



Interlibrary Loan: Copyright Guidelines and Best Practices

Copyright and interlibrary loan

Sharing materials between academic libraries, whether lending or borrowing, is critical to meeting the content needs of patrons. Many interlibrary loan (ILL) transactions involve sending or transmitting materials such as journal articles and photocopies that are not returned. While U.S. copyright law addresses non-returnables, there are some areas that 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 and 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 your 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 you 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, try to include the types of use likely to be requested by your 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** – Notify patrons of copyright requirements by including a copyright notice on ILL request forms and displaying the notice where ILL requests are submitted. Note: the copy does not become part of your library's collection. Any material received via ILL must become the property of the library patron.
- **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 you to determine what aggregate quantity of copying is appropriate.

WHITE PAPER

Interlibrary Loan: Copyright Guidelines and Best Practices

- **Evaluate the requested quantity** – 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; you must request copyright permission and pay any applicable royalty fees 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 you 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. You must evaluate whether the copies requested would substitute for the purchase of the book.
- **Evaluate the market for entire works** – When making an ILL request for 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.
- **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, you must get copyright permission and pay any required royalty payments. Copyright permission can be obtained directly from the copyright holder or through a licensing solutions provider such as Copyright Clearance Center.

WHITE PAPER

Interlibrary Loan: Copyright Guidelines and Best Practices

About Copyright Clearance Center

CCC provides solutions that simplify the access and licensing of content, allowing businesses and academic institutions to share copyrighted material while compensating rightsholders for the use of their content. www.copyright.com

The best way to secure copyright permissions for ILL

Copyright Clearance Center (CCC) offers librarians convenient ways to obtain copyright permission for ILL 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 together — clearing permission for all requests at the same time. You 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.

Visit copyright.com to access CCC's Pay-Per-Use Services, for instant permission to use copyrighted content from the world's most sought-after publications — including the leading titles in science, technology, medicine, business and news. You can obtain permissions for ILL, e-reserves and document delivery online, via fax or by e-mail, and pay after you receive permission, simplifying your payment processing.

For automated rights licensing, CCC offers an integrated service with OCLC ILLiad™ Resource Sharing Management Software. This complete solution enables librarians to request copyright permission from Copyright Clearance Center's extensive rights licensing database and place orders without ever leaving ILLiad, for a streamlined permissions process that reduces paperwork and saves time.

To meet the most urgent content needs of your patrons, try Get It Now, an article delivery service from CCC. Get It Now complements your ILL operation by providing library patrons with the immediate fulfillment of high-quality, full-color PDF articles from unsubscribed journals — 24 hours a day, 7 days a week — through a cost-effective and easy-to-use application integrated into your ILL workflow and/or OpenURL link resolver.

For more information

For more information about copyright education and content and licensing solutions from Copyright Clearance Center, please visit goto.copyright.com/CCC.