 1(2)). Diplomas are not a category in their own right. However, the procedure under the Convention is that the law of the State of origin of the document presented for an Apostille determines whether it is public or not and thus whether the Convention applies. Accordingly, a Competent Authority of a State of origin may affix an Apostille to any document, including a diploma, *which is a public document under its domestic law*. An Apostille may not be rejected on the basis that the underlying document (diploma) is not a public document under the law of the State of Destination. It is strongly recommended that applicants consult with the Competent Authority/ies designated by the State of Origin as to whether or not a diploma may be apostilled.¹³

9. Diplomas that are not considered public documents under the law of the State of origin may not be apostilled. However, it often occurs that such diplomas are subsequently certified by a notary (or another equivalent authority) who merely confirms that the copy of the “private”¹⁴ diploma is indeed a true copy of the original. This subsequent certification undoubtedly constitutes a public document and, as such, may be apostilled (see the discussion of certified copies below). In such situations the Apostille does not “look through” the certification to the underlying document. However, as all

¹¹ See also Conclusion and Recommendation No 22 of the 2003 Special Commission on the practical operation of the Apostille Convention. The Conclusions and Recommendations of the 2003 Special Commission are available in the “Apostille Section” of the Hague Conference website at < www.hcch.net >.

¹² Art. 1 reads as follows:

“The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

- a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server (“*huissier de justice*”);
- b) administrative documents;
- c) notarial acts;
- d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

- a) to documents executed by diplomatic or consular agents;
- b) to administrative documents dealing directly with commercial or customs operations.”

¹³ A comprehensive listing of all Competent Authorities under the Convention is available in the “Apostille Section” of the Hague Conference website, at < www.hcch.net >.

¹⁴ *I.e.*, a diploma not considered a public document under Art. 1. of the Convention.

documents (the Apostille, the certification and the diploma) remain attached together it is easy to see how people might assume that the Apostille relates to the diploma and not the intermediate certification. This is another mistaken assumption that is exploited by diploma mill operators (see below at IV.B.2).

C. Three categories of documents to which an Apostille may relate

10. It is clear that the Convention applies to original public documents. Whether or not the Convention applies to copies is a more complex issue. The application of the Convention to copies of public documents was discussed at the 2003 Special Commission and Conclusion and Recommendation No 11¹⁵ concluded that the Convention applies to copies of public documents presented as *certified* copies.¹⁶

11. There are two important points to be drawn from this outcome of the Special Commission. First, the Convention does not apply to *simple* copies¹⁷ of documents. States do not seem to regard simple copies as public documents (at least not under the Convention);¹⁸ this applies to simple copies of *any* document, be it public or otherwise, including diplomas. Secondly, there is an important distinction which must be made in the case of *certified* copies. Depending on the circumstances, the subsequent Apostille may relate either to (i) the *copied public document itself* (as opposed to the certification) or to (ii) the *certification* which states that the copy of the document is a true copy¹⁹ (as opposed to the copied document itself). In this second case, the copied document may be public or not.

12. Thus, an Apostille may relate to any of the following documents:

- 1) An original public document
- 2) A certified copy of a public document
- 3) A certification issued by a notary or another competent person or authority which confirms that the copy of the document, regardless of whether it is public, is a genuine copy.

13. It is crucial, therefore, that it be absolutely clear to everybody which document the Apostille relates to. However, we note that it is not always clear to applicants, receiving authorities, and sometimes even the issuing Competent Authority which document the Apostille relates to and this distinction must be made clear.

14. The issue of certified copies is particularly pertinent to diplomas as people are often supplied with only one original document which they prefer to retain; or the original document may be retained by the issuing authority who issue only copies. Equally, some States prefer or even insist upon certified copies. It is rare that people are willing to submit their original diploma for an Apostille and then to a foreign authority. Equally relevant is the use of certified copies in relation to diploma mill qualifications. An official looking certificate may be issued to a copy of a diploma mill qualification, and then subsequently issued with an Apostille, without anyone having ever verified the signature on, let alone the contents of, the diploma. The addition of seals, certificates and

¹⁵ Conclusion and Recommendation No 11 of the 2003 Special Commission. "Regarding the application of an Apostille to a certified copy of a public document, the Special Commission concluded that Article 1 of the Convention applies. Individual States, however, may decline to issue an Apostille to a certified copy of a document on the grounds of public policy."

¹⁶ A *certified* copy is a reproduction of a public document that has been compared to the original, and issued with a certificate by a public authority, such as a notary, indicating that the reproduction is a genuine copy of the original. The certification in no way refers to the contents of the copied document.

¹⁷ *Simple* copies are mere reproductions without any kind of certification.

¹⁸ This conclusion is confirmed by numerous responses to the 2008 Questionnaire.

¹⁹ These certifications are typically issued by notaries or other competent persons or authorities.

Apostilles lends credibility to these documents in the eyes of those who are unaware of what is actually being certified.

D. The public policy exception for certified copies

15. The last sentence of Conclusion and Recommendation No 11 of the 2003 Special Commission maintains that a State “may decline to issue an Apostille to a certified copy of a document on the grounds of public policy.” The question of whether or not a certified copy of a diploma would fall within the public policy exception was expressly considered in the 2005 Questionnaire. The majority of States’ responses indicated that they do *not* consider certified copies to constitute a public policy exception and added that they issue Apostilles for certified copies of diplomas.²⁰ However some States advised that they subject certified copies of diplomas to certain restrictions, such as verification, before issuing an Apostille.²¹

16. Japan, on the other hand, indicated that it considers certified copies of diplomas to be within the public policy exception; Slovakia also indicated that it only issues Apostilles for original diplomas. Two States recommended that Apostilles be affixed to the original diploma or that guidelines should be prepared for the issuance of Apostilles to certified copies of diplomas.²² Another State advised that the issue has not yet arisen but nevertheless the public policy exception is very rarely applied in practice.²³ It is clear that most States issue Apostilles for certified copies of diplomas and that in this case Apostilles may, albeit mistakenly, lend credibility to contents of a diploma which have never been reviewed.

²⁰ Responses of Andorra, Belgium, Czech Republic, France, Germany, Hungary, Italy, Liechtenstein, Monaco, New Zealand, South Africa, Sweden, Switzerland, Trinidad and Tobago, Ukraine and the United States of America (Arkansas, Oklahoma and South Dakota) to the 2005 Questionnaire.

²¹ Response of Bulgaria and Estonia to the 2005 Questionnaire. Practice of the United Kingdom, see note 40.

²² Responses of Slovenia and Turkey to the 2005 Questionnaire.

²³ Response of Finland to the 2005 Questionnaire.

III. STATE PRACTICE IN ISSUING APOSTILLES FOR DIPLOMAS

A. Introduction

17. We note that neither the 2005 Questionnaire nor our own research into States' practices allows the Permanent Bureau to draw definitive conclusions about any trends in State practice, as such practice is too divergent. However this section will review the available information regarding State practice and will attempt to categorise such State practice. There are two broad categories of State practice that can be distinguished.²⁴ First, there are States that have not put into place specific procedures for issuing Apostilles to diplomas; these States continue to issue Apostilles on the basis of whether or not the diploma is a public document, without any assessment of the contents of the diploma (see below at B.). On the other hand, there are States that have established a specific procedure for the issuance of an Apostille for diplomas. This procedure is not primarily designed to characterise the diploma as public or private; rather, the main focus is on the *content* of the diploma. If all the conditions of a valid diploma are fulfilled, the latter is certified by a designated authority and becomes eligible for an Apostille (see below at C.).

B. Classification of Diplomas as public documents

18. There are two broad categories of State practice when it comes to classifying a diploma as public: some States only look at the *public or private nature of the institution* that issued the diploma (see the discussion below at 1), others verify whether the institution and/or the course of study offered are *legally recognised by an educational authority* (see the discussion below at 2). Under both these approaches, Apostilles can only be issued for diplomas from public or otherwise recognised institutions; diplomas from private or non-recognised institutions cannot be apostilled directly.²⁵

1. On the basis of whether the issuing institution is considered public or private

19. On the basis of the 2005 Questionnaire, the following States responded that they make the distinction between public or private educational institutions: Andorra, Finland, Germany, Japan, Monaco, New Zealand, Sweden, Switzerland and Turkey. One State acknowledged that they have only a few private educational institutions;²⁶ and another indicated that its Competent Authorities have never been presented with diplomas issued by private educational institutions.²⁷

20. One State indicated that if the Competent Authority does not have a sample of the signature or seal of the issuing public educational institution, a notarial certification would be required.²⁸ Another indicated that if they do not possess a sample they would request further information from the regional departments of education.²⁹

²⁴ The practices of some States defy categorisation as they use aspects of all systems, depending on the nature of the diploma.

²⁵ Only a certification issued by a notary (or other authority) indicating that the copy of the diploma is a true copy of the original could be issued with an Apostille. Again, however, the Apostille would not relate to the diploma itself, only to the certification.

²⁶ Response of Finland to the 2005 Questionnaire.

²⁷ Response of Sweden to the 2005 Questionnaire.

²⁸ Response of Turkey to the 2005 Questionnaire.

²⁹ Response of Ukraine to the 2005 Questionnaire.

21. Based on the responses to 2005 Questionnaire, it would appear that this traditional approach of looking at the public or private nature of the institution that issued the diploma is no longer applied rigorously, and indeed was never so in some States. Given the rise in both private institutions and mixed institutions (*e.g.*, “private” institutions which largely benefit from public subsidies and/or whose academic program is duly accredited or otherwise recognised by the relevant State authorities; “public” institutions which offer private programmes which may not be recognised by the relevant State authorities), States have had to develop new methods of dealing with diplomas. Some States consider all educational institutions which have been either publically recognised (*e.g.*, accredited) or had their courses of study recognised (*e.g.*, public approval of syllabi) entitled to issue public diplomas which may be apostilled directly. Some States continue to regard private institutions as issuing diplomas which cannot be considered public documents, and thus, cannot be apostilled. Some States will never directly issue an Apostille to a diploma, only to a related certificate issued by the relevant public authority, such as a notary.

2. On the basis of legal recognition of an institution or a course of study

22. Some States consider diplomas to be public documents when issued by an accredited and/or legally recognised educational institution. Equally, programs of study may be recognised and approved, meaning that diplomas resulting from these programs are considered public documents.³⁰ Under this approach, there is no further certification requirement for the diploma and, thus, Apostilles relate directly to the diploma.

23. In response to the 2005 Questionnaire, France, Estonia, Slovenia, Slovakia and Trinidad and Tobago indicated that they favoured the approach of recognising an institution. Malaysia, answering in its capacity as a non-Contracting State, indicated that it would in all likelihood consider diplomas issued by accredited public and private higher educational institutions to be public documents according to its domestic law.

24. States follow different practices to verify whether an educational institution or a study program is accredited. This may involve merely comparing the institution issuing the diploma to a list of accredited and therefore publically recognised, institutions. A few States indicated that their Ministry of Education keeps the lists of the accredited educational institutions within their State.³¹ Further, one State advised that the government has exclusive control over titles, educational results and grades.³² One State advised that it has designated its Ministry of Education and Science as a Competent Authority and has compiled a comprehensive list, published by executive decree, of all educational documents to which an Apostille can be issued.³³

C. Procedures specific to diplomas

1. Verification

25. Some States have developed a practice whereby the content, as opposed to merely the origin, of the diploma is verified by an educational authority, such as the Ministry of Education or another agency. If satisfied with its verification, this authority would then issue a certificate which is then submitted along with the diploma to the Competent

³⁰ Response of Slovenia to the 2005 Questionnaire.

³¹ Responses of France and Slovakia to the 2005 Questionnaire.

³² Response of France to the 2005 Questionnaire.

³³ Response of Ukraine: Decree of the Cabinet of Ministers of Ukraine dated 12 November 1997 No 1260 on Education Documents and other Scholastic Degrees and issued by educational and scientific institutions.

Authority which will issue an Apostille for the certificate issued by the educational authority. According to the responses to the 2005 Questionnaire, Bulgaria, the Czech Republic, Hungary and Italy have implemented this practice. Some States indicated that even if they make a distinction between public or private educational institutions, they require all diplomas, even those issued by public institutions, to be certified by another authority before issuing an Apostille.³⁴

26. In some States, the educational authority is also the Competent Authority – thus the verification and the issuance of the Apostille are performed by the same authority. This system seems to be particularly pertinent where these cumulative tasks are performed by the Ministry of Education.³⁵

27. Estonia, and presumably other States, not only accredit the institution issuing the diploma but also the program to which the diploma pertains. In this case the accreditation more closely resembles verification, as the diploma presented for an Apostille is checked against the accredited program. Some States have started to develop databases such as lists of graduates and the qualifications obtained. The development of such databases would allow for verification by receiving entities other than official authorities, such as employers.

28. The Permanent Bureau is also aware of the practice adopted by the Netherlands where the content of original Dutch diplomas is verified by the *Informatie Beheer Groep* (IB-Groep) on behalf of the Dutch Ministry of Education, Culture and Science.³⁶ Neither the IB-Groep nor the Ministry is a Competent Authority for the purposes of the Convention; thus, after verification the Apostille must be issued by a separate authority (*i.e.*, the *Rechtbank* (District Court) in Groningen). The Apostille relates to the certificate of verification issued by the IB-Groep, not to the diploma. Some of the other States which use a system of accreditation also separate the accreditation authority from the Competent Authority under the Apostille Convention.³⁷

29. In all cases, the Competent Authorities are not authorised to issue Apostilles for diplomas unless the diploma has been previously certified by the relevant educational authority. Nevertheless, even under a scheme of verification certified copies may be used to circumvent the procedure, as an Apostille may be issued for the certification, without any verification of the contents. However specific rules may be put in place to prevent this practice.

30. Whilst this system has significant advantages (in particular where the Ministry of Education performs both the certification and the issuance of an Apostille), it is not always clear whether the subsequent Apostille relates to the certificate or the underlying diploma itself.

³⁴ The responses of Belgium and Switzerland (but only as a matter of practice) to the 2005 Questionnaire.

³⁵ See responses of Estonia, Slovakia, Trinidad and Tobago and Ukraine to the 2005 Questionnaire.

³⁶ Additional information may be found at the website of the *Informatie Beheer Groep* at < www.ib-groep.nl/InternationalVisitors/Diploma_assessment/Going_abroad/s20_legalizing.asp > (last consulted 4 December 2008).

³⁷ The United States of America has adopted a system of accreditation, in which institutions are recognised after being reviewed for quality and effectiveness. The review is carried out either by the Council on Higher Education Accreditation (CHEA – a private body) or the federal government through the United States Department of Education (USDE). Whilst at the moment this system aims to prevent consumer fraud by creating a list of accredited institutions, this system could one day be used to prevent Apostilles being issued to diplomas from diploma mills. If Competent Authorities or even notaries were obliged under domestic procedure to verify that institutions were accredited before issuing a certificate or Apostille, then the incidence of exploitation of misunderstandings of the operation of the Apostille Convention would be much reduced.

2. Certified copies only

31. In some States the specific procedure for issuing an Apostille to a diploma is that a certified copy must be provided, regardless of whether or not the diploma is public. The Cook Islands, Liechtenstein, Fiji, USA (Arkansas, Oklahoma and South Dakota) and South Africa have all adopted this approach. However, we note that some States will only use Apostilles for certified copies of all documents, not just diplomas.

32. New Zealand has a hybrid system, where all educational documents issued by either the Ministry of Education or the Qualifications Authority may be issued with an Apostille, as the Competent Authority can authenticate the signature and seal. For all other institutions, regardless of whether they are public or private, their diplomas must be notarized first, as copies of their signatures and seals are not kept on file. New Zealand acknowledges that they would issue an Apostille for a notarial certificate attached to a diploma issued by a diploma mill, but the situation has not yet arisen.³⁸

33. The system of issuing Apostilles to certified copies of diplomas can be exploited by diplomas mills, unless they are subjected to a specific regime. Some States verify certified copies; for example Bulgaria submits certified copies of diplomas to be verified and certified by an educational authority prior to the issuance of an Apostille;³⁹ whereas the United Kingdom requires that all diplomas be certified by a notary or solicitor, the Competent Authority also verifies the validity of the issuing institution against a list of recognised institutions before issuing an Apostille relating to the notarial certification.⁴⁰

34. In this way Bulgaria and the United Kingdom prevent the situation where the use of a certified copy may be used to circumvent the verification procedure that would apply if a diploma was submitted directly.

³⁸ 2008 Questionnaire, response of New Zealand.

³⁹ Response of Bulgaria to the 2005 Questionnaire.

⁴⁰ The UK practice is discussed in detail on the website of the Foreign and Commonwealth Office Documents (at < www.fco.gov.uk/en/about-the-fco/what-we-do/docs-and-legal-services/ >, last consulted 4 December 2008). In this website they advise that degrees, diplomas, certificates, qualifications or other awards can be legalised if they were issued by an educational establishment if it is registered at one of the following websites: the "Register of Providers" or the "Recognised Degrees" sections of the Department for Innovation website, the Universities and Skills (DIUS) website, the Scottish Qualifications Authority website, the National Database of Accredited Qualifications website, the British Accreditation Council website, the Open and Distance Learning Quality Council website, or the Association of British Language Schools website. Additionally, qualifications which are or were issued by OCR, Edexcel, Higher National Diploma, City and Guilds, National Open College Network, GNVQ or the American Study Abroad Programme in the United Kingdom can also be legalised.

IV. ONLINE DIPLOMAS

35. Online diplomas are diplomas which are granted after the completion of a course of study conducted primarily through the Internet. Despite their name, online diplomas are generally issued in paper form like any other diploma and not in electronic form.⁴¹

A. Online institutions

36. It is important to emphasise at the outset that not all educational institutions which offer courses of study through the Internet are diploma mills. Several perfectly legitimate and well respected institutions operate distance learning operations and award valid diplomas through the Internet. There are however other institutions which essentially sell qualifications, without reference to academic requirements. It is therefore often hard for individuals to distinguish between the various online institutions and determine which ones are legitimate.⁴²

37. Further problems are created when States are presented with diplomas from an institution that has no clear presence in their State. Online operations often have only an Internet and not a real world presence, making it nearly impossible for Competent Authorities to determine if the document originated in their State and whether they can issue an Apostille.

B. Diploma mills

1. Defining diploma mills

38. The term diploma mills is difficult to define and often indiscriminately used.⁴³ As a result the term diploma mills lacks a clear consensual definition. There is little academic consensus as to what constitutes a diploma mill.⁴⁴ What seems to be agreed upon are certain common traits or characteristics which give rise to a definition as listed below. Attempts to define the term are set out below.

“Diploma mill: An institution of higher education operating without supervision of a state or professional agency and granting diplomas which are either fraudulent or because of the lack of proper standards, worthless.”⁴⁵

“A commercial enterprise purporting to be a legitimate institution of higher education which sells a degree or more often a variety of degrees, occasionally requiring token effort but never the scholastic work normally expected by reputable institutions.”⁴⁶

⁴¹ Certain responses to the 2005 Questionnaire indicated that States believe the term “online diplomas” referred to electronic copies of diplomas and not diplomas issued by institutions operating primarily online. As a result, it is not possible to report accurately about the current practice followed in the States Parties to the Convention.

⁴² J. Adams and V. Eveland, “Marketing online degree programs: How do traditional-residential programs compete?”, *Journal of Marketing for Higher Education*. 17:1 Spring 2007, as cited in G. Brown, *Academic qualification acceptability and authenticity: a comparative risk assessment of approaches employed by the recruitment and higher education sectors of Australia*, University of Adelaide PhD thesis (2007), at p. 11.

⁴³ It is often used interchangeably with the term degree mill.

⁴⁴ Allen Ezell and John Bear, *Degree Mills: The Billion-Dollar Industry That Has Sold Over a Million Fake Diplomas*, Amherst, NY: Prometheus Books, 2005 at p. 21; Brown, *op. cit.* (note 42), at p. 157.

⁴⁵ *Webster's Third New International Dictionary*, Merriam-Webster (June 2002) available at:

< www.aolsvc.merriam-webster.aol.com/dictionary/diploma%20mill > (last consulted 4 November 2008).

Definition adopted by US Department of Education, available at:

< www.ed.gov/students/prep/college/diplomamills/diploma-mills.html > (last consulted 4 November 2008).

⁴⁶ W. C. Eells and H. A. Haswell, “Academic Degrees; Earned and Honorary Degrees Conferred By Institutions of Higher Education in the United States”, 1960, *United States Office of Education Bulletin*; No 28 at p. 53, as cited in Brown, *op. cit.* (note 42), p. 158.

39. Given that neither the academics nor the authorities have been able to agree upon a definition of diploma mills, the Permanent Bureau has compiled a list of common traits of diploma mills⁴⁷ which should assist in the distinction between a valid online education provider and a diploma mill:

- they sell qualifications;
- these qualifications have significantly lower academic requirements than if they had been awarded by “official” institutions;
- life experience and unverified *curricula vitae* often constitute all of the assessment;
- operations are generally conducted through websites and correspondence rather than real world campuses;
- they are generally unauthorised or unaccredited by the appropriate agencies in the jurisdiction they operate in;
- they often emulate official providers by assuming similar names, branding, etc.;⁴⁸
- they are often associated with accreditation mills – which are bodies created to lend authority to diploma mills; and even occasionally own the diploma mill in question.
 - In 2005 Ezell and Bear found there were over 200 unrecognised accreditation agencies operating around the world;⁴⁹ the resulting confusion regarding accreditation has enormous potential to mislead for both academic institutions and employers into accepting qualifications of unknown quality.⁵⁰

2. Diploma mills and Apostilles

40. The experience of St Regis University (see summary below at section 4 and the case study at Appendix 1) demonstrates that the Apostille Convention is being misused in an attempt to lend legitimacy to qualifications issued by diploma mills. Also, academic writings on the issues have highlighted potential fraud arising from the application of Apostilles to diplomas issued by diploma mills.

41. Bear and Bear have argued that Apostilles are often abused by some non-official providers in order to feign legitimacy.⁵¹ They demonstrate by example how the Apostille Convention might be used to lend credibility to diploma mill qualifications.

“Let’s say you sit down in your kitchen and start a fake school, Godzilla University. You sell me a medical degree for a thousand dollars. You take the diploma (and the phoney transcript you just typed up) to your local Notary Public, who, for \$10, will notarize your signature (that is, compare it with the one on your driver’s license and say yes, it is the same). Then you take (or send) the phoney diploma and notarized certificate to your state capital, where they will confirm that it is indeed a certificate signed by a licensed notary, relating to the diploma. And finally, you submit your packet – the fake diploma and transcript, the notarization, and the state confirmation to the

⁴⁷ For a more comprehensive listing of characteristics, see for example the website of the US Council for Higher Education Accreditation CHEA at < www.chea.org/degremills/default.htm > (last consulted 4 December 2008).

⁴⁸ H. A. Spille and D. W. Stewart, “The New Breed of Diploma Mills: Numerous, Tough, and Aggressive”, (1985) *Educational Record*, v66 n2 pp. 16-22; G. Brown, *op. cit.* (note 42), at p. 154.

⁴⁹ Ezell and Bear, *op. cit.* (note 44).

⁵⁰ Brown, *op. cit.* (note 42), at p. 16.

⁵¹ *Ibid.*, at p. 259.

federal government (Department of State or an embassy) and they will issue the Apostille or authentication."⁵²

42. What makes this particularly worrisome is that a number of purported degree mills use the application of an Apostille as evidence of their legitimacy as an educational institution, and to gain credibility. In essence, the application of an Apostille to notarized copies of diploma mill diplomas is used as a selling point.

"An Apostille service is also provided, designed to legitimize, validate and essentially 'authenticate' the purchased documents."⁵³

43. To those familiar with the operation of the Apostille Convention this is clearly not the effect of an Apostille, as it only authenticates the origin of the public document to which it relates. It does not "look through the certification" to the underlying document. This means that in the case of certified copies of diplomas, Competent Authorities do not even consider the underlying document (*i.e.*, the diploma itself) and neither are they required to do so. The Apostille relates only to the intermediate certification. However, it is not always clear, in particular to the person receiving the Apostille, which of the underlying documents the Apostille relates to. Diploma mills have learnt to exploit the gap between the actual function of an Apostille and the possibly expanded function mistakenly assumed by a receiving body. In fact, diploma mills have been found to encourage recipients to have an Apostille added to their "diploma" in order to distract from the minimal value of the qualification.⁵⁴

44. Clearly, the increasing popularity and proliferation of diploma mills will increase fraud related to the Apostille Convention. Given that diplomas are often presented to individuals who may have no knowledge of the Apostille Convention, such as potential employers, there is a broad scope of potential abuse of the Convention.

3. Practices of States in dealing with on-line diplomas

45. The majority of States who responded to the 2005 Questionnaire refuse to issue Apostilles in relation to online diplomas.⁵⁵ It is therefore very difficult and quite rare for an online diploma to be directly issued with an Apostille. Whilst this prevents the situation where Apostilles are used to lend credibility to documents issued by diploma mills, it denies genuine institutions that simply operate online the ability to have their qualifications recognised overseas. The responses to the 2008 Questionnaire indicate that a number of States have adopted special procedures (often multiple-step processes) for the issuance of Apostilles in relation to diplomas.⁵⁶ This may be as a result of the specific problem presented by diploma mills, or the difficulties relating to diplomas in general, including their classification as public documents. A number of States recognise they would be obliged to issue an Apostille for certification of a certified copy of a diploma

⁵² J. Bear and M. Bear, "Bears' Guide to Earning Degrees by Distance Learning" (15th ed) 2003, Ten Speed Press, California, United States, at p. 62.

⁵³ G. Brown, "Fighting Credential Fraud", *WENR (World Education News and Review)*, October 2005, Vol. 18, Issue 5, available at < www.wes.org/eWENR/05oct/feature.htm > (last consulted 4 December 2008).

⁵⁴ Ezell and Bear, *op. cit.* (note 44).

⁵⁵ The majority includes: Belgium, Bulgaria, Czech Republic, Estonia, Japan, Lichtenstein, Sweden, Trinidad and Tobago and Ukraine. Alternately they had no experience with online diplomas: Andorra, Cook Islands, Fiji, Finland, Germany, Hungary, New Zealand, Slovakia, Slovenia and Switzerland.

⁵⁶ See the responses to Question 17 of the 2008 Questionnaire. Czech Republic, Latvia, Ireland, El Salvador, Portugal and New Zealand all indicated they have multiple step processes for diplomas specifically, whilst they follow a single-step process for most (if not all) other public documents.

issued by a diploma mill.⁵⁷ Other States, however, would not issue an Apostille in such a situation.⁵⁸

4. Case study: St Regis University (Summary)⁵⁹

46. St Regis University (SRU) was one of the largest diploma mill operations in the United States and was shut down in 2005. It sold diplomas as “packages” including transcripts, and Apostilled diplomas. The operations of SRU demonstrate how easy it is to obtain an Apostille for a certified copy of a diploma. Interviews conducted in preparation for the case and released by the Internal Revenue Service, indicate that the person responsible for obtaining Apostilles said “you could have attached a dog licence to the paperwork he obtained and it would have meant as much [as the diplomas].”⁶⁰ Eventually everyone involved in SRU plead guilty to mail and wire fraud and was sentenced to up to three years imprisonment.⁶¹ Their webmaster received a four-year term in light of other criminal activities.⁶²

⁵⁷ Denmark, Ecuador, Finland, China (Hong Kong Special Administrative Region), Japan, Moldova, Monaco, New Zealand, Slovakia, Slovenia and Turkey.

⁵⁸ El Salvador, Georgia, Latvia and Ireland.

⁵⁹ For a more complete overview, see Appendix 1.

⁶⁰ Internal Revenue Service, Criminal Investigation Memoranda of Interviews, US Department of Justice, Interview record available at < http://www.hep.uiuc.edu/home/g-gollin/pigeons/exhibit_19.pdf > (last consulted 31 October 2008).

⁶¹ Unknown, “Husband, daughter of Spokane diploma mill operator enter pleas”, 27 March 2008, *Seattle Times* < http://seattletimes.nwsource.com/html/localnews/2004310763_apwadiplomamill.html > (last consulted 4 December 2008).

⁶² B. Morlin, “Diploma mill webmaster gets 4 years for fraud, porn”, 30 October 2008, *Seattle Times*, < http://seattletimes.nwsource.com/html/localnews/2008330349_webdiplomamill30m.html > (last consulted 4 November 2008).

V. CONCLUSIONS AND RECOMMENDATIONS

A. General comments

47. Diplomas are a very important class of documents for which Apostilles are regularly requested, and the number of requests continues to grow. However when it comes to applying the Apostille Convention to diplomas State practice varies greatly. Some States issue Apostilles *directly* for diplomas if and when the relevant diploma is regarded as a public document. Other States only issue Apostilles that relate to some form of certification; this may either be a notarial (or similar) certification, indicating that a copy of a diploma is a true copy of the original, or a certification issued by an educational authority which assesses and verifies the origin and the content of the diploma. The matter is further complicated by the fact that an Apostille may be issued for *original* public documents (diplomas or certifications) and *certified copies* of public documents.

48. Some confusion may arise as to exactly which document the Apostille relates to, in particular amongst recipients of apostilled diplomas. The Apostille may relate to the diploma itself or a certification of the diploma. Further, the effects of the Apostille are often mistaken. It is this lack of transparency and comprehension that operators of diploma mills exploit in an attempt to lend legitimacy to their "diplomas". The abuse of the Apostille Convention by diploma mills is of particular concern.

49. In light of the above, the application of the Apostille Convention to diplomas clearly merits discussion at the Special Commission in February 2009. States can learn much about the operation of the Convention in relation to diplomas from the practices of other States. The ultimate objective of these discussions must be to ensure that Apostilles are only issued for legitimate diplomas and that the Apostille system is not abused to lend legitimacy to bogus diplomas.

B. Preliminary draft recommendations

50. The Permanent Bureau acknowledges that diploma mills are a problem that goes well beyond the scope of the Apostille Convention itself and that in order to deal with the problem effectively solutions will need to have a broader scope than that suggested below. These draft recommendations are designed to deal specifically with diplomas, although some recommendations may equally apply to other public documents.

51. The Permanent Bureau submits the following preliminary draft recommendations to the Special Commission for discussion:

1. All States Parties are invited to carefully assess all relevant steps of the process that currently leads their Competent Authority(ies) to issue Apostilles in relation to diplomas so as to guarantee compliance with the following objectives:
 - 1.1. the issuance of Apostilles only for legitimate diplomas issued by public or similarly approved, regulated, or controlled institutions;
 - 1.2. the eradication of diploma mills;
 - 1.3. the prevention of the abuse of the Apostille system to lend legitimacy to diplomas issued by diploma mills.
2. In order to achieve the above objectives, States Parties are:
 - 2.1. encouraged to examine both the need, and possible means, to prevent fraud in the issuance and use of diplomas (such means might include monitoring the

issuance of diplomas and double checking diplomas when they are presented; for example through the development of relevant databases such as a graduate database);

- 2.2. invited to examine if there is a need to adopt a specific procedure to verify the origin and content of a diploma before issuing an Apostille; if so, States Parties are invited to examine the possibility of using a process whereby the authority verifying the origin and content of a diploma is also the Competent Authority that issues Apostilles to diplomas;
 - 2.3. urged to ensure that diplomas issued by diploma mills are not directly apostilled;
 - 2.4. invited to examine implementation of a policy which would prevent certified copies and apostilled certified copies of diploma mill diplomas entering into circulation.
3. It must be made clear to all parties (the applicant, the Competent Authority and the receiving person or authority) to what exactly the Apostille relates. In particular, where the underlying documentation involves certification of any kind (either certification by notary or similar authority, certifying that copy is true, or a certificate of verification by an educational authority), it must be made clear whether the Apostille relates to the diploma itself or to the certification only.
 4. States Parties may consider the addition of relevant text or a warning explaining the limited effects of Apostilles outside the box of the Apostille itself; such a warning is particularly apropos where the Apostille does not relate directly to the diploma.
 5. It is recommended that States raise public awareness of how to obtain Apostilles for diplomas, what exactly it is that Apostilles authenticate and their limited effect. This should be done through sources of information such as websites and brochures, and in the case of the latter two (*i.e.*, the subject of an Apostille and an Apostille's limited effect), the information should be provided at the time of issuance.
 6. All States are invited to inform the Permanent Bureau of their efforts in pursuing the goals set out above.

APPENDIX 1: CASE STUDY ST REGIS UNIVERSITY

St Regis University (SRU) was a diploma mill that was shut down by US authorities in 2005.⁶³ It operated roughly 18 other front schools and obtained educational accreditation from Liberia, using less than orthodox means,⁶⁴ to try and validate its operations. Liberia denies SRU was ever validly accredited to operate in Liberia,⁶⁵ St Regis offered an additional service for the degrees it offered that they would be apostilled so that the degrees would be accepted in the Contracting States. Indicating the lack of knowledge that exists regarding the Apostille Convention and its practical operation, the St Regis website listed that the “59 Member States” (at the time) of the Hague Conference would accept the diplomas rather than the greater number of States Parties to the Apostille Convention.

Transcripts of the interviews of those responsible for obtaining Apostilles have been made available by the Internal Revenue Service in their preparations for the case of *US v. Randock, et al.*⁶⁶ An investigation of SRU and other schools was conducted by the US Attorney for the Eastern District of Washington, and in October 2005 eight people were indicted for fraud, wire fraud and money laundering with operations spanning at least 18 states of the United States and 22 countries. Since then, SRU and its satellite schools have been closed. Those involved in the diploma mill operation pled guilty⁶⁷ and the ringleaders have been sentenced to up to three years’ imprisonment.⁶⁸ The webmaster was sentenced to four years in prison as a result of the additional charges relating to child pornography.⁶⁹

In March 2002, an individual, Mr Novak, was hired by SRU to obtain Apostilles and authentications.⁷⁰ Mr Novak would travel to Washington, DC to purchase the necessary Apostilles and authentications for the diplomas. This process had several steps. Mr Novak first went to see a notary, who notarized “Authentication Attestations”. This, as stated in the interviews, indicated that the notary recognised that “the signature on that [Authentication Attestation] was true”. According to the interviews, these “Authentication Attestations” appear to be documents presented by Mr Novak to the notary, when he should have in fact presented the diploma. He admits he never saw a “complete package” containing the Apostille or authentication and the diploma be sent out.⁷¹ After obtaining the notarization of the “Authentication Attestations”, Mr Novak went to the

⁶³ Y. Shorma, “Degrees of Deceit”, 4 October 2008, *South China Morning Post*, Features, p. E6.

⁶⁴ T. Bartlett, “Diploma-Mill Operators Bribed Liberian Officials for Bogus Credentials, Court Documents Say”, 29 October 2008, *The Chronicle of Higher Education*, available at:

< <http://209.85.165.104/search?q=cache:SMpDI3WzEOwJ:chronicle.com/daily/2006/03/2006032206n.htm+Federal+Officials+Raid+Homes+in+3+States+in+Crackdown+on+Diploma+Mill&hl=en&ct=clnk&cd=2&gl=us> > (last consulted 17 November 2008); A. Ezell, Counterfeit Diplomas and Transcripts, 2008, American Association of Collegiate Registrars and Admissions Officers (AACRAO) at p. xi.

⁶⁵ See Liberian Embassy press release, available at < www.embassyofliberia.org/news/item_a.html > (last consulted 30 November 2008).

⁶⁶ *US v. Randock, et al.*, filed 10/05/2005 (case no. 2:2005cr00180); Indictment by US Attorney available online at < www.hep.uiuc.edu/home/g-gollin/pigeons/USA_press_release.htm > (last consulted 28 October 2008).

⁶⁷ US Department of Justice, United States Attorney Eastern District of Washington, “Online diploma mill promoter sent to prison”, 3 July 2008, available online at:

< http://www.usdoj.gov/usao/wae/press_releases/2008/docs/070308_Randock_Sentence.pdf > (last consulted 5 November 2008).

⁶⁸ Morlin, *op. cit.* (note 62).

⁶⁹ *Ibid.*

⁷⁰ The process undergone by Mr Richard Novak to obtain Apostilles and authentications is detailed in the first interview of the bundle, dated 13 December 2005, paras 6 to 15.

⁷¹ Interview of 13 December 2005, para. 12.

United States Department of State to obtain an Apostille or an authentication for the Notarial certificate of the "Authentication Attestation".⁷²

In order to minimise the number of trips to Washington, DC, he would obtain as many Apostilles and authentications as possible, up to 50 on every trip. Mr Novak estimated having gone to Washington, DC ten times in three years, and having obtained between 200 and 300 documents. He said he was paid between USD \$150 and \$250 per document. SRU charged significantly more than it cost to obtain the Apostilles and authentications as it cost up to \$ 1,800 for a package containing several Apostilles and authentications. Given the average price for an Apostille issued in the United States,⁷³ it is clear these diploma mill operators were exploiting both their customers and the Convention.⁷⁴ Once Mr. Novak had obtained these Apostilles and authentications, he mailed them back to SRU. He says he understood that the "paperwork" went on the degrees sold by SRU.⁷⁵

Mr Novak's statement regarding Apostilles and authentications highlights potential misuse of Apostilles and authentications: "He said the Apostilles and authentications essentially didn't say anything." He said "you could have attached a dog license to the paperwork."⁷⁶

⁷² *Ibid.*, para. 9: "The apostile (sic) basically says that ... (the notary) was who she said she was (a valid notary)."

⁷³ Whilst the Department of State charges US \$6 for federal Apostilles, prices vary for state-issued Apostilles (fees range from US \$2 (Alaska) to US \$25 (New Jersey)), "Apostille Section" of the Hague Conference Website, USA Competent Authorities, available at < www.hcch.net/index_en.php?act=authorities.details&aid=353 > (last consulted 1 December 2008).

⁷⁴ A. L. Contrears, "A case study in Foreign Degree (dis)approval", *International Higher Education*, Summer 2003, available on the Centre for International Higher Education website: < http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/News32/text004.htm > (last consulted 31 October 2008).

⁷⁵ Interview of December, *op. cit.* (note 71), para. 12.

⁷⁶ *Ibid.*, para. 13.