



Copyright Basics for Interlibrary Loan

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Today's Learning Objectives

Through this workshop, participants will learn:

- The basic requirements for copyright compliance in interlibrary loan operations
- Differences between Section 108 and CONTU (and definitions of those two terms)
- Strategies for managing copyright in your ILL operation
- Resources for further reading



Recap of Last Session

- Recording is available!
- Visit <https://library.udel.edu/interlibraryloan/delaware/> for more information.
- Log in to your library's ILL account to place requests:
<https://udel.illiad.oclc.org/illiad/lending/lendinglogon.html>



“Copyright is a complex topic that cannot be easily covered in a single chapter, yet an extensive knowledge of every nuance of copyright law is not required for successful (and legal) operation of an ILL department.”

– Lee Andrew Hilyer, *Interlibrary Loan and Document Delivery: Best Practices for Operating and Managing Interlibrary Loan Services in All Libraries*



I am not a lawyer,
and today's session
isn't legal advice.

And before we continue...





What does copyright law do?

- U.S. Constitution: Congress will “promote the progress of science and useful arts...”
- Protects intellectual property for a fixed amount of time
- Gives the copyright owner **exclusive rights**, such as reproducing and performing the work
- Provides **limitations on exclusive rights**, such as reproduction by libraries and archives and fair use

Title 17, U.S. Code: <https://www.copyright.gov/title17/>

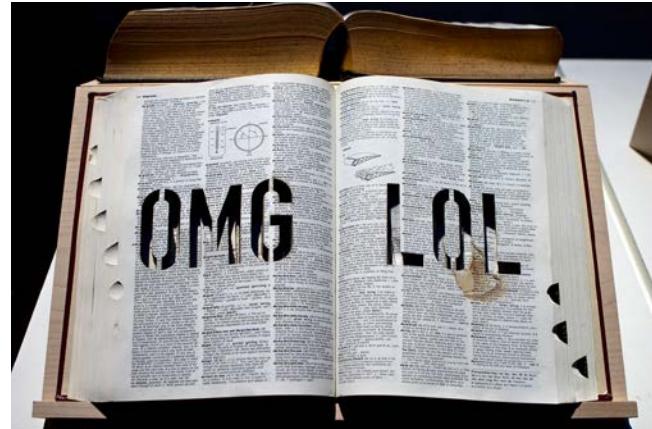


Our focus today

- **Section 108: Reproduction by libraries and archives** (photocopying, scanning)
- The “first sale doctrine,” Section 109, allows libraries to lend their physical collections.



<https://flic.kr/p/Rbqeh>
<https://flic.kr/p/7aaDP9>





Quick detour: Public Domain

- “Creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of the copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.” - Lolly Gasaway definition
- If it is not under copyright, then the work “belongs to the public”
- **Public domain allows us to digitize whole works and put them in repositories like the Internet Archive or HathiTrust.**



Another detour: Open Access

- “Open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions.” - Peter Suber
- “The legal basis of OA is the consent of the copyright holder (for newer literature) or the expiration of copyright (for older literature).” - Peter Suber
- **Open Access literature allows us (and our users) to find and access material online for free.**





Our final detour: Licenses

- License > Law
- All licensed material is governed by the contract the subscribing institution/library signed with the vendor.
- **Licensed material means we cannot deliver articles, chapters, or books through ILL if the vendor has not given us permission to do so.**
- Sample model licenses are available on the Center for Research Libraries' LIBLICENSE site.



Section 108(a) and (d)

What does it say?

- (a) Libraries meeting specific criteria can make copies for users through ILL.
- (d) Libraries may provide a copy “of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work” as long as
 - **Copy becomes property of the user; no notice of use beyond “private study, scholarship, or research”**
 - Library accepting the request needs to prominently display a copyright notice
 - Copy itself must display a copyright notice



UD's notice to users

Please note: The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction in excess of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.



UD's notice to other libraries

Not on shelf	Not found as cited
<input type="checkbox"/> Title not on shelf	<input type="checkbox"/> Vol/year mismatch
<input type="checkbox"/> Volume not on shelf	<input type="checkbox"/> Article not found on cited page
<input type="checkbox"/> Issue missing from volume	<input type="checkbox"/> Checked index
	<input type="checkbox"/> Checked TOC
Searched by: _____ Scanned by: _____	
This material may be protected by copyright law (Title 17 U.S. Code).	



Section 108(e)

- “The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price...”
- **This section gives us the right to copy an entire work for a user if there's no other reasonable way to obtain it.**



Section 108(g)

- “The rights of reproduction and distribution under this section extend to the **isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions**, but do not extend to cases where the library or archives, or its employee—
- (1) is aware or has substantial reason to believe that it is engaging in the **related or concerted reproduction or distribution of multiple copies or phonorecords of the same material**, whether made on one occasion or over a period of time, and whether intended for **aggregate use by one or more individuals or for separate use by the individual members of a group**; or



Section 108(g) continued

- (2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.”*
- **This section tells us that we can't receive so many copies that we're substituting for a subscription or purchase, or that we're assisting a user in systematically reproducing an item.***



Recap: Section 108

- This limitation on exclusive rights **applies to libraries and their employees**.
- The section grants permissions for **reproduction by libraries and archives**. It **specifically grants permission** to share scanned copies/photocopies of material with other libraries upon request of a library user.
- The copy must become the **property of the user** and is to be used for **research or private study**. No direct or indirect **commercial advantage**.
- **Borrowers** are responsible for compliance under U.S. law. Compliance includes ensuring that you are not using ILL to obtain aggregate quantities: ILL may not substitute for a subscription/purchase.



Copyright is exhausting, even for kittens!



CONTU Guidelines on Photocopying under Interlibrary Loan Arrangements, or “So what’s an aggregate quantity?”

- “(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any **calendar year** for a total of **six or more copies** of an article or articles published in such periodical within **five years prior to the date of the request**. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "...such aggregate quantities as to substitute for a subscription to [such periodical]."

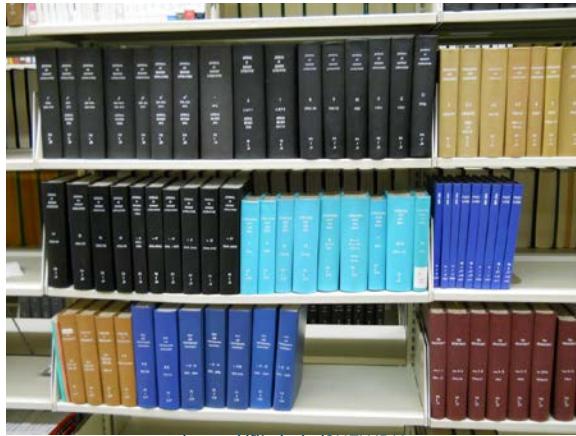


CONTU continued

- (b) With respect to any other material described in subsection 108(d), including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.”
- CONTU is a set of **guidelines**. It is not law.
- CONTU is the origin of the “rule of five,” the “five-five rule,” or the “suggestion of five.”



Suggestion of Five



<https://flic.kr/p/9H7WDU>

In a single calendar year, the **borrowing** library may not request more than **five** articles from a single journal title from issues that have been published within the last **five** years of the date of the request.



Suggestion of Five

Journal title	Journal volume	Request date
<i>Journal of nanoscience and nanotechnology</i>	17, no. 1 (2017)	1/6/2017
<i>J. of nanoscience and nanotechnology</i>	16, no. 4 (2016)	2/1/2017
<i>J. of nanoscience and nanotechnology</i>	16, no. 12 (2016)	3/7/2017
<i>J. of nanoscience and nanotechnology</i>	14, no. 1 (2014)	4/18/2017
<i>J. of nanoscience and nanotechnology</i>	15, no. 3 (2015)	5/20/2017
<i>J. of nanoscience and nanotechnology</i>	5, no. 12 (2005)	6/15/2017
<i>J. of nanoscience and nanotechnology</i>	17, no. 2 (2017)	8/1/2017



Help! I'm over 5. What can I do?

- “Close” the title: no more requests until 2018
- Find a library that subscribes to the journal and find out if your patron may use the material on-site
- Try to borrow a hard copy of the item
- Subscribe to the journal or purchase individual articles/issues from the publisher
- Utilize a document delivery service such as the British Library or Reprints Desk
- Pay royalties to the publisher
 - Through the Copyright Clearance Center
 - Contact the publisher for permission/payment information



Brief return to copyright law!

Section 107: Fair Use

- Another limitation on exclusive rights
- “Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”
- **This section gives anyone the right to make copies of protected works for specific purposes according to the “four factors” of fair use. This means that our users can make a fair use decision about reproducing copyrighted material for their research or scholarship. Many libraries also use this argument for reproduction.**



Fair Use Four Factors

- Purpose and character of the use
- Nature of the work
- Amount of the work used
- Effect of the use on the market





Practical Implications

As a **borrower**, you must:

- Prominently **display** the required notice to your users
- **Indicate** copyright compliance on all of your requests for reproduction: CCL or CCG
 - CCG if your use complies with law and CONTU guidelines (Rule of Five)
 - CCL if use complies with other area of the law (it's older than five years, fair use, you've paid copyright royalties, etc)
- **Keep records** of your requests for three years
- Request **one article or book chapter** per transaction
- **Work** with supervisors and others to establish the library's interpretation of the law and guidelines



Practical Implications

As a **lender**, you must:

- **Verify** copyright compliance prior to fulfilling a request
- **Include** a copyright statement on every filled request
- Be **well-acquainted** with licenses for electronic resources

Strategies for Tracking CONTU Compliance

- Manual records
 - Spreadsheet
 - Rolodex
- OCLC WorldShare users: stats.oclc.org has a Copyright Compliance Payment Report
- ILLiad users:
 - Clear copyright through the client when processing each request
 - Run reports of activity and manually keep track of your totals



Strategies for Recordkeeping

- Keep records for **3 calendar years** after the year in which the request is made.
- You are required to keep a record of what you have received, but **not** who requested it.
- You are **not** required to keep records of lending, only borrowing.
- **Always** document your fair use decisions. This may be notes on a request, a completed Fair Use Checklist in a file, etc.





To recap

- U.S. copyright law has specific exceptions so that staff in libraries may reproduce items at the request of a patron.
- There are other ways you may provide content to a user without violating copyright law, including use of materials that are in the public domain or made available open access.
- It is the responsibility of the **borrowing library** to keep records and to ensure that a request is legal.
- Talk with your supervisors/library directors/legal counsel (where available) about your institution's tolerance for risk and specific policies about what may be requested.



Selected Resources for More Information

- ALA's [Copyright Advisory Network](#), featuring the [Section 108 Spinner](#)
- Tina Baich and Nora Dethloff, "[Oversharing? Copyright, Open Access, and Managing Risks in ILL](#)"
- Columbia University's Copyright Advisory Office [Fair Use Checklist](#)
- Cornell University Library's Copyright Information Center, including the [Copyright Term and Public Domain in the United States](#) chart
- Kenneth Crews, [Copyright Law for Librarians and Educators](#).
- Cindy Kristof, "Copyright" in the [Interlibrary Loan Practices Handbook](#), 3rd ed.
- Cindy Kristof, "[Resource Sharing and ALL THINGS COPYRIGHT!](#)"
- Tomas Lipinski, [The complete copyright liability handbook for librarians and educators](#)
- Online Learning Institute's "[Copyright 101](#)" course
- Carrie Russell, [Complete Copyright: An Everyday Guide for Librarians](#).



Bonus Slides: Scenarios

Back to that *Journal of Nanoscience and Nanotechnology*. You've requested five journal articles from within the last five years for one patron – and he hasn't stopped asking about obtaining more! What options do you have when he comes in to request that sixth (and seventh, and eighth, and ninth...) article?



Bonus Slides: Scenarios

A patron wants to borrow a local interest book that's only held by libraries in the Midwest. You've found some libraries willing to lend it, but they'll charge you fees. Your library doesn't have a budget to pay ILL fees. The book is available for sale on several websites for under \$20.00, but the patron refuses to purchase it. Can you ask your friendly Midwestern colleagues to scan it and send the PDF? It is, after all, just a 30-page book.



Bonus Slides: Scenarios

It seems silly to request an article for a patron and delete it right away. What if a future patron wants to read it? Why not keep it on the library's server for future reference, or, better yet, catalog it so all patrons know it's available?



Thank you!
Any questions?

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<https://library.udel.edu/interlibraryloan/>