



Ana G. Méndez University System

This text presents a translation of AGMUS Copyright Policy, written in Spanish and signed by AGMUS President, Dr. José F. Méndez, on February 13, 2013.

**Ana G. Méndez University System
Office of the President**

February 13, 2013

Vice Presidents, Associate and Assistant Vice Presidents, Chancellors, Vice Chancellors, Associate and Assistant Vice Chancellors, Deans, Associate Deans, University Center Directors, Directors of Academic Programs, Library Directors, Professors, Associates, and Students of Ana G. Méndez University System.

EXECUTIVE ORDER NUMBER 02-2013 TO ESTABLISH THE POLICY ON THE USE AND REPRODUCTION OF PROTECTED MATERIAL UNDER COPYRIGHT

Ana G. Méndez University System (AGMUS) promotes the cultural, social and educational wellbeing of the Puerto Rican society by increasing opportunities for study, research and community service. In fulfilling this mission, faculty, associates, students and others affiliated to AGMUS contribute to new discoveries, creations, and other types of work across different communication media. In the same manner, faculty, associates, students and others affiliated to SUAGM use material generated by other authors and inventors.

AGMUS intellectual property policies are compliant with the laws of the United States and Puerto Rico with regards to ownership, use and protection of inventions and creations. AGMUS recognizes the importance of establishing rules regarding the use and reproduction of protected material under the Copyright Laws

Therefore, it has been deemed necessary to establish a Policy on the Use and Reproduction of Protected Material under applicable Copyright laws to ensure compliance. The Policy establishes norms and guidance to be followed.

The provisions of the Policy contained herein may be amended periodically, and in exceptions expressly recognized by AGMUS, these may be superseded through individually negotiated contracts, agreements and licenses between the parties concerned. This Policy does not cover matters relating to patents or trademarks, for which AGMUS maintains separate institutional policies.

Clarifications on this Policy may be obtained by contacting Ms. Patricia Ramirez Gelpi, at the Vice Presidency of Intellectual Property and Commercialization at 787-288-1100, extension 8275 or by electronic mail patramirez@suagm.edu or propiedadintelectual@suagm.edu.



Ana G. Méndez University System

**ANA G. MENDEZ UNIVERSITY SYSTEM
POLICY ON THE USE AND REPRODUCTION OF PROTECTED MATERIAL
UNDER COPYRIGHT LAWS**

Number: 02-2013

Effective date: February 2013

I. INTRODUCTION

The mission of the Ana G. Méndez University System (AGMUS) is to promote the cultural, social and educational wellbeing of the Puerto Rican society by increasing educational opportunities in the various sectors of the community it serves.

The United States and Puerto Rico laws on intellectual property, as they relate to ownership, use and protection of inventions and creations, are the basis for the Intellectual Property Policy in AGMUS. The compliance of both federal and state laws regarding intellectual property is of great importance to AGMUS.

This document establishes the Policy for the use and reproduction of all works, creations and/or material, among others, subject to Copyright (the Policy). This Policy does not cover Intellectual Property related to patents, trademarks or copyright of work created and developed in AGMUS; for which there are Policies related.

II. SCOPE OF POLICY

This Policy applies to all faculty members, staff, associates and other employees or personnel contracted by AGMUS, regardless of whether they are full or part-time, visiting professors, those on sabbatical or other leave from AGMUS, students and anyone else that uses the resources or facilities owned by AGMUS or under its supervision.

III. DESCRIPTION OF APPLICABLE LAWS

In Puerto Rico, copyright is composed of two (2) rights. These are the **proprietary right** and the **moral right**. The **proprietary right** is known as the right to copy (copyright) that consists in the right to financially exploit the work. The **Moral right** protects the personal bond between the author and his/her work.

In relation to the **proprietary right** or copy, Puerto Rico complies with the federal law, Copyright Act of 1976, as amended, 17 U.S.C 101-et seq., (hereafter referred to *Copyright Act*). As to the **moral right**, **Puerto Rico** complies with, *Ley de Derechos Morales de Autor de Puerto Rico, Ley Núm. 55* dated March 5, 2012 (hereafter referred to Law No. 55 of 2012).

Under the laws of Puerto Rico and federal statutes, the violation of the rights protected under the Copyright Act and the moral right is considered a crime and illegal.



A. FEDERAL COPYRIGHT ACT

Copyright protection is a right granted under the federal government for original works of authors for a determined period by virtue of the Copyright Act. Original works are fixed in a tangible medium of expression, known or expressed in the future and that can be perceived, reproduced or by any other form communicated.

Protected works include: (i) literary, including books, pamphlets, manuscripts, and computer programs; (ii) dramatic, including accompanying music; musical, including accompanying vocal; (iv) films and audiovisual material; (vii) audio recordings; and (viii) architectural plans and designs.

The Copyright Act grants the author or owner the exclusive right to: (i) reproduce; (ii) distribute; (iii) derive or adapt works from the original; and (iv) represent, interpret, execute and exhibit publicly the work.

The rights granted under the federal law are for a defined and determined period of time, after which the work will be for public domain, in other words, for the general knowledge of the public. Copyright is not for works that are already in the public domain.

The author of a work can give, transfer and/or sell his/her proprietary or copyright.

The Copyright Act provides no protection to ideas, procedures, methods, processes, concepts, principles, discoveries, or devices. It also does not provide protection to works that consist only of information that is of public domain and is of common knowledge.

B. Ley de Derechos Morales de Autor de Puerto Rico (Moral Right Law of Puerto Rico)

The Moral Right is granted exclusively by the Government of Puerto Rico to the creator of a work by protecting the bond between the creator and his/her work. The Moral Right of the creator confers him/her: (i) the right to be recognized as the creator; (ii) retrieval, (retrieve or disassociate from previous expressions); (iii) integrity, (that the work maintains its original form); and (iv) access, (the creator is able to have access to his/her work).

The Moral Right conferred by state law is for a definite and determined period of time. The rights cannot be conferred over works that have entered the public domain.

All works created by an associate as part of his/her work responsibilities and all work created as a request to an independent contractor does not generate moral rights.

IV. USE AND REPRODUCTION OF PROTECTED MATERIAL UNDER COPYRIGHT

1. Works subject to this Policy

This Policy is applicable to the work protected by copyright. The Policy does not apply to works that are in the public domain.



Works in the public domain and those for which the determined period of protection has expired can be copied and reproduced.

The absence of a copyright notice in a work does not mean and cannot be interpreted that the work is not protected by the copyright laws.

2. Fair Use

The Copyright Act allows, under certain circumstances and according to the limitations of the law, the limited use of protected material by people other than the conferees of said right. This is known as “fair use”.

It can be considered “fair use” when the work is for: (i) educational purposes; (ii) parody; (iii) a critique; (iv) commentary; (v) news; and/or (vi) a research. If the proposed use is for one of the aforementioned proposes than the proposed will be evaluated according to the following criteria:

1. The purpose and nature for the use of the protected material
2. The nature of the protected material
3. The amount and substance of the portion of the original work that will be used
4. The effect of the protected material in the market or potential market

When the use of the protected material is spontaneous and not repetitive, it can be considered “fair use” and not require authorization from the author. If the use is anticipated, planned, repetitious and/or involves work for which a license or permit is expected in a length of time, than the use will not be considered “fair use” and will require the authorization of the author or owner of the protected copyright.

It is required that the evaluation is made every time the use and reproduction of protected material is being considered by someone other than the author or owner of the copyright.

C. Permissible Uses under “Fair Use“

According to the four criteria described in the previous section, the portion of the material and/or work proposed to be used will be limited according to the following instructions:

1. Video or movie, a maximum of 10% or 3 minutes may be used, whichever is the lesser.
2. A book of ten (10) or less chapters, a maximum of 10%;
3. A book of eleven (11) chapters or more, a maximum of one chapter;
4. A musical video, lyric o music, a maximum of 10% but never more than 30 seconds;
5. Illustrations or photography, a maximum of 5 images from one artist, or no more than 10% or 15 images from a collective work;
6. Data base (numerical data sets), a maximum of 10%;
7. A poem, a maximum of 250 words and has to be reproduced in less than two pages;
8. Documents for the sole purpose of learning and/or in preparation for a course;
9. All copies made will include a copy of the original page that has the notice of copyright is present.



The use and reproduction of copyright protected material by a faculty member for the use of his/her students is limited to one course within a period of time, be it a semester, trimester or of any other part of term. The use has to be spontaneous and not repeated from one term to another. The professor has the obligation to inform his/her students that they are prohibited to distribute copies of said material to other people, in and outside the classroom.

All material copied and reproduced for educational and academic purposes must have a legitimate purpose within the course, and must be relevant to the material offered for said purpose.

If the use is anticipated, planned, repetitious and/or involves work for which a license or permit is expected in a length of time, than the use will not be considered “fair use” and will require the authorization of the author or owner of the protected copyright.

D. Impermissible Use under “Fair Use”

The following practices will not be considered “Fair Use”:

1. Make copies of material to create, substitute or replace anthologies, compilations or collective works, among others, irrespective that the reproduction is bound and maintained separately;
2. Reproduce workbooks, pamphlets, or similar works with the purpose of discarding or destroying them after its use;
3. Make copies to substitute the purchase or acquisition of books or other text material, or music; and
4. Faculty members may not copy the same material period after period without the authorization and/or corresponding license.

To incur in the practices previously described can be considered as a violation to the copyright laws and can result in civil lawsuits, criminal, disciplinary and administrative charges.

E. Other applicable Policies

The following AGMUS policies are applicable in determining if the use of protected material is subject to copyright laws, as well as, disciplinary actions. These are: (i) Acceptable use of Information and Telecommunications Systems, Policy No. 14-2006; (ii) Appropriate use of Electronic Mail, Policy No. RH06-213-005; and, (iii) Acceptable use of the Internet, Policy No. 13-2006.

F. Disciplinary Actions

AGMUS prohibits acts that constitute violations to the laws applicable to protecting the rights of authorship. Any person that violates any disposition contained in this Policy and or applicable laws is subject to disciplinary and/or administrative actions.

Any violation to the dispositions in this Policy and the applicable laws will be referred to the Vice Presidency for Intellectual Property and Commercialization, Vice Presidency of Planning and Academic Affairs and/or the Chancellor of the corresponding institution for evaluation and corresponding actions.



G. Amendments

The dispositions contained in this Policy may be amended from time to time by the AGMUS Board of Directors. The effect of any amendment will be retroactive.

H. Effective Date

This Policy is in effect from the date of approval from AGMUS President and derogates any other policy, rule or regulation previously in effect related to the use and reproduction of works subject to the protection of copyright laws.

No part of this document may be loaned, copied, reproduced or transmitted in any form or utilized for purposes other than those for which it is established, without written consent from the Ana G. Méndez University System.



Table 1. Guide for determining the years of protection for a work, and to evaluate if the work has entered in the public domain.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1 Term of joint works is measured by life of the longest-lived author.

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice were made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway)

LOLLY GASAWAY Last updated 11-04-03

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Table 2. Use of material according to the mean of expression

Mean	Analysis of reasonable Use under the criteria of “Fair Use”
Movie, film, video	Maximum of 10 % or 3 minutes, whichever is lesser
Text	Maximum of 10 % of a book with 10 or less chapters. Maximum of 1 chapter of a book with 11 chapters or more.
Music, lyrics, musical video	Maximum of 10 %, but no more than 30 seconds
Illustrations, photography	Maximum of 5 images from one artist, or no more than 10 % or 15 creations of a collective work published.
Data Base (Numerical data sets)	Maximum of 10 %
Poem	Maximum of 250 words and reproduced in less than 2 pages.

Table 3. Use of material according to its format

Material	Fair Use	Unfair Use
Web page with material protected by copyright	Create a link	Copy and Paste the page content
Web image	Education purposes: shown in Blackboard o e-Reserve for one period. (Ex: semester, trimester)	Repeated use in multiple periods
Article in the library data base	Create a direct link	Copy and paste the content on Blackboard
Copyright image	Education purposes: shown for a period of time (semester, trimester)	Education purposes:
Scan and/or copy a portion of a book	Education purposes: 10% of the total book; and for one period	Repeated use in multiple periods; using more than the permissible percents
Scan and/or copy an article in a magazine, professional journal or dairy.	One article for one period	Multiple articles from the same publication, o use in repeated occasions during the same period
Scan and/or copy a poem	Education purposes: maximum of 250 words and reproduced in less than two pages	Repeated use in multiple periods; using more than the permissible percents



Attachment 1

Guide for the analysis of Fair Use

Instructions: Mark all the boxes that apply. For each section, determine if the proposed use favors or not the Fair Use criteria. When the majority of the boxes marked fall under the column of fair use, the use is acceptable. When less than half of the boxes marked fall under the column of unfair use, than authorization is required from the author. Verify with the library if a license has been obtained for the use of the protected material. If the library has a license, the proposed use may fall under the parameters of the license.

Name: _____ Date: _____

Class or Project _____

Semester or Trimester _____

Title of the Work _____

Author _____

Portion to be used (pages, etc.) _____

1. Purpose for Use

Fair Use

- Educational
 - Teaching, including copies
For the use in the classroom
 - Research
 - Scholarship
 - Critique
 - Commentary
- Transformative o productive (the
Work was modified for a new purpose
- Income is not generated

Unfair Use

- Commercial
- Non transformative use, exact
copy word for word
- Income is generated



2. Nature of the Protected work

Fair Use

- Published work
- True, non-fiction, news

Unfair Use

- Unpublished work
 - Creative (art, music, fiction) or consumable Work (test, workbook)
-

3. Amount of work to be copied

Fair Use

- Abstract consisting of less than 10% of a chapter, magazine article
- Abstract used is not the medullar of the work
- Abstract is appropriate for educational purposes

Unfair Use

- Abstract consisting of a substantial portion or entire work
 - Abstract used is the medullar of the work
 - Includes more than the required for education purposes
-

4. Effect of the work in the market

Fair Use

- Market or potential market is not affected
- One o few copies made and/or distributed
- Work is no longer in circulation, absence Of possibility to obtain a license for use
- Restricted and/or limited access to students In a semester course
- Spontaneous use

Unfair Use

- The use of the copy can replace the sale of the work
 - Multiple copies made and/or distributed
 - Easy access for obtaining a license or permit for use
 - Non-restricted or limited access
 - Repeated use, continuing in Prolonged period of time
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