Ana G. Méndez University System
Vice-Presidency of Planning & Academic Affairs
Associate Vice-Presidency of Intellectual Property and Commercialization

A GUIDE TO THE UNIVERSITY COMMUNITY ON:
COPYRIGHTS

Patricia Ramírez Gelpí, Esq., Director of Copyrights
Luis García Feliú, Associate Vice President

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I. Introduction

The Ana G. Méndez University System (“AGMUS”) has a copyrights policy which establishes and sets forth what is a copyright, what it applies to, and who owns the copyrights to works created by AGMUS employees, among other things.

Compliance with all federal and state laws pertaining to copyrights is of the utmost importance to AGMUS. Violations to federal and state copyright laws may carry civil responsibilities as well as criminal sanctions upon the infringer.

The purpose of this guide is to disseminate knowledge about copyrights and answer doubts the university community may have with regards to the use, dissemination and reproduction of copyright protected materials, and ensure compliance with these laws.

II. What is copyright?

Pursuant to the Copyright Act of 1976, 17 U.S.C. §101-et seq., as amended, a copyright is the exclusive right granted by the federal government to creators of original works of authorship for a limited period of time.

An original work of authorship is defined as that which is fixed on a tangible medium of expression, now known or developed in the future, from which the work may be perceived, reproduced and/or otherwise communicated.

The protection granted under federal law commences at the moment the work is fixed on a tangible medium of expression.

The author of an original work may transfer, sell, and/or assign his rights to another person.

III. What are moral rights?

Moral rights are the exclusive rights granted by the government of Puerto Rico to the author of a work, thereby protecting the link between the author and the work. This law is known as the Moral Rights of Authors of Puerto Rico, Public Law number 55 of 2012.

Moral rights bestow upon the author of a work the rights of: (i) attribution; (ii) retraction; (iii) integrity; and (iv) access. Moral rights are granted by state law for a limited period of time.

Moral rights may not be assigned, sold or transferred.

All works created by an employee within the scope of his employment, works made for hire or as an independent contractor do not generate moral rights.
IV. What is protected by copyright?

Under copyright law, works of authorship include: (i) literary works, including textbooks, pamphlets, workbooks, manuscripts and computer software; (ii) musical works, including any accompanying words; (iii) dramatic works, including accompanying music; (iv) pantomimes and choreographic works; (v) pictorial, graphic, and sculptural works; (vi) motions pictures and other audiovisual works; (vii) sound recordings; and (viii) architectural works.

V. What is not protected under copyright law?

- Ideas, titles and facts.
- Procedures, methods and systems.
- Works created by the federal government.
- Works in the public domain.\(^1\)
- Works whose copyright protection term has expired.\(^2\)

VI. What rights does the copyright owner have?

Federal copyright law grants to the copyright owner the exclusive right to commercially exploit the work. The copyright owner has the exclusive right to: (i) reproduce the work, in whole or in part; (ii) prepare derivative works; (iii) distribute copies of the work; (iv) attribution; (v) publicly perform and/or display the work.

Any person interested in utilizing another’s work or part of a work must obtain permission from the copyright owner prior to using the material; except in those instances where the use may be considered a fair use under the fair use doctrine as defined in the Copyright Act of 1976.

VII. What is AGMUS’s copyright policy?

AGMUS’s copyright policy establishes that the copyrights of all works created by an employee, faculty member, and associate, among others, as part of their employment belong to AGMUS.

All incomes received from the sale or distribution, among others, of such works shall be distributed between its author and AGMUS as set forth in the copyright policy. This policy was

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\(^1\) See Table 1.

\(^2\) See Table 1.
adopted pursuant to Executive Order number 07-2011. Copies may be requested of the full text of the policy via electronic mail to propiedadintelectual@suagm.edu.

VIII. What is fair use?

Under the fair use doctrine, the law allows for the limited use of copyrighted material without permission from the copyright owner under certain instances. This is known as fair use.

It may be considered to be fair use when the work is used for purposes such as: (i) criticism; (ii) parody; (iii) news reporting; (iv) research and scholarship; and/or (v) teaching.

To be considered as fair use, use of copyrighted material must be spontaneous and not recurring.

If the use is planned, recurring, or involves works which have been in circulation, and for which it could be expected to obtain a license from the copyright owner with sufficient time to use the work, then, the use would not be considered as fair use, and a license or authorization from the copyright owner would be required for the use of said work.

For purposes of assisting in evaluating if a proposed use falls under the fair use doctrine or not, we have prepared a checklist which forms part of this document. Additional copies may be requested via electronic mail to propiedadintelectual@suagm.edu.

IX. What may I upload unto Blackboard?

AGMUS uses Blackboard as a teaching aid tool. When uploading information unto Blackboard, faculty members should be aware that federal copyright law applies to the materials they upload.

Therefore, prior to uploading any materials unto Blackboard, faculty should conduct a fair use analysis of the materials to be uploaded in order to determine if the proposed use constitutes fair use under the fair use doctrine.

X. May a professor make copies of a work for use and/or distribution in the classroom?

Based on a fair use analysis, the use of photocopies disseminated by professors in their classrooms may on occasions be considered as fair use and on other occasions as copyright infringement.

If the copy is of a new work for which you could not reasonably be expected to obtain permission in a timely fashion and the decision to use the work was spontaneous, the use may be considered fair use.
If the use of the copy in the classroom is:

- planned;
- repeated from course to course, or from term to term; or
- involves works which have been in circulation and/or existed long enough that it would be reasonably expected to obtain copyright permission or license in advance,

Then the use is not a fair use, and it is necessary that you obtain a license or permission from the copyright owner in order to use the work.

**XI. May copies be made of works placed in the library’s reserve section?**

The library may place a copy of a work on reserve without the need to obtain copyright permission for those works for which it owns a copy.

If the library wishes to reproduce additional copies in order to include them in the reserve area for students to review, it must obtain a license or copyright permission.

**XII. What is the adequate use of photocopy machines in the library?**

- **Copies made for students**

  The library may make copies of works for its library users (students, faculty, etc.), provided that:

  - The library makes one copy of an article from a periodical or small part of any other work.
  - The copy becomes the property of the library user.
  - The library reasonably believes that the copy will be used for private study, research or scholarship.
  - The library displays a copyright notice about the use of copies and reproduction of works at the place where users make their copy requests.

- **Copies made by students**

  Copies made by students are subject to fair use analysis.

  The copy of a small portion of a work or the copy an article may be considered fair use.  The copy of all the assigned chapters of a required and/or recommended text for a particular course, multiple copies of an article or chapters for distribution to classmates, or copies of workbooks, among other things, are not fair use and require permission from the copyright owner.

**XIII. Frequently asked questions**
What is the public domain?

The phrase public domain is used to refer to the state of a work when it is not copyright protected and may be freely used by the general public.

Works in the public domain are considered as being part of the general knowledge of humanity.

When does a work enter the public domain?

Works enter into the public domain when: (i) the copyright protection expires; (ii) the author did not comply with statutory requirements for copyright protection; or (iii) the work is created by the federal government.

For a detail of the terms of protection under federal copyright law, see Table 1.

What is plagiarism?

Plagiarism is a copyright infringement upon the intellectual, artistic, literary or other original work of authorship, incurred when a person presents as original or as his own another’s work.

The act of plagiarism constitutes a violation of both federal and state laws which may carry administrative sanctions, as well as responsibility in civil and criminal cases.

Plagiarism is not limited to educational and scholarly works. It may occur in musical works, choreographies, designs, the visual arts, software programs and architectural works, among others.

Plagiarism may occur when:

- Part of a work is copied without giving credit to the original author.
- Part of a work is copied without citing or citing correctly the original author.
- Parts of various works are copied to create one work without giving credit to the authors of the original works.

What alternatives are there for the use of copyrighted works?

On occasions the proposed use of a copyrighted work does not fall under and/or exceeds the permissible uses under the fair use doctrine. When this occurs, we must search for alternatives. Some of these alternatives for the use of the desired work may be:
- Provide a link directly to the internet page where the work may be found.\footnote{Providing a link does not constitute copyright infringement.}
- Obtain permission from the copyright owner for use of the material.
- Obtain a license to use the material.
  - These licenses may be obtained through the Copyright Clearance Center, \url{www.copyright.com}, or similar entity.
  - Verify with the library if they hold a license for use of the desired work.
- Search and obtain alternate works.

\checkmark \textbf{What are some specific directives regarding the use of copyrighted works?}

- The amount of copyrighted work handed out by a faculty member for use by his/her students should not exceed that which is necessary for the particular academic purpose.
- All copies of copyrighted works must contain and include the correct citing reference to the author and copyright notice.
- Access to a course’s Blackboard page, which contains copyrighted works, must be limited to the students registered in the course.
- Student access to copyrighted works in a course should be terminated upon completion of the course.
- Handouts given by faculty members for use by their students during a course must be limited to one copy per student per course.

\checkmark \textbf{May I use works found on the internet?}

It should be presumed that all the information we obtain from webpage’s is copyrighted.

Just because the information, material and/or image is on the internet does not mean that it’s in the public domain and that it may be freely used. Consequently, you may not use, copy or download the work prior to verifying if in fact the work is copyrighted or not.

On the internet, some works may be subject to specific and particular licenses such as a Creative Commons license. For more information about this type of licenses and their uses, visit \url{www.creativecommons.org}. 
It’s important to mention that just because something is on the internet does not make it true, correct or factual.

✓ **May I use a work published outside the United States?**

Each country has its own laws and regulations regarding copyrights. Under the Berne Convention of 1886, it is required that all member countries recognize the copyrights of foreign authors in the same manner they do those of their own nationals.

✓ **Are there additional laws on or about other aspects of copyrights?**

Yes, there are multiple laws. Each one of these laws touches upon a specific aspect/topic of copyrights.

Some of these laws are the Digital Millennium Copyright Act (“DMCA”), which discusses aspects of copyright law in the digital era, and the Visual Artist Rights Act (“VARA”), which grants additional rights to creators of works of visual arts.

*For additional information contact the Director of Copyrights,*

patramirez@suagm.edu, propiedadintelectual@suagm.edu
Table 1

Guide for determining the years of protection of a copyrighted work.\(^4\)

<table>
<thead>
<tr>
<th>Date of the work</th>
<th>Protected from</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Created on January 1, 1978 or after</td>
<td>Since work is fixed in a tangible medium of expression.</td>
<td>Life of the author + 70 years.(^5)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For works made for hire, the term is 95 years from date of publication or 120 years from date of creation.(^6)</td>
</tr>
<tr>
<td>Published before 1923.</td>
<td>In the public domain.</td>
<td>N/A</td>
</tr>
<tr>
<td>Published between 1923-1963.</td>
<td>Since date of publication with copyright notice.</td>
<td>28 years + renewable for 47 years, now extended by 20 additional years for a total renewal of 67 years. If not renewed, now in the public domain.</td>
</tr>
<tr>
<td>Published between 1964-1977</td>
<td>Since date of publication with copyright notice.</td>
<td>28 years first term; automatic extension of 67 years for a second term.</td>
</tr>
<tr>
<td>Created before January 1, 1978 but published between then and December 31, 2002.</td>
<td>Since January 1, 1978.</td>
<td>Life of the author + 70 years, or December 31, 2047, whichever is greater.</td>
</tr>
</tbody>
</table>

\(^4\) Source: [www.unc.edu/~unclng/public-d.htm](http://www.unc.edu/~unclng/public-d.htm), *When Works Pass Into the Public Domain* written by Lolly Gasaway.

\(^5\) For joint works, term is measured by life of the longest lived author.

\(^6\) Also applies to anonymous works, and works created under pseudonyms.

\(^7\) Under the *Copyright Act* of 1909, works created without a copyright notice went into the public domain upon publication. Works published without notice between January 1, 1978 and March 1, 1989, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing a notice on unsold copies. 17 U.S.C. §405.
Included below are two tables which may serve as an aid when conducting a fair use analysis.\textsuperscript{8}

Table 2, Use of material according to medium.\textsuperscript{9}

<table>
<thead>
<tr>
<th>Medium</th>
<th>Reasonable use under fair use analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Movie, video</td>
<td>Up to 10% or 3 minutes, whichever is less.</td>
</tr>
<tr>
<td>Music, lyrics, and music videos</td>
<td>Up to 10%, but in no event more than 30 seconds.</td>
</tr>
<tr>
<td>Illustrations, photographs</td>
<td>Up to 5 images from one artist, or no more than 10% or 15 images from a published collective work.</td>
</tr>
<tr>
<td>Numerical data sets</td>
<td>Up to 10%.</td>
</tr>
</tbody>
</table>

Table 3, Use of material according to format.\textsuperscript{10}

<table>
<thead>
<tr>
<th>Material</th>
<th>Permitted Use</th>
<th>Prohibited Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Website containing copyrighted materials.</td>
<td>Create a link to the page via Blackboard.</td>
<td>Copying and pasting the content on Blackboard.</td>
</tr>
<tr>
<td>Web image</td>
<td>Must be educational use in nature; posted for one term (semester, trimester, etc.).</td>
<td>Repeated use over multiple terms.</td>
</tr>
<tr>
<td>Article from e-reserves or other library database.</td>
<td>Create a direct link to the article.</td>
<td>Copying and pasting the content of the website onto Blackboard or other.</td>
</tr>
<tr>
<td>Scanned image subject to copyright protection</td>
<td>Must be educational use; used on Blackboard for one term (semester, trimester, etc.)</td>
<td>Repeated use over multiple terms.</td>
</tr>
<tr>
<td>Scanned portion of a prose work</td>
<td>Must be educational use; and no more than 10% of the entire work for books of 10 chapters or less; no more than 1 chapter for books of 11 chapters or more.</td>
<td>Repeated use over multiple terms or use of more than the allotted percentages.</td>
</tr>
<tr>
<td>Scanned article from a journal, trade publication or magazine</td>
<td>A single article for one term.</td>
<td>Multiple articles from the same publication or repeated use over multiple terms.</td>
</tr>
</tbody>
</table>

\textsuperscript{8} The purpose of these tables is to serve as guides in assisting faculty in their fair use analysis.

\textsuperscript{9} Source: Blackboard, Inc., Copyright, Fair Use & Educational Multimedia FAQ; http://www.ccsj.edu/blackboard/BB%20copyright_fair_use.pdf

Table 4.

Under the fair use analysis, it is prohibited to incur in the following practices:¹¹

1. Make copies of works to create, substitute or replace anthologies, compilations or collective works, among others, whether or not such copies are to be bound together or provided separately.
2. Make copies of workbooks or other consumable books, pamphlets, or other similar works the purpose of which is to be utilized and discarded.
3. Make copies to substitute the purchase and/or acquisition of a book or other text material.
4. Faculty members should not copy the same material from term to term without the express authorization and/or corresponding license.

¹¹ Incurring in these practices may be considered a violation to copyright law.
Exhibit 1.

Guide for the fair use analysis.

**Instructions:** Check all boxes that apply. For each section below, determine whether the proposed use favors or disfavors fair use under the fair use doctrine. When the majority of the checked boxes fall under the fair use column, then the use may be acceptable under the fair use doctrine. When less than half of the checked boxes disfavor fair use, then permission should be obtained from the copyright owner prior to using the material. It is important to check with the library and verify if they have a license for the use of the proposed material. If the library holds a license, it is possible that the proposed use may fall under the parameters of the license.

Name: ___________________________  Date: ___________________________

Classes or Project: ___________________________________________________

Semester or Trimester: ___________________________

Title of the work: ___________________________________________________

Author: ___________________________________________________________

Portion to be used (pages etc.): ___________________________

**1. Purpose of the use**

<table>
<thead>
<tr>
<th>Fair Use</th>
<th>Disfavoring Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational</td>
<td>Commercial, entertainment or other use</td>
</tr>
<tr>
<td>o Teaching (including multiple copies for classroom use)</td>
<td></td>
</tr>
<tr>
<td>o Research</td>
<td></td>
</tr>
<tr>
<td>o Scholarship</td>
<td></td>
</tr>
<tr>
<td>o Criticism</td>
<td></td>
</tr>
<tr>
<td>o Comment</td>
<td></td>
</tr>
<tr>
<td>Transformative or productive use (the work modified/changed to serve a new purpose)</td>
<td>Non-transformative, verbatim, exact copy</td>
</tr>
<tr>
<td>Non profit use</td>
<td>profit generating use</td>
</tr>
</tbody>
</table>

**2. Nature of the copyrighted work**

<table>
<thead>
<tr>
<th>Fair Use</th>
<th>Disfavoring Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Factual, nonfiction, news</td>
<td>Creative (art, music, fiction) or consumable work (workbook, test)</td>
</tr>
</tbody>
</table>
### 3. Amount of the work to be copied

**Fair Use**
- Small portion (one chapter or article consisting of 10% or less of the work)
- Portion used is not central or the heart of the work
- Amount is appropriate for educational purposes

**Disfavoring Fair Use**
- Large portion or entire work
- Portion used is central or the heart of the work
- Includes more than is necessary for educational purposes

### 4. Effect on the market for the original

**Fair Use**
- No significant effect on the market or potential market of the copyrighted work
- One or few copies made and/or distributed
- Work no longer in print, absence of licensing mechanism
- Restricted and/or limited access to students registered in the course, or other appropriate group
- One-time use, spontaneous use (no time to obtain permission)

**Disfavoring Fair Use**
- Cumulative effect of copying would be to substitute purchase of the copyrighted work
- Numerous copies made and/or distributed
- Reasonably available licensing mechanism for obtaining permission to use the work
- Access not restricted and/or limited, copy will be publicly available
- Repeated or long term use