# Copyright and Licenses

**Objective**: *We provide a basis for understanding the impact on resource sharing systems from national and comparative international copyright laws and licensing agreements, and from their interaction. This chapter discusses the changing role of interlibrary loan services during and after the COVID-19 pandemic crisis in terms of copyright, licensing, and international agreements.*

## Introduction

For librarians managing resource sharing, copyright can all too often be a source of uncertainty or risk — a factor that needs to be dealt with in order to carry out their missions without fear of sanction. Restrictions on what can be done with physical or digital works in library collections can lead to the rejection of resource sharing requests, or an obligation to pay fees.

Clearly, when resource sharing is working well, students and researchers will barely be aware of copyright. However, when it is impossible to fulfil a request, or when a library's budget for paying fees for such materials is exhausted, patrons risk coming face-to-face with the reality of the constraints that copyright places on libraries.

In order to carry out their work, librarians engaged in resource sharing therefore should have some level of familiarity with copyright law. This is valuable both in terms of being able to use all of the legal means that do exist in order to serve users, but also to engage in advocacy activities designed to change laws if that is what is needed.

Yet the interaction of copyright and resource sharing should not just be a source of frustration. Indeed, the practice of resource sharing is, arguably, right at the edge of current discussions around what should and should not be permitted under copyright law, and under what circumstances.

It is in the public interest to ensure that learners and researchers can access the books, journals, and materials they need, and it makes good economic sense for libraries to share materials. These factors run counter to the fear, on the part of rightsholders, that they are losing sales, or the sense that they should receive payment for activities that go beyond the use of a book within the walls of a library.

This chapter sets out the basics around copyright and its effect on resource sharing. It also looks both at general and specific provisions in copyright law — limitations and exceptions, or wider user rights — that can help libraries, and how these work in a digital world. Finally, it explores a key current question closely related to resource sharing: the practice of controlled digital lending and its legal status.

First, to provide context, we look at two key themes that are important to bear in mind when thinking about copyright and resource sharing:

**Key theme 1: What is fair?** As set out in more depth later in this chapter, the logic behind copyright is to provide a means for those putting time and effort into creating works to be able to recoup their investments, as well as to provide recognition for the creator.

While intellectual property is not explicitly recognized as a human right in the Universal Declaration of Human Rights (although it is in the European Charter, for example), the right to benefit from the fruits of work does feature. At the same time, the Universal Declaration does make clear that there is a right to share in scientific advances and their benefits, as well as the right to freedom of expression (including to receive and impart information).

The need, then, is to balance these rights to ensure that we come to a situation that is fair both for creators and users of works. This is implemented through copyright laws.
So what is "fair" in the case of resource sharing?

As highlighted above, rightsholders will demand, at a minimum, that if the actions of a library in sharing resources result in the rightsholder selling fewer books or journals, then they should receive compensation.

They may also suggest that any use of a work over which they have rights should lead to payment. All money received helps pay for future investment.

Going to an extreme, they will suggest that if it is possible for just one library to buy a copy, and then supply the needs of all other libraries simply through resource sharing, the market would collapse.

On the other side of the argument, it is questionable that resource sharing necessarily results in lost sales. Given the cost of many scholarly materials, it is far more likely, arguably, that a library will simply have to deny the student or researcher's purchase request, leading to a situation where no one benefits. Even in situations where articles or materials are available on a temporary basis, this is often on unfavourable terms (high prices and short access periods).

Secondly, it is important to underline the public interest benefits of what libraries are doing when they engage in resource sharing. While it is difficult to place an economic value on such things, it can be argued, for example, that the benefit to society of a researcher having access to a single chapter of a book or single article may be greater than the benefit to society of a rightsholder earning marginal extra income, once they have already been remunerated for the original sale of a work.

Indeed, the act of charging a fee, or placing a barrier, risks meaning that economic inequities start to appear in the ability of students and researchers to benefit from the possibilities of resource sharing. If a library is only able to provide access to resources that are free or come at a

low cost, rather than those that have a higher price tag, we risk deepening divides between the haves and have-nots.

Finally, it is important to bear in mind to what extent resource sharing is happening. There is a difference between intensive resource sharing and more ad hoc models. Many laws do indeed underline that exceptions should be limited to the latter, while more regular copying of articles or books should then lead to payments.

**Key theme 2: Digital dilemmas.** Resource sharing is also an area where the incompatibility of analogue laws and digital practices comes to the fore. The rise of new technologies opens up opportunities for more efficient provision of works among libraries, and that often runs counter to the letter of provisions set up at a time where the physical loaning of works was the primary means of sharing knowledge.

As set out in more detail below, digital uses often raise copyright issues that were not envisaged when working with analogue works. Even the act of reading a digital work on a device implies the creation of a local copy (covered by reproduction rights), while sharing with a colleague elsewhere may come into conflict with rights of communication to the public. As such, there is a need to ensure that relevant laws and regulations recognize these issues, and to make clear that resource sharing should be possible, regardless of the technology used for doing it.

In addition to the way in which digital uses are tackled (or not tackled) in law, there is the additional question of the relationship between copyright laws and contracts. Indeed, in many cases, digital resources are not "owned," but rather accessed under licence, with a set of terms and conditions applying. In many cases, such licences are seen as coming before copyright law, given that they are supposed to represent a mutually agreed set of rules around how a work can be used.

This, however, ignores the fact that libraries often have little room to manoeuvre in deciding whether to accept a contract, and have minimal negotiating power over the contract terms. In effect, the rightsholder is frequently in a position to impose terms, and so can take away the possibility to share resources (or the ability to carry out other library missions, such as preservation and copying for research and education purposes). Therefore, to properly enable resource sharing in a digital age, there need to be legal provisions making such licence terms unenforceable.

Clearly, a concern among rightsholders is that whereas there is inevitably a limit on the harm that a single copy of a physical book can do to sales, a digital copy placed on the open internet has a much greater potential to damage demand. They will point to shadow libraries (discussed below) as a threat to their own business models and livelihoods.

In this context, rightsholders themselves may make use of extensive digital locks to try and stop this from happening. This cannot be acceptable for libraries when those digital locks prevent legitimate use, including resource sharing. Of course, at the same time, it also creates

responsibilities for libraries to ensure that they minimise the risk of copies "escaping" into the wild.

In summary, the interaction between copyright and resource sharing is both a "hot" and a "live" topic. For librarians, it is, as set out above, important to understand what is possible in order to fulfil their missions, and it is valuable to be able to reflect on the wider issues at stake in order to engage in reforms.

## Copyright

### Background and Historical Overview

Matthew Arnold (1822-1888), an English poet and cultural critic, once said in his acute and suggestive essay on copyright that "an author has no natural right to a property in his production" (as cited in Mattews, 1890). However, Brander Mattews (1890) discussed that there is an inner instinct in man that makes him want to possess what he produced. Those statements reveal how the philosophy of copyright evolved from the moral concept of not having the right to claim ownership of personal productions into the well-established concept of copyright that gives the author exclusive rights to benefit from their work morally and commercially. For many people around the world, copyright is a hard concept to understand and apply. This may be because of the complex nature of copyright and how it is applied to a diversity of materials and formats that include print, electronic, and audio-visual materials.

The concept of copyright was derived from the royal patent grants system, which allows some authors to exclusively publish materials for the sole purpose of raising revenue to the government and to give the government control over published materials (Fisher, 2021). The first recorded concept of copyright dates to 1710 when the Statute of Anne was enacted in England ("A brief history," 2006).

The law established the concept of author ownership over their intellectual products and the terms of protection. It also established the concept of limited duration that was set then at 28 years before the work passes to the public domain. Later, the duration was altered in the 1886 Berne Convention, which suggested exclusive protection for 50 years after the death of the author. The Statute of Anne also required works to be registered and deposited in designated libraries. Following the Statute of Anne, other countries started to adopt similar versions of it, including Denmark (1741), the United States (1790), and France (1793) (Fisher, 2021).

However, the breakthrough of copyright on the international scale is the Berne Convention. "The Berne Convention was introduced to provide mutual recognition of copyright between nation states, and to promote the development of international standards for copyright protection" ("A brief history," 2006). The Berne Convention initiated the idea of extending protection to unpublished works, and this step can only be done by removing the registration requirement and making copyright protection automatic once the work is created and becomes available in a tangible form. The core principle of the Berne Convention is the concept of

"national treatment" — "the requirement that each signatory country provides to citizens of other signatory countries the same rights it provides to its own citizens" (Fisher, 2021).

Before the Berne Convention, the Paris Agreement (1883) was created to protect industrial property, which includes patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications, and the repression of unfair competition ("Paris Convention," 1883). Its main highlight was to ensure that those rights are respected internationally, which helped later in global trade.

## Definition & Scope

Encyclopaedia Britannica defines copyright as "the exclusive, legally secured right to reproduce, distribute, and perform a literary, musical, dramatic, or artistic work" (Fisher, 2021). Copyright is a component of the broader umbrella called intellectual property (IP), which includes patents, trademarks, and other concepts of intellectual protections in some countries, while in many European countries patents and trademarks are considered industrial property.

The primary purpose of copyright is to protect literary, dramatic, and artistic works and to protect the author "against specific unauthorised uses of his work" (Fisher, 2021). It is important to note that copyright protects the tangible exhibition of the idea, not the idea itself. Patent law is the one concerned with protecting innovative ideas and inventions.

In countries that follow civil law regimes, copyright laws "tend toward the creators' entitlement end of the spectrum" (Ginsburg, 2016). As an example, copyright law in France is entitled "droit d'auteur" which translates as "authors' rights" in English with a clear focus on the moral rights of the author, and on the entitlement of the author to compensation for any use of their work, regardless of its impact on the market for the original.

However, in countries such as the United States of America that follow common law systems, it is clear that the law focuses on commercial and publishing rights, as the title "copyright" implies. "Common law systems generally situate at the social contract end" (Ginsburg, 2016), protecting the market for the original work, but typically taking a more relaxed approach to other uses that can be deemed "fair."

In practice, both systems have the ultimate purpose of protecting the intellectual rights to the work and regulating its commercial use.

Copyright was created to protect the creative works of the human mind, thus making creativity a key requirement. The philosophy behind copyright was derived from the importance of creating a sense of ownership over a person's intellectual labour. England's Statute of Anne was the first to shift the rights from printers and publishers to the author of the work to reflect "the Enlightenment tenet that property derives from labour" (Ginsburg, 2016). This was the first time that intellectual creation was considered property and the outcome of labour, similar to the

product of any physical labour. The United States copyright law added the concept of creativity to encourage authors to produce original works.

Additionally, in many countries copyright protection has been extended to other subject matter, such as performances (for example, those of dancers or musicians), physical sound recordings, and broadcast signals.

## General Protection Requirements

Most copyright laws state that to be protected, a work must fulfil two criteria: tangibility and originality. Since copyright law doesn't protect the idea itself but the expression of the idea (e.g., book, article, etc.), items should be available in a tangible form to be protected. In addition, originality or creativity is a key requirement for protection that is mentioned in many laws around the world. A work that does not encompass an intellectual output cannot be protected by copyright and therefore will be deemed out of copyright. A good example is a phone directory. A phone directory is simply a listing of names and phone numbers organised in alphabetical order. It doesn't contain any intellectual output, so it is considered out of copyright. There may, however, be "database" rights that seek to protect the time and effort that go into compiling databases, though such rights have arguably been little used.

Registration is not a requirement for copyright protection. The registration requirement was waived by the Berne Convention, meaning that copyright protection can be extended to unpublished works, and creators do not need to fulfil formalities in order to benefit from rights. As such, once a work is created, it is automatically protected by copyright, regardless of the intention of the author to exploit it commercially or otherwise. It is also important to understand that copyright is territorial, which means "the existence, content, and expiration of the copyright are subject to the law of the country in which the use or infringement occurs" ("Territorial application," n.d.). It should be noted that a key principle of the Berne Convention is that countries afford the same protection to rightsholders from other countries as they do to their own nationals.

## Exclusivity & Exceptions

### Fair Dealing:

Copyright is not unlimited in scope. Indeed, it is by definition bounded — a temporary monopoly, at least as far as economic rights are concerned — rather than a permanent property right. Most copyright laws have exceptions that allow users to benefit from a certain amount of copyrighted materials for non-commercial purposes such as personal or educational use. Examples of this concept are "fair use" in the United States, "fair dealing" in many Commonwealth countries, the "library privilege" in the United Kingdom, and clauses covering personal and educational use in other countries.

Fair dealing regulates the usage of copyrighted materials according to certain limits and without the permission of the copyright owner. The fair dealing doctrine allows the use of "copyright protected material for the purpose of research, private study, education, satire, parody, criticism, review or news reporting, provided that what you do with the work is 'fair'" (Taylor, 2021). Yet, a user should follow some guidelines to deem whether the usage or the "dealing" is fair:

**1. The purpose and the character:** The work should be used for a non-commercial purpose such as personal and educational needs. Any commercial use, even of a small part of the copyrighted material, is not allowed by the law. However, if the usage is for a non-commercial purpose, a user might benefit from a work without securing the permission of the copyright owner. Also, the character of the use is necessary to decide whether the dealing is fair. This includes whether the use is single or repetitive, whether it involves distribution, and, if so, to what extent.

**2. The amount:** The amount of the used or copied material should be minimal. The law doesn't state a specific amount; yet, according to best practices, the copied amount should be no more than around 10% of the work.

**3. The nature:** In the case of a published work that is available in the market for a fair price, the right decision is to buy the work instead of copying it. However, copying is deemed fair if the work is unpublished or an out-of-print material.

**4. The effect:** To what extent is copying a copyrighted work causing harm to the commercial rights of the copyright holder? Copying from an out-of-print material will not deprive the copyright holder of commercial returns because the work is not available for sale; yet if the work is available in the market, copying will reduce the sales of the work, causing harm to the owner. In brief, a user should exercise good judgement to determine whether the dealing is fair. It is not necessary to satisfy all the requirements stated above, but it is important to understand that only non-commercial dealings in small amounts are considered fair.

First Sale (Exhaustion) Doctrine:

Another major concept in copyright is the first sale or exhaustion doctrine. The concept implies that "the copyright holder's right to control the distribution of their work goes away after the "first sale" of the work" (Quilter, n.d.). In other words, when a library or an individual buys a work, they have the right to lend their copy to others, resell it, or discard it. This is the main clause in the law that allows libraries to lend print materials from their collections.

However, the first sale doctrine cannot be extended to digital materials because they are treated as licensed, not owned. For example, when a user buys an eBook, they are actually buying access to the eBook according to a licence. Sending a copy of the book to others is considered distribution, and it implicates the reproduction right. Therefore, it is not protected by the first sale doctrine.

## Out-of-Copyright Works and the Public Domain

Economic copyright terms are not perpetual. They have a life span that differs from one country to another. The Berne Convention advised that exclusive protection extends for 50 years after the death of the author (or the last author in the case of multiple authorship), which is the case in most countries that are members of the Berne Convention. The United States and European Union countries have set the copyright protection at 70 years after the death of the author.

Public domain refers to "creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent law" (Stim, 2019). Works in the public domain can be freely used without permission from the author or their inheritors, and for any reason, including commercial uses, on the condition that the author is acknowledged.

Some countries have placed out-of-copyright works under the protection of the government, so a person should have permission from the government before using them, especially the ones that are related to the folklore and traditions of the country.

A work "falls into" the public domain for different reasons:

- When the copyright protection period expires;
- In some countries, governmental publications and legal provisions are born out of copyright;
- Folkloric works in some countries such as Lebanon are considered out of copyright;
- When an author deliberately chooses to donate their rights to the public;
- Works that are considered common property such as calendars, colours, height and weight charts, etc.;
- And for other reasons that differ from one law to another.

However, it is important to mention that in some countries moral rights are perpetual — they do not expire with time. Therefore, an author should be acknowledged and cited even if their commercial rights have expired.

## Exceptions and Limitations for People with Disabilities

The Marrakesh Treaty's main purpose was to establish humanitarian limitations and exceptions in copyright laws for the benefit of people with special needs, especially the blind and visually impaired. It was signed in Morocco on June 27, 2013 ("Marrakesh Treaty," 2013), and is the most signed treaty of the World Intellectual Property Organization (WIPO). It is based on the concept of universal design in libraries, which provides equal access to information and promotes social inclusion for disabled people. The treaty tackled an important barrier, which is the ability of visually and print-impaired people to overcome the challenge of access to information and advance their right to equal access to education. The treaty recognized the

barriers in accessing print materials faced by the visually impaired and encouraged the creation and dissemination of works in accessible formats. In addition, the Marrakesh Treaty enhanced the legal framework on the international level to not only include exceptions and limitations in copyright law for visually and print-impaired people to access information, but also to diversify formats and make them widely accessible.

## Copyright & Resource Sharing

Cooperation is a fundamental principle in libraries. No library can strive to serve its users relying only on its own collections. Therefore, resource sharing is an important service in libraries that helps to open other libraries' collections to users and provides an alternative to acquiring works that would only be used by a small number of people, making their cost unjustifiable. It also clearly helps in situations where works are unique or not available commercially.

The COVID-19 pandemic and the associated lockdowns have significantly highlighted the importance of resource sharing on an international scale, as users have lost access to print materials. However, there are always challenges in international borrowing, mainly related to copyright and licensing. Many initiatives were born to tackle this issue, and copyright holders have been more lenient about reducing copyright restrictions during lockdowns to facilitate sharing, at least in the first months of the pandemic.

Resource sharing relies mostly on copyright exceptions for educational or research purposes that are established in many laws and international agreements around the world. Many countries have exceptions that explicitly facilitate interlibrary loans and resource sharing; other countries don't, but still practice these rights under the broader concept of the law, such as creating exceptions for educational purposes or following the best practices that are performed by most libraries around the world.

Crucially, there may be a difference in laws between the loaning of materials (in a way that does not lead to new copies being made) and forms of sharing that involve copyright. The lending of material does not fall under international law and may often be allowed according to the principle of first sale or exhaustion (i.e., that once you own a copy of a work, you can do with that copy what you wish). In some countries, rightsholders do have the power to allow or forbid the lending of their works, but such rules often do not apply to academic or research libraries. As highlighted above, some countries may spell out explicit permissions to lend works.

The copying of works may raise more issues, given that the right to permit or forbid reproductions does feature in international copyright law. As such, an exception or other provision may be necessary.

For example, section 108(d) of the United States Copyright Act governs interlibrary loans. It states that a library can reproduce a small part of an item and send it to another library as long as it fulfils conditions that stress the personal and educational use of the copied material and that a copyright warning should be placed on the item before sending. This is mainly facilitated by the

first sale doctrine codified in section 109 of the law that provides to the buyer of a copyrighted copy of a work the right to sell, dispose, or display the copy. However, this cannot be applied to electronic materials because they are governed by licences. In addition, the CONTU guidelines, drafted in 1976 to govern interlibrary lending in the United States, have established some constraints related to interlibrary loans and resource sharing. The CONTU guidelines were intended to define how much sharing is allowed under the exceptions provided by the law. It created the "rule of five," which limits the number of articles shared from the same journal to five in a calendar year. And it limits libraries to six requests per year per title for copies of non-periodical materials such as books during the entire term of copyright of that work.

In addition, it is important to highlight the roles and responsibilities of both the borrowing and lending libraries to avoid possible copyright infringement. It is certainly a shared responsibility to abide by the terms of the law and to ensure the appropriate use of copied material.

Borrowing library:

- Should make sure to abide by the fair dealing or personal and educational use exceptions established in the local copyright law;
- Should observe national guidelines and follow any relevant national rules or best practices when fulfilling article requests;
- Should include a statement to notify the end user that the material should be used for educational and personal purposes only and that any commercial dealing will make the user liable for copyright infringement;
- Should send the material in a way that doesn't encourage further distribution, such as by sharing print copies or using password-protected cloud sharing.

Lending library:

- Should include a copyright compliance statement to inform the borrowing library that the material is not to be used in excess of fair use;
- Shouldn't use documents available illegally on the internet from shadow libraries that may put the institution in a delinquent situation;
- Should not store scanned and electronic copies and use them for further requests;
- Should track requests and pay any required copyright royalties.

## Controlled Digital Lending: The Case of the Internet Archive's National Emergency Library

Controlled digital lending has emerged as a recent flashpoint between librarians, authors, and publishers in the United States. While the basic principles of controlled digital lending (or CDL) were articulated by Georgetown law professor Michelle Wu about a decade ago, the term CDL

did not enter the mainstream library discourse until the publication of *A White Paper on Controlled Digital Lending of Library Books* by David Hansen and Kyle Courtney in 2018. In this white paper, the authors identify the problem of 20th-century books — many of which are still within copyright but unavailable in digital form from their publishers — as a compelling reason to consider controlled digital lending and lay out the basic legal framework within U.S. copyright law that makes CDL possible. Hansen and Courtney argue that both the first sale doctrine (which also allows libraries to lend physical books) and fair use allow for CDL as a potential remedy that provides digital access to physical books that are otherwise unavailable electronically.

CDL is not necessarily only possible in countries that have incorporated fair use into their law. In Canada, there are efforts to draw on the fair dealing exception to enable CDL, at least in the case of out-of-commerce works. In Europe, the judgement in the case of Vereniging Openbare Bibliotheken v. Stichting Leenrecht (C-174/15) leaves open the question of whether lending a digital copy of a physical book is possible.

Authors and publishers have had mixed reactions to the idea of controlled digital lending. The Authors Guild, which famously opposed the mass digitization of library books by Google with a lawsuit in 2005, criticises the legal rationale for CDL as well, claiming that a legal case involving the reselling of a digital music file (Capitol Records v. ReDigi) should apply to what they call the "unauthorised" resale or lending of eBooks. In addition to this, the Authors Guild also directly made accusations of copyright infringement against several organisations that had embraced the practice of controlled digital lending — most notable among these practitioners was the Internet Archive and its Open Library.

Founded in 1996 by Brewster Kahle in San Francisco, the Internet Archive (IA) is a non-profit American digital library whose stated mission is "universal access to all knowledge." When it was first established, the IA was intended to be a digital archive of the World Wide Web, but as the archive grew, it began to add other materials to its collections, including software applications, games, music, movies, videos, and books. The IA collects a variety of different types of eBooks, including titles that are in the public domain as well as digital copies of books that are in print and protected by copyright. While some of these copies were uploaded by archive users, the IA also digitises an estimated 1,000 books per day through a global network of scanning centres. This Open Library makes millions of out-of-copyright e-books available to the public and allows registered users to borrow digital copies of titles that are still within copyright for two weeks at a time via controlled digital lending, by which only one user can access the eBook at a time.

On March 24, 2020, during the first few weeks of the COVID-19 pandemic, the IA announced that it would temporarily suspend the one-user lending restriction for copyrighted eBooks as part of what it called its National Emergency Library. It cited the "unprecedented global and immediate need for access to reading and research material" caused by the sudden closure of libraries around the world as its justification for opening access to its in-copyright collections. Although the National Emergency Library allowed for authors to submit opt-out requests for their books, the archive's decision to make millions of copyrighted eBooks available angered many authors and publishers, leading to a lawsuit filed in June 2020 by four major book

publishers against the IA. The IA closed the National Emergency Library on June 16, 2020 — two weeks before it was originally scheduled to shut down.

The National Emergency Library proved to be a controversial topic among librarians, surfacing a range of emotions, from support to anger, towards authors and publishers and exposing many incorrect assumptions about how U.S. copyright law works with respect to eBooks and libraries. Many librarians felt that not only did the extraordinary circumstances of the pandemic justify the IA's actions, but publishers had helped foster the present vulnerability by not working harder to make eBooks more accessible and affordable. Other librarians decried the move, defending such bestselling authors as Neil Gaiman when they publicly excoriated the archive for making their books publicly available without their permission. Some resource sharing librarians actively welcomed the National Emergency Library as a viable method of obtaining information for their patrons during the first wave of library shutdowns, while others adopted a more cautious approach, mindful of the unsettled legal questions posed by the resource.

The IA lawsuit is still pending as of the writing of this chapter. Law professor and former Stanford research fellow Argyri Panezi argues that the case "presents two important, but separate questions related to the electronic access to library works; first, it raises questions around the legal practice of digital lending, and second, it asks whether emergency use of copyrighted material might be fair use." Whatever the outcome, it is ironic that, at least in the United States, the legal question of controlled digital lending currently depends on the outcome of a lawsuit prompted by the uncontrolled digital lending of copyrighted eBooks.

## Contracts and Licensing

### Definition and Historical Background

Libraries have been commercially licensing digital content since the 1990s, with many libraries now paying more money annually in licensing fees than they spend to acquire physical content. Commercially licensed content is governed by a licence, since the library is leasing the content instead of owning it.

When a library owns a physical item, the use of the item is only governed by the relevant jurisdictional laws, such as copyright. Thus, the laws and rules around the use of a library's physical collection tend to be the same for each item. But with licensed content, the rules for use are different for each licence.

Consequently, the licensing of content has significant consequences for the ability to provide standard library services such as resource sharing (Cross, 2012). Why? Because many library practices, such as resource sharing, are predicated on the library owning the material it is lending or from which it is making a copy. But libraries don't usually own the eBooks and e-journals to which they subscribe. Rather, they lease them, possibly in perpetuity, and the use is governed by the associated licence. The licence sets out how the library can share the digital content via interlibrary loan, how library patrons can use the digital content, how it can be accessed, etc.

What is a licence? A licence is a contract, and when a library licences content, it enters into a contractual arrangement with the vendor (the licensor) (Bamman et al., 2021). The contract allows the vendor and other copyright owners to reorder the use of the material according to private contracts and contract law and away from the public law of copyright (Di Valentino, 2014). Licences will often contain provisions that restrict how much, and for what purposes, content can be copied. For example, copying by a student for research may be allowed, but copying for interlibrary loan may not be allowed. In addition, the resource itself may come with technological protection measures that limit how many pages can be printed or downloaded. Most copyright legislation prohibits the circumventing of a technological protection measure, even if the circumvention would be for an allowable purpose. So, as we can see, many library licences are agreements made by the library "to not take advantage of copyright exceptions for the duration of the contract" (Di Valentino, 2014).

Even though licensed electronic resources have been used in libraries for three decades, most library users and library staff are not aware that the use of digital resources is governed in a fundamentally different way than a physical item.

Contracts are only valid when both parties agree to them, and a fundamental aspect of a contract is the opportunity to negotiate. Therefore, it is important for librarians to try to negotiate better terms in the licences they agree to. For example, if resource sharing is covered by your national copyright act, you should try to include a licence clause that states that nothing in the licence overrides your copyright act. Or try to ensure that the licence allows for at least some form of interlibrary loan. When libraries purchase licensed material where the licence prohibits interlibrary loan, they are contributing to the diminishment of the library ethic. Such licences turn libraries into silos of unshareable information and contribute to inequality between citizens and nations. Resource sharing is fundamental to libraries, and therefore librarians must do their best to ensure that licences for electronic resources allow for interlibrary loan.

Notably, some countries, such as the United Kingdom, Singapore, and Ireland, have laws that disallow contract override of copyright exceptions. In these countries, those parts of a licence that restrict the exercise of copyright exceptions are not enforceable. Additionally, library associations in other countries are recommending contract override legislation in their countries (Canadian Federation of Library Associations, 2018; Australia Libraries Copyright Committee, 2016).

Due to the variety of licensing terms for different resources, it is important for libraries to try their best to make licensed information available to resource sharing staff. In particular, the interlibrary loan terms should be made available. These terms can vary, with some more common terms being: prohibition of interlibrary loan; requirements that document delivery must be in paper format; and only a single chapter of an eBook may be sent on interlibrary loan, not the entire eBook.

The proliferation of licences in libraries across the world may cause some to wonder how, or if, a licensor can enforce their licence terms. As described earlier, some countries have legislation that

voids licence terms that restrict the exercise of copyright exceptions. IFLA has a helpful document that provides information about protecting exceptions against contract override and the status of contract override provisions in many countries. Some legal scholars, including Ariel Katz and Lisa Di Valentino in Canada, question whether a licence can truly override the copyright act of a nation. These scholars say that in those countries where the courts have framed copyright exceptions as *user rights*, that a contract cannot abrogate those rights. For example, Katz has written that "… courts will not necessarily uphold any private re-ordering of the respective legal entitlements of copyright owners and users" (Katz, 2016). This reasoning suggests that a licence that forbids all interlibrary loan may not be enforceable as it unduly interferes with the normal, accepted practices of libraries (Katz, 2016).

However, in the absence of clear case law, such conclusions are strictly speculative. Another view is that licences are business arrangements between parties that are meant to ensure that a party does not do anything to overtly compromise the licence terms at the expense of the other party; consequently, occasional minor licence breaches by the licensee are expected by the licensor. This type of pragmatic advice is again speculative because most licensors will not openly admit that they expect licensees to breach licence terms.

A proven breach of a licence by the licensee will usually allow the licensor to cancel the contract outright, or to suspend access until they have received sufficient assurances that the breach will not happen again. Consequently, without clear legal guidance to the contrary, it is incumbent upon resource sharing departments to follow — as best they can — the interlibrary loan provisions in licences for electronic resources.

## Licensing and Open Access

Licensing is not only for commercial items. There are also licences that govern the reuse of material to allow for copying and reuse beyond the usual copyright exceptions. These licences are generally called open licences, and they encourage the free access to, and sharing of, material without first obtaining the permission of the copyright holder (Bamman et al., 2021). The most common type of open licence is the Creative Commons suite of licences; and for resource sharing purposes, the main type of publication that uses open licences is open access (Bamman et al., 2021).

Open access as a movement and publishing model grew out of scholars' desire to make scholarly research available to all readers, and not just to those fortunate enough to be at institutions that can afford to subscribe to expensive scholarly journals. Open access is based on the idea that "knowledge is and ought to be a public good" (Suber, 2016), and in general open access is more prevalent in the science and medical fields than in the arts and humanities. Although many publications may use the term open access, the standard definition of open access means that the work is both free to read and can be reused and shared with greater flexibility than is available under standard copyright exceptions (Budapest Open Access Initiative).

Open access makes it easier for the interlibrary loans divisions to supply, or find and share, a needed article, and thus open access resources are valuable for resource sharing purposes. Many patrons request open access publications via interlibrary loan even though they could access them for free online, and it is hypothesised that patrons likely do not think to search to see if the publication is an open access publication (Hayman, 2016). Likely the patron assumes that since their library does not own the journal, they need to use interlibrary loan services to get a copy of the desired publication.

Even large commercial scholarly publishers use the OA model, both for individual articles and for entire journals. However, these particular publishers often require the author(s) to pay an article processing fee ranging between $1,000 and $3,000 USD. So while these particular journal articles are available to all, the ability to publish in these journals depends on the ability to pay these fees as well as the scholarly quality of the article. However, most open access publishers do not require the payment of article processing fees. Most open access publications allow the author to retain copyright and simply require that the author agree to licence the published article under a Creative Commons licence.

## Creative Commons Licensing

Creative Commons is the most common open licence in use and is the licence most used for open access publications. Creative Commons (CC) licences are developed and maintained by the non-profit Creative Commons organisation (Creative Commons, 2022b). Creative Commons also works with major institutions, governments, and others to help them create and adopt open licensing and to ensure that CC licences are used appropriately. Copyright underpins CC licences, since only the copyright holder can apply a CC licence to a work (Creative Commons, 2022a). Thus, an open licence is simply a different type of licence from a commercial licence, but is still a licence, as the consent of a copyright owner is always needed when applying a licence to a work. Six different types of CC licences are available, and they range in degrees of openness. The most open is the CC-BY licence, which allows for any type of reuse as long as attribution is given to the original creator of the work, whereas others are more restrictive as they might limit the creation of derivative works, or may restrict uses of the openly licensed work to non-commercial use.

## Shadow Libraries

As just stated, only the copyright holder can authorise a licence to be applied to their work. Therefore, large collections of copyrighted works that are made available without the copyright holder's authorisation cannot be considered openly licensed. Rather, they are collections of illicitly obtained materials and are known as shadow libraries. The most famous shadow library at the current time is Sci-Hub (Gardner et al., 2017). Shadow libraries usually harvest their content by using pooled university credentials to access subscription content, then adding this content to their illicit collection (Gardner et al., 2017). Since a shadow library does not have a licence to make available others' copyrighted content, it is infringing on copyright. As such, resource sharing departments should refrain from using shadow libraries as a source for fulfilling requests

(Harrison et al., 2018). Interestingly, an analysis of resource sharing and shadow library usage in various cities in Canada and the United States showed that shadow libraries likely do not negatively impact the use of resource sharing services (Gardner et al., 2017).

However, other researchers and librarians insist that there is a causal relationship between shadow libraries and the decline in the use of resource sharing services. For example, Kehnemuyi and Larsen, when discussing how shadow libraries illicitly use resource sharing services to obtain content, hypothesised that the use of shadow libraries by researchers and students may contribute to the decline in the utilisation of resource sharing services. The authors also mention other recent factors that may be contributing to the decline such as truly open access publications, pre-print servers and the perceived slowness of resource sharing services in supplying documents (Kehenemuyi & Larsen, 2019).

Shadow libraries such as Sci-Hub must not be confused with open access. As stated earlier, open access is a movement where the author and rightsholder make a conscious decision to make their research openly available for use. In contrast, shadow libraries infringe on the law by violating copyright legislation, by abusing institutional IT policies, and by facilitating the violation of digital licensing contracts (González-Solar & Fernández-Marcial, 2019).

Although licences require the consent of the copyright owner in order to be applied to a work, the licence itself can either restrict or expand the rights that users are given under their respective national copyright laws. The main thing to remember is that when a work is made available under a licence, the resource sharing staff need to do their best to always comply with the licence terms, whether the licence is a commercial licence or an open licence.

## Case Studies

United Kingdom (British Library)

British Library Copyright Update
Prepared by:
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Matt Lambert (Head of Copyright and Assurance)
Janet Winter (Licensing Manager)
29 Sept 2021

The legislation (the Copyright, Designs & Patents Act 1988 as amended) provides a number of routes to supplying items, or copies of items, to other libraries. The main ones of interest are:

- Interlibrary lending: Section 40A provides for public libraries to lend copies of works to the public, subject to the Public Lending Right (PLR) legislation. It also provides a route for non-profit libraries or archives which are not a "public library" to lend copies (Section 40A(2)). This is of most interest to the British Library, as it allows us to lend items in our collection. As a policy decision, we lend items only to other institutions, and only more modern works.
- Library privilege: Library privilege is a term commonly used, but not mentioned in the legislation, for Sections 42A & 43, which allow libraries to supply copies of excerpts of works (in the case of published works) or entire works (in the case of unpublished items) for non-commercial research or private study provided a declaration is signed. The law is silent on whether these can be supplied outside of the UK, so we have made a policy decision to fulfil requests of this nature to any part of the world excluding the United States.
- Parliamentary and judicial proceedings (Section 45), accessible copies for disabled persons (Sections 31A, 31B, and 31BA), replacement copies (Section 42): These all allow us to provide copies for very specific uses. As with the library privilege copies, the legislation is silent on supplying copies outside of the UK, so we will fulfil requests internationally for these.

For requests which don't fall under any of these, then we have a non-legislative route available in our document supply service. This functions through contractual agreements with publishers or the collecting society that allow us to provide copies of a work in exchange for a fee, which is then passed back to the publisher. The copy the requestor receives can be used in a much broader manner than those above and adds a copy of the work to the requestor's collection that can be used as if it had been purchased outright.

Until 2010, the British Library also offered the library privilege service to international non-commercial customers. However, this was withdrawn following concerns expressed by the publisher community. A licensed service to replace this with reduced copyright fees was trialled but was unsuccessful, as the service was too manual and did not have the funding to invest in a

modern (technology-enabled) user experience. Following a review around risk and international approaches, it is planned to reintroduce the library privilege service to all countries except the United States.

Historically the British Library supplied copies from the library's purchased collection either to commercial users (with a copyright fee) or to non-commercial users via the "library privilege" option (without a copyright fee). However, in recent years, pressures on the acquisitions budget mean that the service is increasingly reliant on licensed electronic journals for document supply (downloading the copy from the publisher website) for subsequent resale to the end user. This has helped alleviate the impact of acquiring less content to commercial customers (who still pay the copyright fee) and has enabled the library to introduce a lower fee for articles, as they are provided from electronic resources and therefore less costly. Most publishers, though, are reluctant to allow licensed content for library privilege, as it undercuts their business models and offers no copyright fee in return.

Interlibrary lending has been around for hundreds of years and is built upon the principle that everyone should be able to access printed collections in order to study, research, and enjoy the written word. Given that one library cannot own everything, for interlending to work, a spirit of sharing and community is required to make the provision "for everyone." Accordingly, many in the UK think that for ILL, we should go back to first principles and re-create a "community-owned" sharing platform that underpins these basic principles:

- Working collaboratively, as a community
- Being open to sharing, and in doing so …
- Leveraging the uniqueness of individual collections
- That libraries are for anyone and everyone

The research landscape is changing for lots of reasons: more open access, the need for data, the ability to manipulate with digital technologies, changing user expectations, and the sheer vast amount of content that's out there. In the wake of the pandemic, it is important to collaborate and share across territorial boundaries and not be impacted by commercial obstacles. This then will require a close dialogue with publishers to ensure they can participate in this new way of working.

Qatar (Qatar National Library)

Prepared by:
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04 Oct 2021

Law No. 7 of 2002 on the Protection of Copyright and Neighbouring Rights 7 / 2002 is the Qatari law that handles Qatari works. This law has been in place since 2002 and has not been updated since.

As an institution operating in the State of Qatar, services of the Qatar National Library (the library) are governed principally by Law No. 7 of 2002 on the Protection of Copyright and Neighbouring Rights. All library services are conducted in a manner consistent with applicable national and international copyright law, always respecting the rights and interests of copyright owners, while also exercising rights and opportunities allowed to libraries and the public.

The collections at the library are composed of massive quantities of copyrighted works in print and digital form; the copying, sharing, and other uses of many materials in QNL collections are governed by copyright law. Under the Berne Convention and other multinational treaties, works that were originally created or published in most other countries are also subject to copyright protection. For most works, copyrights last for the remainder of the life of the author, plus 50 calendar years.

Qatar National Library manages closely the proper use of works that have copyright protection, such as:

1. Works of Qatari authors published within or outside the state

2. Works that are published for the first time inside the state

3. Works that are published for the first time in another state and then published in Qatar within 30 days of their first publication date, irrespective of the nationality or place of residence of their authors

4. Audio-visual works, the producer of which has their headquarters or place of residence in Qatar

5. Architectural works constructed in Qatar, or any other artistic work incorporated in a building, or any other construction situated in Qatar.

The provisions of this law shall also apply to works protected by an international agreement or a court in which Qatar is a party, and in accordance with the provisions of such agreement or court.

**Cases that have hindered the accessibility of resources:**

- COVID lockdown put a focus on electronic resources such as the public library and research subscriptions, but we were limited with resource sharing and document supply due to limitations in copyright law that allow only portions of a work to be scanned and provided upon demand

- During the first months of the pandemic in 2020, the library closed its doors to visitors. While this led to increased usage of electronic resources, the library was limited in fulfilling user requests for copies of printed materials. Besides access to physical documents and digitization, the library can only reproduce articles and other short works or extracts for teaching, research, and education. This meant that library users were not able to access all the information that they needed. Although Qatar is a signatory to the Marrakesh Treaty, which creates an exception to copyright allowing any book to be copied in Braille for visually impaired users, the Qatar copyright law has not been updated yet to reflect this change

- QNL signed an agreement with the World Intellectual Property Organisation to become part of the Accessible Books Consortium, but we are limited in what we can do with cross-border transfers as we await copyright law updates to reflect the Marrakesh Treaty

- Qatar laws do not have fair use or fair dealing provisions and are limited to a specific range of exceptions such as single copies for patrons (Article 21(2)), digital preservation and creation of replacement copies (Article 21(2)), and serving people with disabilities. Therefore, during COVID we had to explore channels to deliver book readings online other than our social media platforms, which required publisher approvals

- Qatar law has exceptions for education, but the law does not reflect the advancements in online/distance education. Therefore, it is essential to ensure access and use rights through licensing. For access requirements such as text and data mining, the QNL Electronic Resource Management (ERM) section needs to put them in the licence.

**QNL initiatives to counter the limitations:**

- When QNL works with major publishers, the ERM team requires that "nothing in the agreement goes against the copyright."

- QNL has several "Read and Publish" agreements with major publishers. This is transforming Qatar-based research into open access. This means it will allow access to articles from Qatar freely without any dependence on publishers' terms or copyright.

# German Copyright

Prepared by: Nicole Clasen, ZBW, Leibniz Information Centre for Economics User Services (n.clasen@zbw.eu).

## 1. Legal basis / German copyright

The Copyright Knowledge Society Act (UrhWissG) came into force in Germany on 01 March 2018. The previous legislation was often very detailed and spread across several different laws. In addition, digitisation and networked working have changed the possibilities of creating, distributing, and using copyrighted content. For interlibrary loan and document delivery in Germany, the UrhWissG not only brings advantages and clear guidelines, but also restrictions compared to the previous rules. Particularly in an international context, these rules give rise to questions and incomprehension. This is probably due to the fact that the German Copyright Act has little in common with the guidelines on international interlibrary loans. The most important points for interlibrary lending and document delivery within Germany are regulated in §60e (5) UrhG. Among them:

- Individual request for non-commercial purposes
- Copies of up to 10% of a published work
- Copies of individual articles from scientific journals
- No limitation to certain types of publication originals (print or digital)
- No restriction to certain delivery routes
- Appropriate individual remuneration by a collecting society (cf. §60h Abs.3-4 UrhG)

The UrhG refers in the context of copy delivery to German domestic interlibrary loans. International lending is not dealt with separately. However, the regulations still apply to international interlibrary loans with German libraries, as they are binding for German libraries. Unlike in other countries, in Germany the lending library is responsible for the payment of the fees to the collecting society.

### 1.1 Individual request for non-commercial purposes

The legally permitted use is basically limited to non-commercial use. This must be proven by the user in the form of a self-disclosure. In the national context, this is done across the library networks by a checkbox, which the user must acknowledge for each order transaction. The library has no active obligation to verify. In the international context, the German lending library should check in advance whether commercial orders can be placed via the international ordering system and, if necessary, verify with the user that the request serves non-commercial purposes by filling in a form.

1.2 Scope limitation to 10% of a monograph

The delivery of copies from monographs is clearly regulated by law and limited to 10%. Previous legislation allowed the delivery of a "small part" as a copy. In common practice, this small part corresponded to 15%. Since the specified 10% must be strictly enforced by the libraries, this means a labour-intensive effort for the libraries. This check cannot be done automatically by the ordering system.

In addition, the lending library should ensure that it does not process several consecutive requests from the same user, as it could mean that they exceed the legally permitted 10% portion of a work. As an alternative, of course, there is book lending, but this, especially in an international context, has the disadvantage of lengthy and expensive transport.

1.3 Article requests from scientific journals

A major change is the restriction of the delivery of copies of scientific journals. Newspapers and journals for the general public may no longer be used for the delivery of copies. However, the law does not contain a definition of journals for the general public in comparison to professional and scientific journals. The blacklist on the SUBITO document delivery service and the categorization of professional journals on buchhandel.de serve as guides for libraries.

Public magazines are aimed at a broad audience and are preferably read in leisure time. In comparison, scientific journals are aimed at a specialised audience and contain subject-related articles. In practice, the differentiation is sometimes difficult and must be made individually by each library. There is currently no uniform national reference system for differentiation between professional journals and public magazines.

1.4 Publication form and delivery options

The elimination of restrictions on the publication form (print or digital) and the acceptance of electronic transmission to the user as the standard delivery option are the most far-reaching changes brought by §60e UrhG compared with the previous §53a.

The examination of appropriate offers from publishers and the mandatory use of graphic files have been eliminated. However, the practical implementation of these positive changes is only possible to a small extent. The unrestricted use of e-resources applies only to licence agreements concluded after March 1, 2018. Moreover, electronic transmission to users is not part of the agreements with collecting societies and therefore cannot yet be implemented. During contract negotiations with the VG Wort on the new amount of the fee for the individual case remuneration, no agreement could be reached that included electronic transmission.

2. German ILL and SUBITO

The German interlibrary loan system consists of several standardised interlibrary loan systems which cooperate across different networks. The basis for this is the National Interlibrary Loan

Regulation. Interlibrary loan is mainly used to supply research and therefore mainly refers to scientific literature.

Orders via SUBITO are more expensive than national interlibrary loans. The libraries serve different target groups via SUBITO than via national interlibrary loan.

### 2.1 International interlibrary loan

Conventional international interlibrary loan requests can be submitted directly to the lending library by website form, email, fax, or post. The copy or the loan of the book will be sent by post. The accounting is done via the standardised IFLA Voucher Scheme. This form of international interlibrary loan is the most common procedure and can be used for orders from most German libraries.

### 2.2 SUBITO library service

In addition to the interlibrary loan system, SUBITO e.V. is a cooperative direct delivery service among libraries from Germany, Austria, and Switzerland. In contrast to (inter-)national interlibrary loans, this service allows direct delivery to users and requests from commercial users and private persons.

International, publicly financed libraries can use the SUBITO library service to order books and articles from German libraries. This applies to all libraries worldwide except for the United States and Great Britain. At SUBITO, research and ordering take place in one system. At SUBITO, unlike conventional interlibrary loan, copies from licensed journals can be sent by email using the digital rights management system.

The services offered (delivery of copies, lending) and the associated prices are determined individually by the supplying libraries. Note that not all SUBITO supplier libraries offer the lending of books. The average prices in the SUBITO library service are higher than the voucher costs in conventional international interlibrary loan. For this purpose, billing takes place centrally via the SUBITO office in the form of collective invoices.

### 2.3 WorldShare ILL

Orders via OCLC WorldShare ILL are a good alternative for libraries from the United States and Great Britain. Please note, however, that only a few libraries in Germany participate actively in the WorldShare ILL interlibrary loan system, whereas it can be regarded as the standard interlibrary loan system of the United States.

Several German supplier libraries use ImageWare's MyBib electronic reading room as a complement to OCLC's WorldShare ILL interlibrary loan system to provide digital copies of articles. The requesting libraries can call up and print the ordered article via a link in the electronic reading room. There is no direct delivery as PDF or to the user. The electronic reading

room enables a copyright-compliant compromise between modern, technical possibilities and the copyright requirements for German libraries.

# Spanish Copyright Law

Prepared by: Carmen Lomba, Cantabria University, Spain.
10 Aug 2021

The Spanish law on copyright does not mention expressly the interlibrary loan and the document supply among libraries. It does include a general exception for loans, if they are made in certain institutions, including publicly owned libraries, or libraries that belong to cultural, scientific or educational institutions without profit-making, or that are integrated into the Spanish educational system.

The current copyright law in Spain is in the consolidated wording of the Law on Intellectual Property, approved by Royal Legislative Decree 1/1996 of April 12, 1996.

Article 37 states the exception to copyright for libraries, archives, etc.: Libraries don´t need the authorization of the copyright owner to copy and lend materials if it is not for profit, and if the purpose is exclusively for researching or conservation.

Article 3 of the Royal Decree 624/2014, of July 18, 2014, develops the right of remuneration to authors for the loan of their works made in certain establishments accessible to the public. It establishes that loans between libraries do not generate remuneration, as libraries are beneficiaries of the public loan exception.

# ALPE, Italian cooperative system for checking ILL permitted uses in e-resource licences

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10 June 2022

ALPE (Archivio Licenze dei Periodici Elettronici / e-journals licence database) is an Italian cooperative project aiming to improve the understanding of the issues raised by interlibrary loan clauses of electronic resources licence agreements.

ALPE is designed to collect all clauses of the licence agreements subscribed to by the participating universities and research institutes, with the purpose of building a national archive open to the public.

ALPE is integrated with NILDE — the Italian service for resource sharing — which allows librarians to implement the correct policies for ILL services, leads to the explanation and clarification of the clauses, and at the same time guarantees publishers fulfilment of the subscribed agreements.

## Introduction

The massive growth in e-journal collections and the increasing use of electronic/digital interlibrary loan systems such as NILDE highlighted the need to clarify the relationship between e-journal licence conditions and resource sharing.

The problem arises when staff members handling ILL services have to manage the service from different providers and publishers and have to correctly identify the right licence for the specific individual article that they are lending in the shortest possible time. Another relevant problem arises when staff members handling ILL services have to understand the legal language of the licence. Licence wording is technical and sometimes vague with respect to interlibrary loans. In a resource sharing network such as the NILDE community[9], this means that the licensing rights of all titles need to be communicated to the ILL staff of more than 900 libraries.

The challenge is to share the e-resource licence with staff in a simplified format that educates them on how not to infringe on the permitted uses for interlibrary loan. The ALPE database and the integrated NILDE widget allows this sharing and allows the ILL librarian to search, view,

[9] https://nildeworld.bo.cnr.it/en

and choose the right licence and then to automatically apply its conditions in the same interface while fulfilling the lending request.

**A brief history of ALPE**

ALPE is a national archive of ILL clauses, extracted from standard and negotiated licences, created to manage, to publicly share, and to check the permitted uses of e-resources for ILL and document supply.

The ALPE project started in 2012 when a national working group was formed by volunteers. The aim of the project is to create a national archive of clauses with a standardised descriptions in order to minimise the risk of subjective interpretation of the licences by librarians and to increase usability. It is a framework developed to help ILL librarians to comply with the licences during the ILL activity.

The working group started with an analysis of the ILL clauses in contracts negotiated by Italian consortia between 2005 and 2012 (about 60 licences), at the same time analysing a local electronic resource management system developed independently by a university. Although the maintenance and update of the information is very difficult, the analysis highlighted the need for a collective and cooperative effort. (Balbi, 2013, Okamoto, 2012; Wiley, 2004; Blake et al., 2013). The ALPE group worked in three subgroups coordinated by CNR Bologna Research Library.

The first group had the task of creating and assessing a shared schema able to represent the content of ILL clauses found in licence agreements. A vocabulary of terms found in licences also had to be shared. In general, there is no common language to describe permitted uses of ILL. The language used is often juridical and technical and is not so easy for non-legal professionals (Lamoreux and Stemper, 2011).

The second subgroup had a mandate of filling the database with the licence agreements of the "big-deals" contracts subscribed to by consortia. In this case, we refer to *negotiated licences,* which are discussed and subscribed to by libraries, consortia or institutions. Negotiated licences may be multi-year.

The third subgroup worked to fill the database with the publisher's *standard licence* agreements. We consider *standard licences* the automatic licences attached to a subscription to digital content. Usually, terms and conditions can be found on the website of the publisher or of the content provider. This kind of licence usually is valid for a year. This group updates the database annually. It also populates the database if there is no specific information about ILL service on the website of the publisher. In those cases, ALPE's answer is that the document supply service is not directly allowed or is forbidden.

ALPE is a growing organism that started as a project and has become a vital asset to NILDE's librarians. The design and development of the system was directly inspired by librarians who expressed their practical needs. Now it is a fundamental tool that is fully integrated into the ILL workflow for all NILDE librarians.

**How we can work in a large group: methodology, working group, a common language**

The ALPE database is steadily updated by the librarians of the universities and research organisations that adhere to NILDE and ALPE. There are three different profiles enabled to fill the database with the licences:

- The librarian with the account of organisation operator. This person inserts the licences negotiated by their institution and these are only effective for the libraries of the organisation.

- The librarian with the account of consortium operator. This librarian inserts the licences negotiated by different consortia (e.g., CRUI-CARE, BIBLIOSAN, etc.) and they are effective for every library of the organisations that subscribed to the contract.

- The librarian with the account of the standard operator. These librarians insert standard examples of licences published by the scientific publishers on their site, and these are effective for all libraries and organisations that don't negotiate licences.

There are about 60 librarians collaborating on the project and contributing to the growth of the database. In many cases, the person who inserts licences is not a librarian assigned to ILL, but instead a colleague who deals with management of electronic resources.

The choice of a system of cooperative filing and updating was a strength of the project and permitted a very high number of licence upgrades or new licences each year.

The CNR Bologna Research Area Library projected and standardised the first training for the project for the operator assigned to insertion. The trainings include a one-on-one Skype webinar and a coaching phase. Every two years, when there is a NILDE national congress, training sessions are provided to every librarian in the network. In recent years, since the pandemic started, online training sessions have been provided upon the request of specific organisations aiming at training all their librarians.

One of the positive effects of ALPE is the growth of knowledge and awareness about copyright and licences for electronic resources among the librarians who take part in the project. This growth causes positive effects in the organisations in which the librarians work.

The purpose of using ALPE is to allow ILL staff who fulfil requests on electronic resources to perform the operations necessary to fulfil the requests in the manner and under the conditions set by the publishers, and to do so automatically and without any expertise in the field of licences. ALPE allows them to answer the questions, "Can I send this file?" and "Under what conditions?" in a short time and without having to possess licensing expertise.

**ALPE contents and licenses analysis**

ALPE is a complex system composed of:

- management software
- a public archive
- a search engine

It can be integrated in other web systems through its API.

The **management software** allows insertion and updating of licences. There is an authentication system that allows work group operators to enter and update licences, and it allows librarians to search for and view licences that are valid for their own library.

The ALPE **public archive** (https://nilde.bo.cnr.it/licenze.php) is freely accessible to all and allows searching and viewing the licences of electronic periodicals. The public interface allows you to search for the licence relating to a specific bibliographic reference starting from some parameters, which are: ISSN of the magazine and year or ISBN in the case of an eBook.

The **search engine** is able to identify the correspondence between the journal publisher and the platform used to access the digital collection and to return only the licences relating to that particular journal for that year, reducing the problem of transfers of a magazine from a publisher. It is also possible to search for all the licences relating to a specific publisher or a specific platform, by selecting them from a drop-down menu. In this second case, the system returns all the licences associated with a publisher.

The advantage of a centralised licence management system is that each library's search results contain only the licences related to its own electronic collections. The ALPE archive has been populated with more than 900 licences related to 160 publishers.

Figure 1 shows the number of negotiated and standard licences per year present in the ALPE archive.

Figures 2 and 3 show in detail the percentage of ILL service allowed, not specified or forbidden in the year 2021 standard and negotiated licenses.

Figure 4 shows in which percentage International ILL is allowed or forbidden in standard and negotiated licenses in year 2021.

Figure 5 and 6 show the allowed method to send a document to another library, in standard and negotiated licenses in year 2021.

It's worth to notice, in all the above cases, that the negotiation activity carried out by libraries and consortia has a positive impact on the permitted uses found in the licenses.

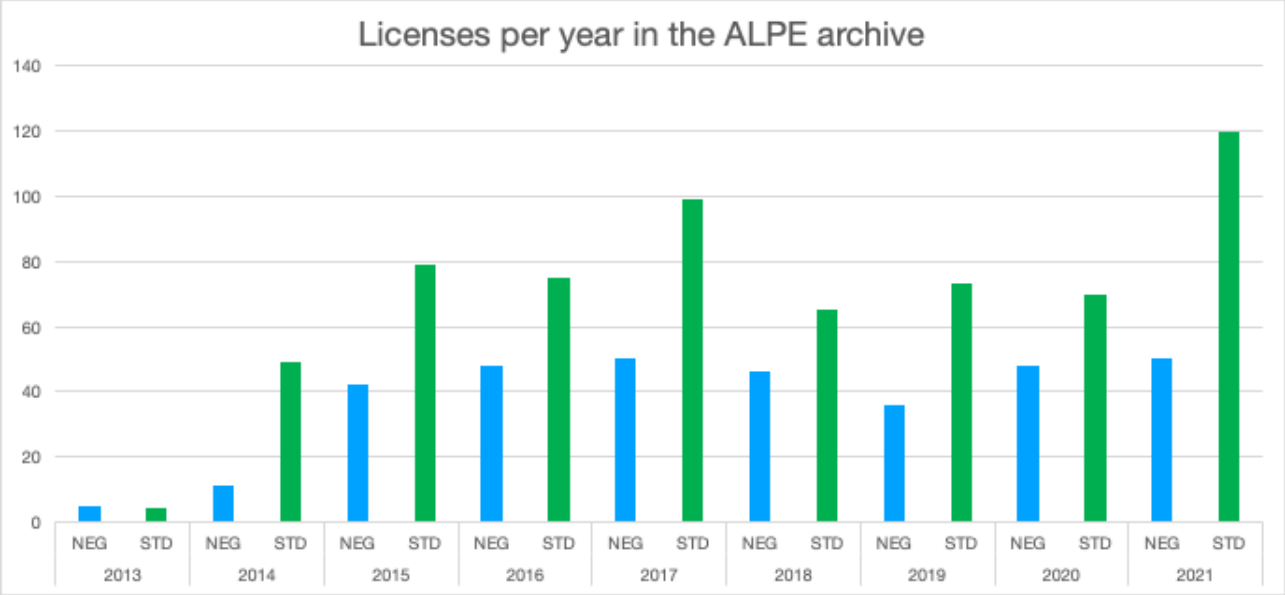


*Figure 1 Negotiated and standard licenses in the ALPE database, per year*

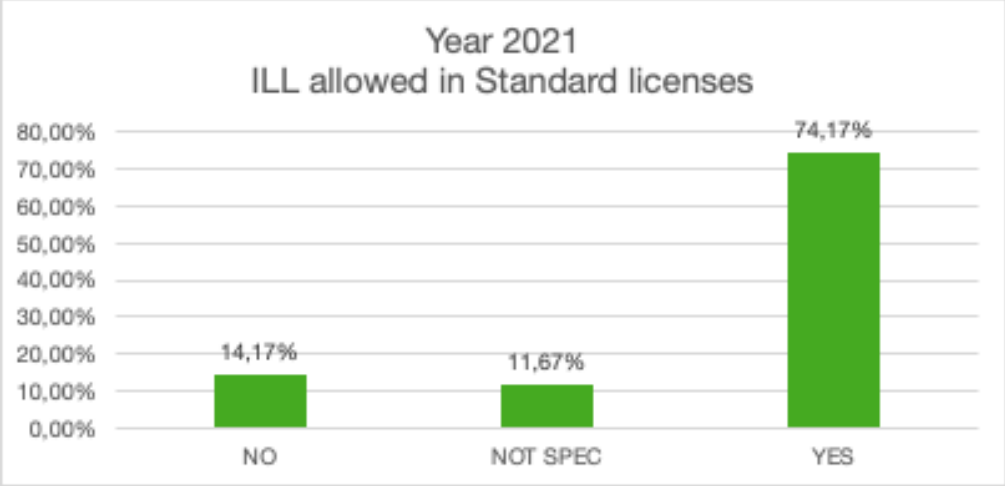


*Figure 2 ILL allowed in standard licenses, year 2021*

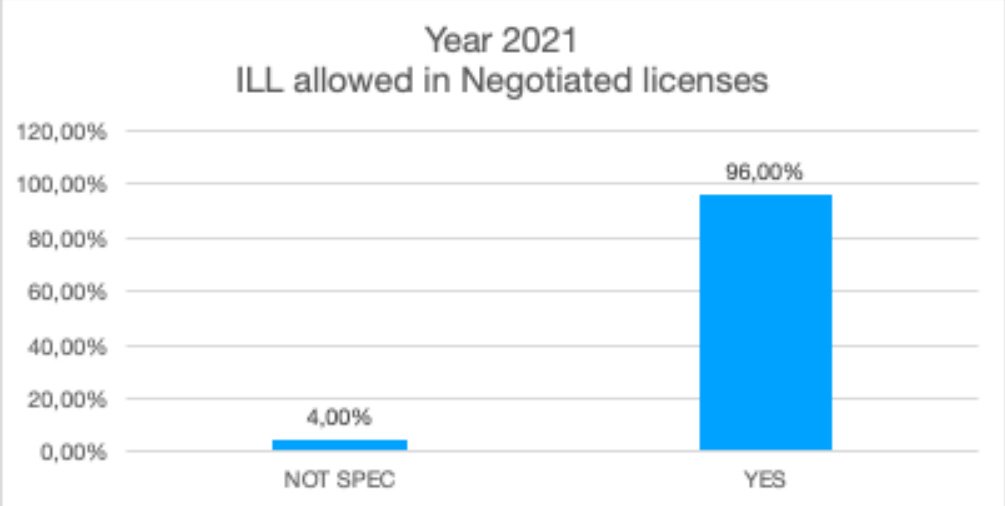


*Figure 3 ILL allowed in negotiated licenses, year 2021*

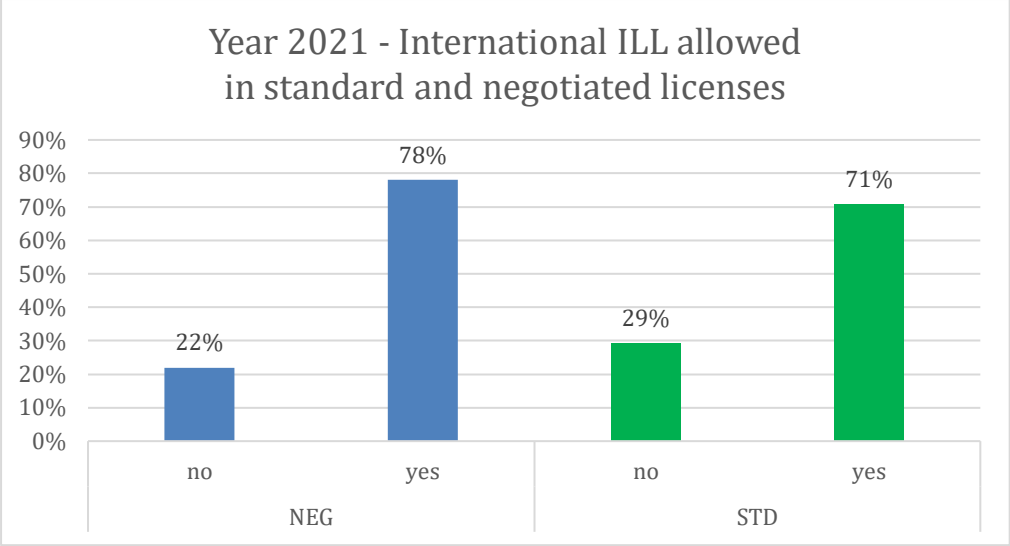


*Figure 4 International ILL allowed in standard and negotiated licenses, year 2021*

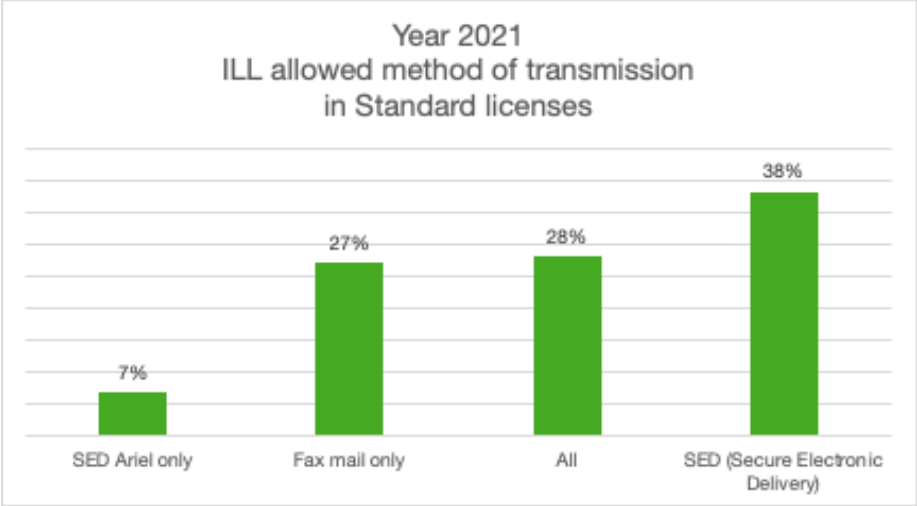


*Figure 5 Allowed methods for sending documents, year 2021 standard licenses*

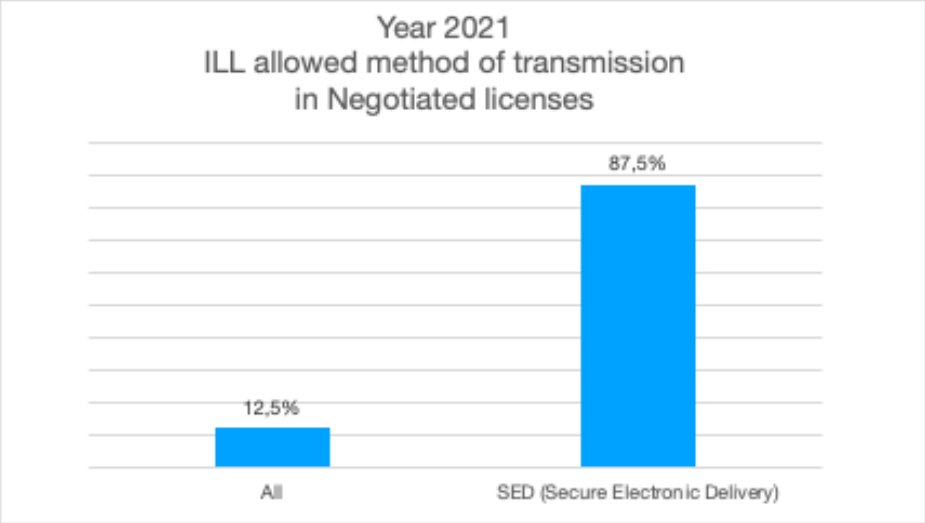


*Figure 6 Allowed methods for sending documents, year 2021 negotiated licenses*

ALPE API's and integration with the NILDE system

The ALPE system is equipped with a set of APIs that allow access to all the insertion and search functions from other web systems. Using the APIs, it's possible — for developers and everyone else interested — to gain access to ALPE data. The API technical documentation is at https://nilde.bo.cnr.it/doc/api.

In the NILDE resource sharing system, the integration with ALPE is accomplished using an ALPE widget for the simplified display of essential licence information for the librarian fulfilling the request.

The librarian who uses NILDE and fulfils a document delivery request therefore has the ability to click on the "find licence" button, which displays a widget that summarises and simplifies the contents of the ILL clause through an immediately understandable system of icons such as a traffic light. In this way, the librarian can easily choose the licence to apply. After the librarian clicks the "apply" button, the system interprets the conditions imposed by the licence by selecting only the permitted operations. If ILL is not allowed, the system blocks the request and prevents the librarian from proceeding.

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**Further Readings**

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International Federation of Library Associations and Institutions

# Document Delivery and Resource Sharing: Global Perspectives

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