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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 14-2017: AMENDMENT TO EXECUTIVE ORDER 19-2016 ON THE POLICY OF USE AND REPRODUCTION OF COPYRIGHT MATERIAL

I. INTRODUCTION

This document amends the policy on the use and reproduction of copyrighted material (Fair Use) of all works, work, and/or materials, among others, (the Policy). This Policy does not cover intellectual property rights related to patents, trademarks, or copyrights of works created, produced and/or developed under AGMUS, for which there are one or more policies on these issues.

II. SCOPE

This Policy will apply to all AGMUS associates and faculty, either full-time or part-time or with licenses for various reasons, full and part-time students, researchers, and independent contractors, as well as any other person who uses the AGMUS resources or facilities or carries out work under the supervision and/or at the request of AGMUS, including the members of the Board of Directors. The provisions of this Policy only apply to work, works or materials, among other, protected by copyright. The Policy does not apply to those works that are in the public domain. Those works and/or work, whose period of protection expires and/or which were never subject to protection, are in the public domain and may be copied or reproduced.

III. DESCRIPTION OF APPLICABLE LAWS

A. Federal Copyright Law

Copyright is an exclusive right granted by the federal government of the United States to creators of original works of authorship for a specified period under the Copyright Act. An original work of authorship is one that is fixed in a tangible means of expression now known or invented in a future and from which the work can be perceived, reproduced, or otherwise communicated. For more information on copyright, access the Copyright Guidelines.

Copyright protects eight categories of work, which include: (i) literary works, including books, pamphlets, manuscripts, and computer programs; (ii) dramatic works, including accompanying music; (iii) musical works, including accompanying words; (iv) choreographic works and pantomimes; (v) pictorials, graphic and sculptural works; (vi) motion pictures and audiovisual works; (vii) sound recordings; and (viii) pianos and architectural work.

Federal law grants the copyright owner the following copyright exclusive rights:

1. Reproduction (making of copies, digitizing, etc.)
2. Distribution (transfer, sale, uploading, sending via email, etc.)
3. Derivative works (creating sequels, translations, adaptations, etc.)
4. Public display (display of a work in a public place); and
5. Public Performance (work is performed in a public place).

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

The absence of a copyright notice on a work does not and cannot be construed as meaning that the work is not protected by copyright.

IV. Fair Use

A. Fair Use

The Copyright Act, under certain circumstances and as defined by law, permits the limited use of copyrighted material protected by law for persons who are not the holders of said right. This is known as the doctrine of fair use.

The fair use analysis consists of a two-part evaluation. First, it considers whether the material will be used for one of the following purposes: (i) educational; (ii) parody; (iii) criticism; (iv) comment; (v) news reporting; and/or (vi) research. If its use is within one of these purposes, an evaluation will be carried out under the second level of fair use analysis. If the proposed use will not be used for one of these purposes, then the use will not be a fair use and will require prior authorization from the copyright owner.

In this second part of the analysis, the considerate use will be evaluated from case to case in accordance with the following four factors identified below:

1. The nature of the original work. The use of creative works or opinions will not be considered a fair use whereas the use of uncreative works based on data or facts will be considered as fair use. It will be necessary to consider the following questions:
 - How creative is the work?
 - Is it a work of fiction?
 - Does it state opinions, criticisms, or facts?

2. The purpose of the use that will be given to the material. It will always be necessary to evaluate the context and medium in which the material will be shared. Academic or educational use will be fair use. Commercial, promotional, protocol, entertainment or administrative use will not be a fair use. It will be necessary to consider the following questions:
 - Is it for commercial, promotional, or administrative use?
 - Is it a transformative use of the original?
 - Is the use purely academic/educational?
 - Is the use for entertainment?

To the extent that it is part of a commercial activity, with facts of use, entertainment, or no credit is given to the original author, it departs from "fair use".

3. The amount or portion of the original work to be used. It will always be necessary to evaluate the quantity or portion of the material to be used.

The applicable law has been emphatic in that the use and custom of percentages, seconds and the number of pages is not grounded on a legal base, therefore, this argument will not be valid. It will be necessary to consider the following questions:

- What portion of the original will be used?
- Is it all, much, or a small extract of the work?
- Is it the core of the work?
- Is the minimum needed to convey the message?
- Is all or most of the work and/or the core of the work used? ("heart of the work")

4. The effect on the market or potential market for the copyrighted work. It will be necessary to consider the following questions:

- How will the market for the original be affected?
- How will the market for the original be affected if all universities do the same?
- Am I supplanting or replacing the need for the original with this use?

“Fair use” will possibly be considered when the copyright has been acquired, few copies made, and no significant effect is caused in the market or there is no procedure to obtain a license.

It is a requirement to perform this analysis each time that it is used and/or when reproduced material whose authorship is from a different person and/or unrelated to the person who intends to use it. If there are doubts, a consultation should be carried out.

If the use is one anticipated, planned, repeated, continuous and/or involves works for which it would be expected to obtain a license and/or permission with sufficient time, then the use will not be a fair use and the prior authorization from the copyright owner will be required.

B. Use of Copyrighted Content

AGMUS promotes the responsible use of content protected by copyright in face-to-face and distance learning in accordance with the exceptions established by applicable legislation and law. The exceptions established by the Copyright Act for teaching and academic function only apply within the framework of academic activity.

They do not extend and do not apply to other activities of the university environment such as administrative, protocol, promotional, cultural and/or entertainment activities and functions, among others. For these it will be necessary to carry out the due analysis of “fair use”, obtain authorization from the copyright owner and/or pay for a user’s license. For more information refer to the Fair Use Guidelines in the Academy.

Beyond the exceptions established by law, the use of illegally acquired or pirated content, as well as the reproduction, distribution, transmission, displays or public exhibition and preparation of derivative works, without the prior authorization of the copyright owner will be considered as a violation of the Law and this Policy.

In addition to the above, and to responsibly use content protected by copyright, at least the following must be observed:

1. The acquisition of a copy does not grant the user the right to reproduce and distribute copies of the purchased copy. As indicated above, the right to reproduction and distribution are reserved rights for the copyright owner.

2. All fair use should be spontaneous and not repeated. If the use is anticipated, scheduled or continuous, it will not be fair use and will require obtaining authorization from the copyright owner and / or paying a user’s license.

3. Every professor and/or lecturer has the duty and obligation to inform his students that it is prohibited, and they are not allowed to distribute copies of the material provided.
4. Work copied and/or reproduced for academic and educational use must comply with a legitimate purpose within the course and must be closely intertwined with the subject matter to meet that purpose.
5. It is not permitted to copy and/or digitize books, movies, music, among others, to replace the purchase and/or acquisition of these.
6. The educational technological platform to be used by the AGMUS faculty will be that authorized by AGMUS and administered by the Central Office of Information Technology and Telecommunications (OCIT).
7. All content placed by the faculty in the educational platform must be in accordance with this Policy.

For practical examples see the following materials: (i) Guidelines on Fair Use in the Academy, (ii) pamphlet on Copyright in the Academic Environment, and (iii) pamphlet on the Copyright in the Administrative Environment.

V. DISCIPLINARY MEASURES

AGMUS expressly prohibits actions that constitute copyright infringement. Any person who violates any provision contained in this Policy and/or applicable laws shall be subject to disciplinary and/or administrative measures.

Any violation, of the provisions of this Policy and the applicable laws, will be referred to the AGMUS Associate Vice President for Academic Affairs, and/or the Chancellor of the corresponding university for evaluation and action.


VI. AMENDMENTS

AGMUS may amend the provisions contained in this Policy from time to time as deemed necessary.

VII. EFFECTIVE DATE

This Policy will be valid from the date of its approval by the AGMUS President. Any AGMUS existing policies, rules or regulations related to this subject shall be amended to harmonize with this policy.

Approved by:



José F. Méndez Méndez
Presidente

4-dic-2017