

COUNCIL ON HIGHER EDUCATION

P.O.Box 23305 UPR Station
Río Piedras, Puerto Rico 00931

Certification Number 93-140

I, Ismael Ramírez Soto, Executive Director of the Council on Higher Education, do hereby

CERTIFY:-----

That the Council on Higher Education, in its ordinary meeting of Wednesday, May 19, 1993,
approved the following:

INSTITUTIONAL POLICY REGARDING INTELLECTUAL PROPERTY

I. Introduction

The University of Puerto Rico, as a public institution of higher education, has as its mission the fostering of teaching, research and community service. All the elements of this mission touch, in one way or another, on the transmission of knowledge. Therefore it is the intention of the University of Puerto Rico that the knowledge that is the result of its functions, or which is transmitted through its activities, effectively benefit and serve the community.

The production and transmission of knowledge in the context of the university finds expression in a variety of artistic, creative, literary and scientific forms. Thus, the mission of the university is consubstantial with the production of the written word, books, articles, lectures, artistic works, scripts and musical or photographic compositions, among many other forms, and also with newer forms such as, for example, computer programs, videotaped productions and programmed instructional materials.

Almost ninety years of university activity have validated the function of the institution in fostering, promoting, and supporting the production of these forms, so that they will be fruitful and enduring and so contribute to culture and the sciences, both nationally and internationally. The creative works of members of the faculty, non-teaching personnel, and students must be given appropriate copyright protection so that their authors, the institution, and the community at large may benefit from them.



In order to protect, recognize and disseminate information on the rights and responsibilities regarding Intellectual Property of the members of the university community and the university itself, the present certification establishes an Institutional Policy Regarding Intellectual Property consonant with the mission of the University of Puerto Rico. This policy is intended to offer the support and guidance necessary for the protection of the rights of the faculty, non-teaching personnel, and students in regard to the product of their intellectual or professional work, as well as that which in law belongs to the university, including the right to receive income and other tangible benefits from the work.

II. Objectives

This Institutional Policy Regarding Intellectual Property meets the following objectives:

- ◆ It serves the interests of the public by providing a procedure for making protected intellectual work, produced through university activities, available to the public;
- ◆ It fosters research and the development of ideas, as well as the publication of research and other forms of intellectual expression, by giving the necessary orientation and guidance on the ways to protect and register intellectual property, and on the financial benefits that may be generated by such protection and registration;
- ◆ It sets out the interpretation of the institution regarding the applicability of jurisprudence and pertinent regulations, in the jurisdiction of the United States and in that of the Commonwealth of Puerto Rico, in regard to intellectual property subject to copyright protection; and
- ◆ It protects the interests of the institution and provides guidance to its employees and students as to how to protect their rights regarding intellectual property.

III. Applicability

This policy is applicable to teaching personnel and non-teaching personnel of the University of Puerto Rico, both full-time and part-time, professionals, contractors and all students in the institution.



This policy shall constitute a part of the conditions of work and contracts entered into by the university -- including the contracting of students who are employed by the institution -- and the conditions governing the enrollment of every student of the University of Puerto Rico.

IV. Basis in Law

The Institutional Policy Regarding Intellectual Property of the University of Puerto Rico recognizes that the following statutes, in the form presently in force or as they may be amended in the future, are pertinent and applicable to the protection of intellectual property rights in the university:

- ◆ The Copyright Act of 1976 (17 U.S.C., 101 et seq.), which took effect on January 1, 1978. This law covers the protection of the economic or proprietary rights of authors.¹
- ◆ Law Number 96 of the Commonwealth of Puerto Rico of July 15, 1988 (as amended by Law Number 11 of June 2, 1989), which is known as the Law on Intellectual Property. This law covers the protection of the moral or extra-proprietary rights of authors.

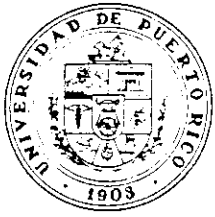
V. Basic Definitions

The Institutional Policy Regarding Intellectual Property of the University of Puerto Rico recognizes that the following basic definitions are pertinent and fundamental to the protection of intellectual property in the university:

A. Under Federal Law (17 U.S.C., 101 et seq.)

- ◆ Economic or Proprietary Rights are the rights under which an author is entitled to derive economic benefit from his work, including:
 - the right to reproduce the work;
 - the right to distribute the work through sale, lending, rental or donation;
 - the right to make derivative works;
 - the right to exhibit or present the work to the public; and
 - the right to perform or interpret the work in public.

¹ Beginning on June 1, 1991, the Federal Visual Artists Rights Act (V.A.R.A.) took effect, which recognizes moral rights only for graphic artists, photographers, sculptors, and painters, according to the criteria set out in said act.



- ◆ Work Done for Hire is the legal doctrine that defines the conditions under which an employer may hold title to the work of its employees. The University of Puerto Rico recognizes that jurisprudence has established special considerations regarding the applicability of this doctrine in the academic and university world.
 - ◆ Fair Use of the protected intellectual property is the degree of availability of the work for use or reproduction without the express authorization of the author. The courts of law permit Fair Use as a valid defense against allegations of infringement. They also recognize possible eligibility of this defense for activities consonant with university activities defined in the law.
- B. Under the Intellectual Property Law of the Commonwealth of Puerto Rico:
- ◆ Moral or Extra-Proprietary Rights are those that allow the author of a work to defend the integrity thereof, his or her reputation and prestige, attribution of authorship, the right to decide the moment when the work is first to be published, and to withdraw it when it has been altered without the authorization of its creator such that it no longer represents his or her thinking, though without prejudice to the legitimate rights that third parties may have acquired therein.
 - ◆ The author of a work is that person who can demonstrate that he or she is the creator of a work, as a whole or in part, and so receive the protection of the laws concerned with copyright.
 - ◆ Works created by employees are those which have been produced by a government employee in the course of his or her duties, title to which belongs to the Commonwealth of Puerto Rico.

VI. Materials Which May Be Registered and Protected

- A. Under the Federal Copyright Act of 1976,² the following may be registered and subject to protection:
- ◆ literary works;
 - ◆ musical works, including any work of accompaniment;
 - ◆ dramatic works, including musical accompaniment;
 - ◆ pantomimes and choreographed works;

² 17 U.S.C., 102.



- ◆ pictorial works, graphic works and sculptures;
- ◆ films and other audiovisual works;
- ◆ sound recordings; and
- ◆ architectural works.

B. Under the laws of Puerto Rico, the following may be registered:

- ◆ books, articles in periodicals, texts, bibliographies, theses;
- ◆ graphic works of all kinds;
- ◆ photographs, films and videos;
- ◆ musical compositions;
- ◆ theatrical and film scripts;
- ◆ literary works;
- ◆ sculptures;
- ◆ architectural designs;
- ◆ computer program source codes; and
- ◆ manuscripts and unpublished works personally presented by the author.

VII. Title to Copyright to be Protected and Registered

Teaching personnel and students of the University of Puerto Rico will retain the title to works created in the normal course of their academic activities and study, unless otherwise provided.

However, the University of Puerto Rico will hold title when these works are products of the exercise of administrative or academic functions specifically commissioned and officially assigned by the institution, according to the stipulations and applicability of the concept of work done for hire in force, unless otherwise provided.

The University of Puerto Rico will also hold partial title in cases in which the university has planned the work and has defined its participation in or financing of the work in advance, or has directly or intentionally facilitated or fostered its development, subject to the terms agreed upon, and unless otherwise provided.

The authors retain their title over works developed through and in the course of sabbaticals, leaves, release time, periods of special assignments and other similar situations, unless otherwise provided. Title to thesis work and other similar required academic requirements belongs to the student or students (though they receive academic credit for them), unless otherwise provided.



The university hereby establishes that the holding of title as the author of one's work does not exempt one from the responsibility of explicitly giving the university the recognition due, as appropriate, for contributions, support or collaboration that have facilitated the design, development, or dissemination of the work. Similarly, it does not exempt students from their responsibility of so indicating if their works were developed as part of the requirements for courses or academic degrees. The University of Puerto Rico, in any case, retains the right to require such recognition.

It is the right and responsibility of employees and students to register and protect the works to which they have title.

VIII. Procedures for Determining Who Holds Title to Intellectual Property and for Resolving Disputes Related Thereto

Should a dispute arise over who holds the title to works and copyright, or related to any other provision of this policy, the dispute will be submitted for the consideration of the chancellor of the campus of the complainant, who may make a final determination on the matter in keeping with the provisions of law and applicable regulations. The decision of the chancellor will be binding on all parties. In the case of disputes which entail the jurisdiction of more than one campus, such disputes will be brought to the attention of the president of the university. All decisions are subject to appeal in keeping with the regulations of the university and the laws in force.

IX. Committee on Intellectual Property

Each unit is urged to create or make provision for a Committee on Intellectual Property made up of members of the university community. This committee may assist in the process of guiding and informing the university community about the way to protect and register its works. It may also advise and provide technical assistance to the chancellor and other university officials in the full and appropriate application of the institutional policy and on other matters related to copyright and other areas of the broader field of intellectual property.

The members of the committee are to be named by the chancellor of each unit and each year are to submit a report of the work carried out.

X. Amendments

The provisions of this policy may be amended in the manner set out in the regulations of the University of Puerto Rico.

Amendments are to be subject to the approval of the Council on Higher Education, at the recommendation of the president of the university.



XI. Applicability

This policy is to take effect beginning on the date on which it is approved by the Council on Higher Education, and shall render null any other policy which may exist or be in force in the University of Puerto Rico.

And in evidence thereof I hereby issue the present certification under the seal of the University of Puerto Rico, in Río Piedras, Puerto Rico, this day, the twentieth of May of the year one thousand nine hundred and ninety three.

[signed: Ismael Ramírez Soto]
Ismael Ramírez Soto
Executive Director