

December 4, 2017

VICE PRESIDENTS, ASSOCIATE AND ASSISTANT VICE PRESIDENTS, CHANCELLORS, VICE CHANCELLORS, ASSOCIATE AND ASSISTANT VICE CHANCELLORS, DEANS, ASSOCIATE DEANS, FACULTY, DIRECTORS, ASSOCIATES AND STUDENTS OF THE ANA G. MENDEZ UNIVERSITY SYSTEM

**EXECUTIVE ORDER 13-2017:
AMENDMENT TO EXECUTIVE ORDER 01-2013 ON THE COPYRIGHT POLICY**

I. INTRODUCTION

The primary mission of the Ana G. Mendez University System (AGMUS) is to promote the cultural, social, and economic development and wellbeing of the Puerto Rican society, as well as other sectors of the Hispanic community outside Puerto Rico by expanding educational opportunities for the various sectors of the community that it serves. To fulfill this mission, those affiliated to AGMUS will contribute new discoveries, creations, and other works through different medias.

AGMUS understands that it is important to establish policies that address the intellectual property rights of works created, invented, and developed by AGMUS employees, contractors, students, and others. The United States and Puerto Rico intellectual property laws regarding ownership, use and protection of inventions and creations are the basis of our intellectual property policies. This document amends the AGMUS Copyright Policy. The provisions contained herein may be amended from time to time and may be supplanted through contracts, agreements, and licenses negotiated individually between the relevant parties.

This Policy does not cover the intellectual property rights relating to patents or trademarks, for which there are one or more policies on these subjects.

II. SCOPE

This Policy will apply to all AGMUS associates and faculty, whether full-time or part-time, or with licenses for various reasons; full-time and part-time students; researchers and contractors; and to any other person who utilizes AGMUS resources or facilities or performs work under the supervision and/or at the request of AGMUS, including the members of the Board of Directors. The provisions of this policy apply only to original works of authorship, work, or materials, among others, protected by copyright. The policy does not apply to those works found in the public domain. Those works whose term of protection expires and/or that were never subject to protection and are in the public domain may be copied or reproduced.

III. DESCRIPTION OF APPLICABLE LAWS

In Puerto Rico, copyright is established from the interaction of two rights. These are the property law (economic right) and the moral right. The economic right is known as the right of copy (copyright), which consists of the right to the economic exploitation of the work. The moral right protects the link between the author and his work.

With respect to the economic or copy rights, in Puerto Rico we are governed by the federal law known as the Copyright Act of 1976, amended, 17 U.S.C. §101-et seq., (hereinafter the "Copyright Act"). With respect to moral rights, we are governed by the Puerto Rico Moral Copyright Act, Law No. 55 of March 5, 2012 (hereinafter "Law No. 55 of 2012").

Under the laws of Puerto Rico and the federal statutes, copyright infringement is illegal, and a crime is recognized when a person violates the rights provided by the Copyright and Moral Rights Laws. It is important to know that the laws discussed below, grant and acknowledge the author of the work the attribution of the creation regardless of whether the copyright ownership is vested in AGMUS, the author or a third party.

A. Description of the Federal Copyright Law

Copyright is an exclusive legal right granted by the federal government to creators of original works of authorship for a specified period. An author's original work is one that is fixed in a tangible means of expression now known, or that is invented in a future and of which the work can be perceived, reproduced, or otherwise communicated. The protection under the federal law begins from the moment the work is embodied in a tangible medium.

Works that may be protected by copyright include: (i) literary, including books, pamphlets, manuscripts, and computer programs; (ii) dramatic, including any accompanying music; (iii) musicales, including any accompanying words; (iv) choreographies and pantomimes; (v) pictorials, graphics and sculptural; (vi) cinematographic films and audiovisual works (vii) sound recordings; and (viii) architectural plans, drawings, and buildings.

The Federal Law grants copyright owners the following exclusive rights: (i) reproduction; (ii) distribution; (iii) preparation of derivative works or adaptations of the original; and (iv) to represent, interpret, perform, and display their work publicly.

The rights granted by the federal law are for a defined and determined period after which the work will pass into the public domain, that is, to the general knowledge of humanity. Copyright may not be exercised for works which have entered the public domain.

Federal law does not provide protection for ideas, procedures, methods, processes, concepts, principles, discoveries, or devices, nor does it offer protection to works that consist only of information that is public knowledge and is in the public domain.

B. Description of the Puerto Rico Moral Rights Law

The moral right is an exclusive right of an author over his work that protects the relationship between the author and his work.

The moral right of the author over his work confers the right to: (i) attribution; (ii) withdrawal; (iii) integrity; and (iv) access. The moral rights granted by state law are for a definite and determined period. Moral rights may not be exercised if works have entered the public domain.

The author of any work created by an employee as part of his or her employment functions or as an independent contractor (work for hire) cannot claim moral rights over that work.

IV. COPYRIGHT POLICY

A. Traditional academic work

AGMUS, under the federal copyright law known as the *Copyright Act*, owns the copyright of works created by its employees as part of their duties and/or functions, including, but not limited to, associates, faculty members and students.

AGMUS will not claim and will grant the author the copyright and/or copy rights of those works created by faculty members when these are considered traditional academic works; except, when these are works created as "work for hire" (see subsection B); involve "substantial AGMUS resources" (see subsection E); or involve resources and/or funds from, and/or allocated to AGMUS; or are created under a special project and/or endorsed by a third party under a contract by virtue of which the ownership of the copyright is either transferred and/or assigned to AGMUS or to the third party, in which case what is expressed in the contract will prevail over what is established herein.

Traditional academic works are those works created independently and at the initiative of the creator for purely academic purposes.

This category includes:

- i. course guide, course outline, syllabi, journal articles, course texts, other books, poems, musical compositions, works of the artistic imagination that were not created using substantive AGMUS resources and/ or staff.
- ii. Works created by students during their education, such as assignments/reports, projects, and other similar academic requirements that were not created using substantial AGMUS resources; and
- iii. works created by students during their education and as part of their concentration requirements, such as theses, dissertations, and projects that were not created using substantial AGMUS resources.

In all the works described in subsections (i) and (ii) of this section, AGMUS shall have and will hold the non-exclusive right without royalty payment to use and reproduce academic work for teaching, learning and research, and may retain additional rights by contract with the author.

In those works, described in subsection (iii) of this section, the student, as a condition to being conferred his degree, will grant AGMUS non-exclusive use without payment for the reproduction and public distribution of his work for educational and research purposes.

AGMUS will retain and claim copyright and/or copy rights of all online course work, reports, modules, units, presentations, course guides, syllabi, course outlines, among others, that have been created and/or prepared by faculty members ¹.

AGMUS will retain and claim the power to review, check, and comment on the course guides, course outlines, syllabi and/or course modules, among others, created and developed by its professors.

B. Work for Hire

AGMUS will hold the copyright of a work made for hire. Any work made to order will not generate moral rights. A work for hire includes:

- i. any work created, within the functions of their employment, by a faculty member, professors, associates, employees, and students employed by AGMUS, regardless of the place where the work is created, and regardless of whether specific instructions have been mediated requesting the creation of the work.
- ii. any commissioned work and/or entrusted to a professor, associate, student, independent contractor or other, through a written contract signed between the person and AGMUS by virtue of which the work to be carried out is specifically detailed and expresses that all its copyright is abdicated and transferred to AGMUS.

C. Institutional work

Institutional work is work resulting from the simultaneous or sequential contribution of several faculty members, associates, employees, or students under the AGMUS direction or supervision.

AGMUS will retain all copyrights of any work created and generated as institutional work.

D. Conflicts with patent policy

Some works described in the preceding subsections in this section may be protected under the concepts of copyright and patents.

All works subject to copyright and patent protection are governed by and will be subject to the provisions of the AGMUS Patent Policy.

1 See Executive Order 20-2016-Policy for Course Offering Supported by Web and Distance Technology

E. Substantial use of AGMUS resources

Copyright of a work created by virtue from the substantial use of AGMUS resources shall belong to AGMUS.

The copyright of any work created by a member of the AGMUS community whether faculty, associate, employee, student or other in an AGMUS program, using AGMUS funds or facilities shall be the property of AGMUS.

The following will be considered use of substantial AGMUS resources:

- i. the use of AGMUS facilities and other resources, including employees and students, for purposes beyond the employment functions of the individual with AGMUS, or the academic curriculum of a student.
- ii. the use of AGMUS facilities and other resources without which it would not have been possible to create the work; and
- iii. the use of those resources that are ordinarily not accessible to all or almost all faculty members with similar AGMUS locations, the university, or the department.

F. Recognition to the creator of the work

The preceding subsections establish who is the copyright owner for those works created within the parameters described. In addition to the above and in recognition of the significant efforts and talents of AGMUS faculty, associates, and students in developing and elaborating such work, AGMUS agrees to the following:

1. Give recognition to the faculty, associates, and students as the creators of the work.
2. Provide the associated faculty and students, the first option to update or revise the work created, as AGMUS deems necessary, while the professor or associate is employed by AGMUS. If a professor or associate refuses to update or revise the work within a reasonable and acceptable period, AGMUS shall have the right to appoint another person to perform that task.
3. Reasonably allow the faculty, associate, or student to modify and update the work.

1. **Distribution of AGMUS copyright royalties**

AGMUS recognizes the significant efforts and contributions of faculty, employees, and creative student who belong to AGMUS, among others. To promote these efforts, AGMUS will share its net revenues received from sales, licenses, or other commercial exploitation of the copyright owned by AGMUS, as indicated in this section.

The distribution of royalties will be made according to the AGMUS Marketing Policy.

AGMUS and the creator/author may agree by means of a written document signed by all the parties involved, a distribution of royalties different from that established by the Marketing Policy. Agreements signed individually between AGMUS, and the creator/author shall prevail where they differ from the terms of this Policy.

H. Copyright Notification

The Associate Vice Presidency for Academic Affairs (hereinafter referred to as the "Office") shall be responsible for the administration of this Policy and shall attend all matters related to copyright in coordination with the AGMUS advisors. Any person to whom this Policy applies shall promptly notify **the Office** of those works in which AGMUS may have and/or has copyrights in accordance with the terms of this Policy.

The Associate Vice Presidency for Academic Affairs shall, as deemed necessary, seek external legal support or other forms of assistance, including the establishment of special committees composed by AGMUS members and others to fulfill these responsibilities.

It is the responsibility of the AGMUS faculty, associates and other employees or contracted persons and students to know the content of this Policy and to make copyright notifications or inquiries as appropriate.

I. Copyright Notice

In each publication of a work for which AGMUS has copyright, whether it is a work printed on paper or disseminated on the Internet, among others, the following copyright notice will appear:

© 20XX. Ana G. Mendez University System. All rights reserved.

The notice consists of the copyright symbol, year of publication and the name of the owner and/or copyright holder, which is the Ana G. Mendez University System. The substitution of the University System will not be allowed.

Ana G. Mendez for the name of a university, institute, department, or other AGMUS initiative.

This notice is required to comply with this Policy and applicable laws. The purpose of the notice is to inform about the protection of the work.

J. Disciplinary measures

Any person who violates any provision contained in this Policy shall be subject to disciplinary and /or corrective measures according to the severity of the violation and applicable AGMUS policies. Any possible violation of the provisions of this Policy and the applicable laws will be referred to the AGMUS Vice President of Academic Affairs and/or the Chancellor of the corresponding university for its evaluation and determination.

K. Amendments

The provisions contained in this Policy may be amended by another executive order.

L. Effective Date

This Policy will be valid from the date of its approval by the AGMUS President and repeals any previous policy, rule or regulation that may exist in AGMUS with relation to AGMUS copyright.

No part of this document may be lent, copied, reproduced, or transmitted in any form or used for purposes other than those for which it was created, without written permission from Ana G. Mendez University System.

Approved by:



José F. Méndez Méndez
Presidente

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Date