

# Report of the Task Force on International Interlibrary Loan and Document Delivery Practices

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ARL affirms that it is the right of North American research libraries to participate in international interlibrary loan and document delivery activities.

## Introduction<sup>1</sup>

**R**esearch libraries have an important and longstanding role in facilitating the growth of knowledge and the sharing of information. These libraries provide resources to faculty, researchers, students, and members of the public to engage in research, education, and learning and to advance knowledge. Increasingly, collaboration among these communities of users is interdisciplinary and global. As a result, the sharing of resources occurs within the universities' campuses and centers in the US and abroad, in formal relationships between research institutions at home and abroad such as joint or shared academic degree programs, and in agreements between libraries in the US and abroad.

One way that research libraries strive to meet the needs of patrons is through interlibrary loan (ILL). The mission of ILL is to provide access to materials for local patrons and to lend materials to other institutions. ILL services supplement libraries' collections by providing access to materials needed for research, scholarship, and private study that are not available at a user's home institution.

ILL is a research library activity that occurs between two different institutions. Research and academic libraries place ILL requests on behalf of faculty, staff, and students for returnable items (e.g., books, audiovisual materials, microfilm) and non-returnable items (e.g., copies of journal articles, conference papers), usually to obtain material that is out of scope for the home collection or to support the specialized research interest of one of their users. ILL offices supply materials from a variety of countries to other countries.

Over the past year, questions have been raised concerning the current ILL practices of some US research libraries. In particular, the focus is on the delivery of resources from US libraries to non-US libraries. The concerns seem to be that these international, non-US libraries do not have to adhere to US copyright law.

ARL established a Task Force on International Interlibrary Loan and Document Delivery Practices to better understand the current international ILL practices of research libraries, to evaluate the concerns of selected scientific, technical, and medical (STM) publishers, and to formulate a response to publisher concerns. One tenet of the task force deliberations was to ensure that the research library community takes full advantage of its legal privileges and practices.

## **Data Gathering and Analysis**

In support of the task force's work, ARL convened three Working Groups on International Interlibrary Loan, Trends in Licensing, and US Law and International Interlibrary Loan. Members of the working groups are expert practitioners in the community and work within ARL libraries and ARL. Working group members collaborated over a period of several weeks to provide timely background and analysis to inform the task force's deliberations. For example, members of the Working Group on Trends in Licensing examined the negotiated licenses at two ARL libraries, the generic licenses on the EBSCO site, as well as the STM publisher association member list. The Working Group on US Law and International Interlibrary Loan reviewed copyright law and international agreements pertaining to ILL. And the Working Group on

International Interlibrary Loan reviewed current ILL practices, both domestic and international, and the importance of international ILL to achieving the mission of research libraries. Finally, the task force conducted a survey of international relationships of the ARL membership, which garnered 85 responses. These data portray a rich and complex environment within which ARL libraries operate. Based on their research and analysis, each of the three working groups produced a white paper, which informed this report. The three white papers follow in this issue of *Research Library Issues*.

## Findings

1. Research libraries provide access to information through multiple channels, including acquisition of copyrighted works, licensing agreements, ILL, purchase on demand, and more. These services entail significant expenditures in support of research, teaching, and learning.
2. Participation in ILL arrangements is a well-established practice in libraries in many countries. The Berne Convention and other international copyright agreements do not specify any standards for ILL thus nations have considerable discretion about the terms of allowable reproduction and distribution.
3. By engaging with international partners, research libraries build relationships with libraries and institutions in other countries, develop reciprocity, and supply the materials required. These activities support and promote scholarship.
4. The proper scope and function of ILL are embedded in well-established practices that have been openly integrated into professional standards and have been widely known to and acknowledged by authors, publishers, and others for years.
5. US copyright law supports the ability of domestic libraries to participate in ILL arrangements and to send copies of some copyrighted works to foreign libraries provided the libraries meet the requirements of the law.
6. Since the 1990s, publishers and libraries increasingly use license agreements to establish use permissions that previously had been guided by US copyright law. This shift away from copyright law to contract law has affected some aspects of resource sharing.
7. Review of ILL clauses in research library licenses indicate that the majority

- of publishers allow ILL, the majority of publishers do not restrict ILL to the same country, and there is no uniformly adopted language or permission describing ILL services.
8. The e-book environment is younger and business terms for e-books are far more elastic than those for e-journals; at the same time, their rights management issues are more complex. Many publishers embrace the notion of ILL for e-books, although it is not clear exactly what that means or how tracking and delivery will be managed.
  9. ARL institutions are expanding their global presence through the establishment of overseas campuses and centers, through joint degree programs with other universities, and through formal academic partnerships. This growth in international relations is also expanding implications for ARL libraries with the expectation that collection access, including ILL and document delivery, can appropriately be part of the arrangements.
  10. Current practice allows research libraries to fulfill their “special responsibility” to promote “universal availability of published material.” Changes that would require research libraries to provide special handling for international requests would have a negative impact on ILL operations, are unnecessary, and would not be cost-effective.
  11. As print subscriptions diminish, lending from licensed content will take on increasing importance to interlibrary lending. More restrictions on lending of licensed content will result in a larger gap between the material available to local patrons and what can be shared through ILL.

## Conclusion and Recommendations

The International Federation of Library Associations and Institutions (IFLA) guidelines for international lending summarize the situation well: “Just as no library can be self-sufficient in meeting all the information needs of its users, so no country can be self-sufficient.”<sup>2</sup> Challenges to current international ILL practices could significantly undermine this carefully crafted and balanced set of resource-sharing activities. ARL affirms that it is the right of North American research libraries to participate in international interlibrary loan and document delivery activities. It will be important for ARL members to understand the changing ILL landscape, especially given the shift away from reliance on

copyright law to license agreements and the growing adoption of e-books.

Given the importance of resource sharing to research libraries and to the communities they serve, members of the research library community should continue to participate in international interlibrary loan and document delivery arrangements and actively promote inclusion of ILL privileges not limited to national boundaries when negotiating license agreements. One way to accomplish this would be to include a provision stating that nothing in the license may restrict exceptions permitted under copyright law.

- The result of moving to licensed electronic versions rather than purchased print versions may leave research libraries with no right to lend to or obtain non-subscribed materials from peers if ILL privileges are limited by licensing agreements or if the agreements do not include a provision acknowledging that nothing in the license may restrict exceptions permitted under copyright law.<sup>3</sup>
- The rapid adoption of e-books presents an opportunity for libraries to work with publishers on licensing terms and conditions. It will be important for research libraries to actively promote including ILL privileges in e-book license agreements and ones that are beneficial to the reader, e.g., the ability to loan an entire work, not just a chapter.
- It would be useful to articulate clearly ILL clauses that are consistent with research libraries' mission, ILL best practices, and ILL management tools. There is need for greater understanding and education of ILL workflow and the tools to support it particularly as licenses are being negotiated. Development of model ILL license language would be of great value. Key features to include in license language are: confine constraints on ILL permissions to the lending libraries, do not restrict ILL to the same country, and allow the use of a digital copy of the electronic article without printing prior to sending through Ariel or Ariel-like software.

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<sup>2</sup> IFLA, "International Resource Sharing and Document Delivery: Principles and Guidelines for Procedure," first agreed by IFLA 1954, major revision 1978, modified 1987, major revision 2001, revision February 2009, <http://www.ifla.org/files/docdel/documents/international-lending-en.pdf>.

<sup>3</sup> Of course, while such provisions clarify and make explicit the rights libraries require, libraries typically retain their legal rights under statutory exceptions even without an explicit provision. So, unless the agreement expressly limits a library's default legal rights, it will retain the right to engage in international ILL under the auspices of Sections 107 (fair use) and 108.

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