
INTERLIBRARY LOAN

Copyright Guidelines and Best Practices

THE EVOLUTION OF INTERLIBRARY LOAN

Interlibrary loan (ILL) used to be just that—a loan of materials from one library to another where the borrowed book or journal was returned to the lending library. Today, a typical ILL transaction involves sending or transmitting copies that are not returned. Copyright law has expanded to address this evolution, but there are some areas that can still present challenges for librarians.

Section 108 of the Copyright Act of 1976 addresses reproduction of copyrighted materials by libraries and archives for several purposes, including ILL. Qualifying libraries may send portions of copyrighted works to other qualifying libraries, as long as the “aggregate quantity” doesn’t replace a purchase of or subscription to the work. But Section 108 does not define “aggregate quantity,” leaving librarians to interpret the spirit of the law.

In 1978, the National Commission on New Technological Uses of Copyrighted Works (CONTU) published guidelines to help further define Section 108 and specify what can and cannot be copied for ILL. These guidelines were never enacted into law, but were accepted by the library, publishing and author communities at the time as reasonable accommodations for everyday use.

In the late 1990s, the Conference on Fair Use (CONFU) attempted to develop specific guidelines for digital delivery of ILL materials, but the effort was not successful. While everyday practice often assumes digital and non-digital uses should be treated equally, neither the law nor publishers have endorsed this belief.

INTERLIBRARY LOAN VIS-À-VIS DOCUMENT DELIVERY

Interlibrary loan occurs when a qualifying library borrows from another qualifying library on behalf of a patron. If a library receives a request from anyone other than a qualifying library, then that request is considered to be *document delivery*, not ILL. Only exchanges between qualifying libraries are afforded the exclusionary rights provided by copyright law and the CONTU guidelines for interlibrary loan. Document delivery transactions may require copyright clearance and perhaps a royalty payment to the copyright holder.

GUIDELINES AND BEST PRACTICES FOR INTERLIBRARY LOAN

FOR LENDING LIBRARIES

- **Make sure your library qualifies.** Both the lending and borrowing libraries must be open to the public or to researchers outside the library, or its parent institution.
- **Check your license agreement first.** License agreements and subscriptions from publishers may limit content reuse more strictly than copyright law or the CONTU guidelines. If the library has licensed—not purchased—its copy of the material, the license agreement is a binding contract and overrides all other restrictions on content use.
- **Make sure you receive a compliance statement.** The borrowing library must represent that it has complied with copyright law and applicable CONTU guidelines when requesting ILL materials. The lending library should ensure that a compliance statement accompanies each ILL request.
- **Consider the purpose of each request.** Requests for any purpose other than private study, scholarship or research, should not be fulfilled through interlibrary loan.
- **Check the publication dates.** The CONTU guidelines apply to publications that are less than five years old. For publications five years old or older, it is up to the librarian to determine what aggregate quantity of copying is appropriate.

- **Include the original copyright notice.** Every ILL copy sent should include the original copyright notice or a standard notice if the original is not available.
- **Negotiate electronic ILL rights up front.** When negotiating subscriptions with publishers, librarians should try to include the types of use likely to be requested by its patrons.

FOR BORROWING LIBRARIES

- **Make sure your library qualifies.** Both the lending and borrowing libraries must be open to the public or to researchers outside the library or its parent institution.
- **Notify borrowers of copyright requirements.** Libraries must notify patrons of copyright requirements by including a copyright notice on ILL request forms and displaying the notice where ILL requests are submitted.
- **Consider the content type.** ILL provisions do not apply to music, pictures, graphics, sculptures, motion pictures or other audiovisual works that are not news-related—except when the pictures or graphics are part of a written work, or for the purposes of preservation or replacement of a damaged or lost copy.
- **Consider the purpose of each request.** Requests for any purpose other than private study, scholarship or research, should not be fulfilled through interlibrary loan.
- **Check the publication dates.** The CONTU guidelines apply to publications that are less than five years old. For publications five years old or older, it is up to the librarian to determine what aggregate quantity of copying is appropriate.
- **Evaluate the requested quantity.** Librarians must consider whether the “aggregate quantity” of requested materials substitutes for the purchase of, or subscription to, the publication.
- **Remember the “Rule of Two.”** Per Section 108, libraries may provide one article, per issue, per patron without requesting copyright permission; the librarian must request copyright permission and pay royalties, if any, for the second and subsequent copies.
- **Follow the “Suggestion of Five” for periodicals.** Per the CONTU guidelines, the borrowing library may receive copies of up to five articles from a single periodical title (as opposed to a single issue) per calendar year. Starting with the sixth copy, copyright permission and royalty fees may be required and the librarian must evaluate whether the copies requested would substitute for a subscription to, or purchase of, the journal.
- **Follow the “Suggestion of Five” for non-periodicals.** No more than five copies of articles, chapters or other small portions of a non-periodical work may be received by a library in a given calendar year, during the entire period of copyright of the book. Starting with the sixth copy, copyright permission and royalty fees may be required and the librarian must evaluate whether the copies requested would substitute for the purchase of the book.
- **Entire works: evaluate the market.** For ILL requests for a copy of an entire book or journal issue, the borrowing library must determine that a copy cannot be obtained at a fair price.
- **Include a compliance statement with your request.** The borrowing library must represent that it has complied with copyright law and applicable CONTU guidelines. A compliance statement should be transmitted along with your ILL request to the lending library.
- **The copy does not become part of your collection.** Any material received via ILL must become the property of the library patron.

- **Save your records.** Borrowing libraries must maintain records of all ILL requests for three calendar years after the request is made.
- **Report transactions throughout the year.** The CONTU guidelines recommend that libraries report ILL transactions on an annual basis. However, some libraries may reach the five allowed copies very quickly for certain publications, creating a more cumbersome reporting process at year-end. More frequent reporting will enable the borrowing library to ensure that permission is obtained on a timely basis, and royalty costs are well understood and budgeted for.
- **Get permission after exceeding the limits.** Once CONTU limits are exceeded, librarians must get copyright permission and pay any required royalty payments. Copyright permission can be obtained directly from the copyright holder or through a licensing agent such as Copyright Clearance Center.

THE BEST WAY TO SECURE COPYRIGHT PERMISSIONS FOR INTERLIBRARY LOAN

Copyright Clearance Center offers librarians convenient ways to obtain copyright permission for interlibrary loan transactions that fall outside the CONTU guidelines. With CCC, you can keep track of your ILL requests on an ongoing basis and submit your sixth and subsequent requests all together—clearing permission for all requests at the same time. Librarians can report ILL usage to Copyright Clearance Center either once per year as the CONTU guidelines recommend, or more frequently, even if the reporting is done many months after the borrowing takes place.

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For more information about Copyright Clearance Center's compliance solutions, please e-mail us at info@copyright.com or call us at 978-750-8400.



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