Copyright Issues for Classroom and Online Teaching at Rutgers: A Workshop for Rutgers New Brunswick Instructors

Janice T. Pilch

Copyright and Licensing Librarian
Rutgers University Libraries

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A few questions

- Do you know who holds the copyright in your course materials?
- Have you heard of the “fair use” provision in copyright law?
- Have you ever read the “Terms of Use” on a website?
- Have you ever read the licenses for materials in RUL databases?
- Do you what a Creative Commons license is?
- At Rutgers do we allow streaming of films in the course management system?
Legal framework

- **Copyright law**
  - Creating one’s own copyrighted works for teaching—copyright ownership in instructional materials
  - Using third party copyrighted works in teaching

- **Contract law**
  - May define copyright ownership in instructional materials
  - Governs many types of material, including most intangible digital resources you use for research and teaching

- **Rutgers University policies**
  - Copyright Policy adopted in 2007
  - Legacy UMDNJ policies associated with Intellectual Property: Copyrights & Royalties
  - Open Access Policy will take effect on September 1, 2015
Copyright law
A few copyright basics

- Requirements for copyright protection in U.S.
  - Originality
  - Minimal creativity
  - Fixation in tangible medium of expression
- Protects published and unpublished works
- Copyright exists upon creation of the work
  - Registration not required, optional
  - Since March 1, 1989 copyright notice no longer required in U.S. on published works but recommended (© 1963 Jane Doe)
- Jurisdiction of U.S. copyright law
  - Applies to U.S. works and eligible foreign works being used in the U.S.
What is protected by copyright in U.S.

Literary works
  • Incl. compilations meeting minimal requirements for originality, creativity in selection and arrangement of content, incl. databases and data compilations
Musical works, including any accompanying words
Dramatic works, including any accompanying music
Pantomimes and choreographic works
Pictorial, graphic, and sculptural works
  • Works of visual art
Motion pictures and other audiovisual works
Sound recordings
  • U.S. sound recordings fixed before February 15, 1972 are protected by state law; federal law takes precedence in 2067
Architectural works- plans and constructions
What is not protected by copyright in U.S.

- Facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, discoveries
- U.S. federal government works
- Works in public domain

- Data as fact is not protected, but these forms may be:
  - Data as a copyrighted work (literary work, chart, graph, audiovisual work, sound recording, etc.)
  - Data as compilation of data elements
  - Third party works incorporated in “data”
Copyright ownership

- Creator of a work is generally the author
- Who holds initial copyright in a work?
  - Authors
  - Employer or commissioning entity in “works for hire”
  - Copyright ownership may be set by contract or set by institutional policy.
- RU Copyright Policy, Section III:
  “Faculty, teaching assistants, and graduate assistants also own copyright to pedagogical materials, including materials in electronic format or posted to a website, that they develop in the regular course of their teaching duties using resources ordinarily available to all or most faculty members (as described in the section of this policy concerning Use of Substantial University Resources). Copyright to works created by a teaching assistant or graduate assistant at the direction of a faculty member or the university typically will be owned by the faculty member or the university.”
Copyright ownership

- Legacy UMDNJ policies associated with Intellectual Property: Copyrights & Royalties, Section VII.A.1:

“Institutional Works and Instructional Materials as defined herein shall be deemed as having been created within the scope of employment of the Creator. Copyright ownership of such works shall vest with the University unless otherwise agreed in writing. Rights associated with copyright ownership become enforceable where the University has sought and obtained a copyright, which shall be done where the University determines that the material is commercially viable.”
Copyright ownership

- Who else could hold copyright in a work?
  - Heirs or other special beneficiaries
  - Transferees/assignees
- Copyright ownership may be shared
  - Joint authorship (co-ownership)
    - Inseparable or interdependent parts of a unitary whole
  - Collective authorship
    - Separate and independent works of authorship
- Compilations
  - Copyright in original and creative selection and arrangement of material, apart from copyright in the individual parts
    - Edited compilations
    - Data compilations
Exclusive rights and exceptions

Exclusive rights

• Reproduction
• Derivative works
• Public distribution
• Public performance
• Public display
• Public performance by means of digital audio transmission
U.S. copyright terms

General summary

- Works first published before 1923 are in public domain, with few exceptions
- Works published from 1923-1977 could be protected for as long as 95 years from publication
- Works created from January 1, 1978- are protected for life of author + 70 years
  - For works of corporate authorship, works for hire, anonymous and pseudonymous works, the term is the shorter of 95 years from publication or 120 years from creation
Summary of U.S. copyright terms

- If published before 1923, in public domain
- If published with notice from 1923-1963 and renewed, 95 years from date of publication
- If published with notice from 1964-1977, 95 years from date of publication
- If created, but not published, before 1978, life of author + 70 years or 12/31/2002, whichever is greater*
- If created before 1978 and published between 1978 and 12/31/2002, life of author + 70 years or 12/31/2047, whichever is greater
- If created from 1978- , life of author + 70 years*
  (*for works of corporate authorship, works for hire, anonymous and pseudonymous works, term is the shorter of 95 years from publication or 120 years from creation)
Summary of U.S. copyright terms

- If published without notice from 1/1/1978-3/1/1989 and registered within 5 years, or if published with notice in that period, life of author + 70 years (for works of corporate authorship, works for hire, anonymous and pseudonymous works, the shorter of 95 years from publication or 120 years from creation)

Helpful charts:
  http://www.unc.edu/~unclng/public-d.htm
- Peter Hirtle, “Copyright Term and the Public Domain in the United States,”
  https://copyright.cornell.edu/resources/publicdomain.cfm
Exceptions and limitations to exclusive rights

Certain limitations and exceptions enable uses without prior permission or payment of a royalty, including:

- Face to face classroom teaching exception (§110(1))
- Online classroom teaching exception - TEACH Act (§110(2) and §112)
- Fair use exception (§107)
- Reproduction for blind or other people with disabilities (§121)
- First sale doctrine (§109)
Face-to-face teaching exception for showing works in the physical classroom

- U.S. copyright law allows for performance and display of works in face-to-face teaching activities in §110(1)
  - In nonprofit educational institutions
  - In a classroom or similar place devoted to instruction
  - When using a motion picture or other audiovisual work, the copy used must be lawfully made
- Enables presentation of copyrighted works, such as text, images, charts, tables, musical works, sound recordings, audiovisual works, in a live classroom
Online teaching exception for showing works in the virtual classroom

The copyright law was revised by the Technology, Education and Copyright Harmonization (TEACH) Act of November 2002 to allow for use of works through digital networks in distance learning in §110 (2)

- Complex exception involving many requirements and cooperation among instructors, administration, and systems specialists
- Rutgers University not considered TEACH compliant
- At Rutgers we instead consider fair use for online teaching

See Kenneth D. Crews, Copyright Checklist: Compliance with the TEACH Act, http://copyright.columbia.edu/copyright/special-topics/distance-education/
Fair use exception

- Establishes that certain uses may not be infringing, based on four factors, for purposes including criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, and research
  - Purpose and character of use
  - Nature of copyrighted work
  - Amount and substantiality of portion used
  - Effect of use on market or value of work
- Applicable to all types of works, technology neutral
- Broad and ambiguous, case-by-case application
- Does not guarantee against infringement
- Fair use decisions are made by courts- legal precedents
- Strategy for litigation as affirmative defense
- We exercise fair use through reasonable behavior based on legal precedent
Fair use exception

Weighs for fair use:

- **Purpose:** Education, research, criticism, comment, news reporting, transformative use, parody, non-commercial use
- **Nature:** Published, work of factual nature, informational, nonfictional
- **Amount:** Small portion, non-essential portion
- **Effect:** No major effect on market or potential market for work
Fair use exception

Weighs against fair use:

- **Purpose:** Commercial use, entertainment, non-transformative use
- **Nature:** Unpublished, highly creative work
- **Amount:** Large portion, “heart” of the work
- **Effect on market:** Affects market or potential market for work

More on fair use

- All four factors are important
- Educational uses may or may not be fair
- Law does not state exactly the amounts or extent of third party works that may be considered fair use
- Permissibility of quotations from published works reinforced by Berne Convention Article 10(1)
- Reasonable, limited, educational, scholarly uses of materials weigh toward fair use
- Use an amount appropriate to the purpose and tied to critical analysis
- Limiting amount used and frequency of use is more fair on the sliding scale of fair use
- Transformative use an important factor
More on fair use

- Interfering with the market for publishers, including textbook publishers, weighs against fair use
- Avoid uses that exploit the rights of another person or cause economic harm
- Consider whether the use will involve print-only access, restricted Web access, or public Web access
- Publication and digital distribution require more consideration
- Use may be considered more fair if a licensing mechanism is not readily available
- Always provide attribution
- First check if contract/license associated with the work, because...
Contract law
Contract law in the teaching environment

- **Your use of others’ copyrighted works**
- Contract law (licenses) overrides copyright law
  - Negotiated licenses
    - Terms and conditions for institution
    - Terms and conditions for end/authorized user
  - Mass market licenses (shrink-, click-, browse-wrap)
  - Open content licenses (Creative Commons)
  - Rights statements in digital repositories provide instructions

➢ *Is there a contract/license associated with the resource?*
Examples of license terms

• Negotiated license
  • JSTOR (Terms and Conditions)
  • Westlaw Campus Research (Terms of Use)

• Browse-wrap license
  • Internet Archive Open Library (Terms of Use)
  • You Tube (General Use of the Service)

• Rights statement
  • Rutgers RUcore rights statement- China Boom Project
  • Creative Commons Licenses
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https://rucore.libraries.rutgers.edu/

- Rutgers University institutional repository providing public access to content
- Rights statements associated with each document
- Example: Emmanuel Ojukwu interview for the China Boom Project (video)

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Title: Emmanuel Ojukwu interview for the China Boom Project

Date Created: 2009-03-26

Description: Emmanuel Ojukwu, President of the Nigerian Community in China, was interviewed by the Asia Society staff in Guangzhou, China on March 26, 2009.
Date Created 2009-03-26

Subject China -- Economic policy, China -- Economic conditions, China -- Social conditions, Making Room for China, Structural Transformation of the Economic Sphere, Ojukwu, Emmanuel, China

Extent 1 video (58 min)

Description Emmanuel Ojukwu, President of the Nigerian Community in China, was interviewed by the Asia Society staff in Guangzhou, China on March 26, 2009.

Note Transcript is also available.

Note Interviewee's bio is also available.

Note Original video interviews are available at the Asia Society.

Note The China Boom Project classified this interviewee's field as Business.

Genre interviews

Persistent URL http://hdl.rutgers.edu/1782.1/rucore00000002130.Video.000061856

Language English

Data Life Cycle Event(s)
  Type: Excerpt or clip creation
  Label: Video clip created from Emmanuel Ojukwu interview
  Detail: Clip created for the China Boom Project is available on the China Boom Project Website (Asia Society).
  Creator: Asia Society, New York, NY
  Name: China Still Has Many Places to Develop
  Reference: http://chinaboom.asiasociety.org/period/prospects/0/243

Collection China Boom Project

Organization Name Asia Society, Rutgers University, Libraries

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- Public Domain Mark- No Known Copyright
- CC0 - No Rights Reserved

For licensed content, read the license/terms and conditions!
Teaching
Teaching activity

- If a license applies, it’s the law
- For unlicensed content, three exceptions to consider:
  - Face to face classroom teaching exception
  - Online classroom teaching exception - TEACH Act
  - Fair use exception
- If the license does not allow, or if an exception does not apply, or if the use exceeds limits of an exception, then need to obtain permission
  - from copyright holder (with/without payment), or
  - through Copyright Clearance Center (with payment)
    http://www.copyright.com/
- Or order a coursepack through Rutgers Bookstore
  - Payment offset to students
Face-to-face teaching exception for showing works in the physical classroom

- U.S. copyright law allows for performance and display of works in face-to-face teaching activities in §110(1)
  - In nonprofit educational institutions
  - In a classroom or similar place devoted to instruction
  - When using a motion picture or other audiovisual work, the copy used must be lawfully made
- Enables presentation of copyrighted works, such as text, images, charts, tables, musical works, sound recordings, audiovisual works, in a live classroom
Scenario

- I have a DVD that I would like to show to my class. May I show it in the physical classroom?
  - Nonprofit educational institution
  - In a classroom or similar place devoted to instruction
  - Requires that when using a motion picture or other audiovisual work, the copy used must be lawfully made
Fair use

For everything else - reproduction, display, distribution, making derivative works, performance/streaming at Rutgers

- Classroom handouts
- Reading materials as assignments
- Coursepacks (reading assignments/textbooks)
- Making works available through course management systems, incl. by streaming
- Use of works in library e-reserve system
- Making works available on faculty websites or online
- Reproduction, display, distribution, derivative works, performance/streaming done by students themselves
Classroom handouts and Reading materials as assignments

- Reasonable, limited, isolated, non-repeating uses of materials are more likely to be fair use
- Traditional factors for classroom use are brevity, spontaneity, cumulative effect, but

- In 1990s court rulings established that handouts should not be a substitute for class reading materials or for coursepacks, or for “consumable” workbooks - not a fair use
- 2008 lawsuit against Georgia State University challenges electronic distribution of class reading materials
Legal landscape: Academic coursepacks

- Academic coursepacks and copyright law
  - Two key cases in 1990s established nationwide practice that permissions be obtained for copyrighted material in coursepacks; generally instructor’s responsibility to see that permissions obtained

  Kinko’s copy shop photocopied copyrighted material from a book for an academic coursepack. Not a fair use. This case changed the way that institutions deal with coursepacks.

  Again, coursepack copying of copyrighted material. Not a fair use.
Legal landscape: Academic coursepacks

- Rutgers University Bookstore arranges for coursepacks with University Publishing Solutions that secures permissions. Cost of permissions included in cost of coursepack.

- Copyright Clearance Center offers Get Permission service, secures copyright permissions for a fee, http://www.copyright.com/content/cc3/en/toolbar/getPermission.html
Legal landscape: “Electronic coursepacks”

Georgia State University case (2008)

*Cambridge University Press et al. v. Becker et al.* (Civil Action No. 1:08-cv-01425-ODE)

- Alleged violation of copyrights in e-reserve, CMS, faculty websites, and hyperlinked syllabi on websites
- Complaint cited over 6,700 instances of copyrighted works made available to students for downloading, viewing and printing without permission or licensing fees
- “Electronic coursepacks”
- State sovereign immunity defense
- In 2012 ruling made on 74 claims concerning book chapters, 5 are found to be infringing
- Case is appealed on 1/28/13
- On 10/17/14 appeals court reverses and remands 2012 ruling to the lower court - we await new ruling
Making works available through course management systems

- At Rutgers we apply principles of TEACH Act in exercising fair use for online teaching/exercising reasonable behavior
  - Limit access to students in the class
  - Limit access to the term of the class
  - Assess amount of work used, frequency of use, etc.
  - Provide notice to students prohibiting further distribution: “This material is subject to the copyright law of the United States (Title 17 U.S. Code) and is for use of students in English 101 only. Further reproduction or distribution is prohibited.”
  - Inform students about copyright law
Making works available through course management systems: To do and not to do

- Link whenever possible to library-licensed and lawful online content instead of copying into CMS
- Ensure that content being used is lawfully made and acquired
- **Books:**
  - Do not scan and place an entire book in the course management system if it is in print/being marketed, or is a similar earlier edition
- **Book chapters:**
  - Limit use of book chapters to be fair
  - Avoid aggregation that substitutes for purchase
Making works available through course management systems: To do and not to do

- **Articles:**
  - Use licensed e-resources that allow use in course management systems and online education
  - Use open access databases
  - Use publicly accessible institutional repositories
  - Do not use scans taken from other institutions’ licensed databases that prohibit use by unauthorized users
  - Comply with licenses and assess fair use
  - **Quotations:** short excerpts permissible as fair use
Scenario for analog environment

- May I distribute PDFs of scholarly articles to students in class so that they don’t have to buy them or spend time finding them in the library?
- There is a book from which I plan to use a few chapters for my class. May I copy and distribute the book chapters to my students?

- Possible fair use, depending on circumstances; or
- Place on RUL reserve; or
- Permission from copyright holder; or
- Permission through Copyright Clearance Center; or
- Order a coursepack
Scenario for digital environment

- May I upload PDFs of scholarly articles and place them in my online course so that students don’t have to buy them or spend time finding them in the library?
- There is a book from which I plan to use a few chapters for my online class. May I scan and upload the book chapters for electronic distribution to my students?
- Is there a contract/license associated with the resource?
  - Check license terms
  - Link whenever possible
Scenario for digital environment

- Possible fair use for CMS, depending on circumstances
  - Access only to students in class
  - Access only for the term of the class
  - Assess amount of work used, frequency of use, etc.
  - Students prohibited from further distribution by a notice, and
    - Students informed of copyright law; or
- Place on RUL e-reserve; or
- Obtain permission from copyright holder; or
- Obtain permission through Copyright Clearance Center; or
- Order a coursepack
Use of works in library e-reserve system: RUL E-reserves

- Reserve Services, A Guide for Faculty, [http://www.libraries.rutgers.edu/reserve_services_for_faculty](http://www.libraries.rutgers.edu/reserve_services_for_faculty)
  - Library e-reserve policy based on fair use
  - Not for entire books or entire journal issues
  - Requests for which nature, scope, or extent of copying exceeds fair use require copyright permission
  - Use of the same photocopied or scanned material in multiple courses or for successive years will generally require permission
  - Instructor may contact rightholder directly
  - Copyright Clearance Center (CCC) Get Permission service, [http://www.copyright.com/content/cc3/en/toolbar/getPermission.html](http://www.copyright.com/content/cc3/en/toolbar/getPermission.html)
  - Payment for permissions by instructor/department
Making works available on faculty websites or online

- If instructor holds copyright in the content, no problem
- For other copyrighted works, instructor should instead:
  - Use the course management system or e-reserves for course material after fair use assessment
  - Link to the content or cite it instead of copying it - part of educational process is teaching students how to find research material
  - Ensure that content being linked is lawfully made and made publicly available
Streaming audiovisual works

- Subject to interpretation of copyright law (§107, §110(1), §110(2))
- At Rutgers, generally streaming permissible if:
  - Work is in the public domain (U.S. v. global public domain)
  - Copyright holder has given permission
  - Faculty member/instructor is the rightholder
  - The AV material is licensed for use and license clearly allows for the use
  - Online terms and conditions allow for the use and the AV material has been lawfully made and lawfully made publicly available
- For other situations, Rutgers policy is not to stream full works in the course management system without permission or a public performance/streaming license
Streaming audiovisual works

- Rights for physical public performance v. public performance by streaming
- If you need a streaming license:
  - Swank Motion Pictures
  - Criterion Pictures
  - Motion Picture Licensing Corporation
  - Facets Multi-media
  - Kino International
  - Milestone Films
  - Zeitgeist Films
- Swank Digital Campus provides online streaming access of feature films through RUL as of Sept. 2014, http://libguides.rutgers.edu/content.php?pid=394349&sid=5147898
Streaming audiovisual works

Other options:

- Students view films on Amazon, Netflix, Google Play as one-time view or through personal subscription (~inexpensive textbook)
- Rutgers University Libraries:
  - Streaming Media Clips for Reserves Service
  - Clips from Analog Tapes or DVDs Service
  - [http://www.libraries.rutgers.edu/media/services](http://www.libraries.rutgers.edu/media/services)
- YouTube for lawful content
  - Link to YouTube rather than copy the video
  - Ensure that content being used is lawfully made and posted
  - Follow terms and conditions on website
Images and cartoons

- Images licensed for sale on Internet (Getty, Corbis, etc.)
- Cartoons licensed for sale on Internet (New Yorker, CartoonStock.com, etc.)
- Available through negotiated institutional licenses (ARTstor, Shutterstock, etc.)
- On public domain image sites (Pixabay)
- In licensed instructional textbook packages
- Copied from a print work
- On sites that appear to operate legally but do not have rights to license images to you
  - Beware of language like “use at your own risk,” or “this image has additional restrictions”
Images and cartoons

- **Google Images is not an image database**
  - “You may not use content from our Services unless you obtain permission from its owner or are otherwise permitted by law.”
  - “Our Services display some content that is not Google’s. This content is the sole responsibility of the entity that makes it available. We may review content to determine whether it is illegal or violates our policies, and we may remove or refuse to display content that we reasonably believe violates our policies or the law. But that does not necessarily mean that we review content, so please don’t assume that we do.”
  - Go to source and read online license
Predatory websites

- Commercial websites offering possibly infringing copies of textbooks and other course material, such as Course Hero, [http://www.coursehero.com/](http://www.coursehero.com/)
- Students given incentives for submitting course content, including faculty content
- Discuss with students and place notices on content to discourage further distribution, such as:

  “This material is subject to the copyright law of the United States (Title 17 U.S. Code) and is for use of students in English 101 only. Further reproduction or distribution is prohibited.”
Summary - Permitted uses, possible uses, and prohibited uses

- **Clear permitted uses:**
  - Work is in the public domain (U.S. v. global public domain)
  - Copyright holder/s have given permission
  - Faculty member/instructor is the copyright holder
  - A copyright exception explicitly allows for the use
  - Material is licensed for use and license clearly allows for the use
  - When the Rutgers University Library database or electronic resource is acquired through a license that permits the use - read the terms and conditions of use
  - Online terms and conditions allow for the use
Summary- Permitted uses, possible uses, and prohibited uses

- **Less clear situations:**
  - When it is unclear whether the work is in the public domain
  - When it is unclear whether the work is under a license
  - When it is unclear who the copyright holder is or how to contact them to obtain permission (orphan works)
  - When application of U.S. fair use doctrine is unclear
  - When there are no online terms and conditions or when they are not clear
Summary - Permitted uses, possible uses, and prohibited uses

- **Uses not permitted:**
  - When the use would clearly violate copyright law
  - When the material is licensed and the use would clearly violate the license
  - When the Rutgers University Library database or electronic resources is acquired through a license that prohibits the use
  - When the copyright holder has prohibited the use and the use would not be considered a fair use
  - At Rutgers in general, streaming full works in the course management system without permission or a public performance/streaming license
Policies
Rutgers University policies

- University Copyright Policy,
  [http://policies.rutgers.edu/view-policies/governance-legal-matters-%E2%80%93-section-50#3](http://policies.rutgers.edu/view-policies/governance-legal-matters-%E2%80%93-section-50#3)

- Legacy UMDNJ policies associated with Intellectual Property: Copyrights & Royalties,
  [http://policies.rutgers.edu/view-policies/governance-legal-matters-%E2%80%93-section-50#3](http://policies.rutgers.edu/view-policies/governance-legal-matters-%E2%80%93-section-50#3)

- Legacy UMDNJ policies associated with Intellectual Property: Educational Use of Copyrighted Works,
  [http://policies.rutgers.edu/view-policies/governance-legal-matters-%E2%80%93-section-50#3](http://policies.rutgers.edu/view-policies/governance-legal-matters-%E2%80%93-section-50#3)

- University Acceptable Use Policy,
  [http://policies.rutgers.edu/view-policies/information-technology-%E2%80%93-section-70](http://policies.rutgers.edu/view-policies/information-technology-%E2%80%93-section-70)
Rutgers University policies

- Copyright Information on Acceptable Use Policy, Compliance with DMCA, and Designated Agent,
  http://www.rutgers.edu/site-resource/copyright-information
- Digital Millennium Copyright Act Compliance,
  http://rusecure.rutgers.edu/content/digital-millennium-copyright-act-compliance
- University Code of Student Conduct,
  http://policies.rutgers.edu/view-policies/academic-%E2%80%93-section-10
- Disclosures: Peer-to-Peer File Sharing (Office of Institutional Research and Academic Planning),
  http://oirap.rutgers.edu/disclosure.html
- Rutgers University Higher Education Opportunity Act Plan (HEOA),
  http://rusecure.rutgers.edu/HEOA
Rutgers University Libraries policies

- Reserve Services, A Guide for Faculty,
  http://www.libraries.rutgers.edu/reserve_services_for_faculty
- RUcore, Intellectual Property Policy,
  http://rucore.libraries.rutgers.edu/policies/copyright.php
- Special Collections and University Archives, Access Policy For Archival Records,
  http://www.libraries.rutgers.edu/rul/libs/scua/university_archives/ua_access_policy.shtml
- Resource Sharing: Interlibrary and Rutgers Delivery Services,
  http://www.libraries.rutgers.edu/public_service_policies/pspm_04_interlibrary_loan
Thank you!

Janice T. Pilch
Copyright and Licensing Librarian
Rutgers University Libraries
E-mail: janice.pilch@rutgers.edu