

## **License to Deny?**

You work in interlibrary loan and you couldn't get a library to fill an article request recently, it's a title available online, was that a factor in lack of a fill? In your other role as a lender, hard pressed already to keep up with requests, are you able to navigate around the licenses you know about that may restrict ILL? Technology makes some things easier in resource sharing...others harder as it turns out.

This paper explores a number of issues related to digital content licensing in libraries and specifically on how they impact article supply via interlibrary loan and document delivery. It reports on the results of a survey done by an academic consortium on licenses for electronic serial titles, the identification of any restrictive ILL clauses and the daily problems experienced as a result as well as potential future issues.

Information on both the lending and borrowing experience was collected. The results are summarized with conclusions and recommendations for follow up. A brief history on copyright legislation and guidelines as they relate to ILL are provided as background on how licenses can undermine the copyright support libraries have needed to provide the services users require.

### **Survey on Licenses and ILL**

Colleagues across a group of thirteen large research libraries in the Midwest were interested in what each was experiencing in navigating the restrictions placed on their ability to share their serial titles because of licenses. The group wanted to inform each other on local practices that affected request fulfillment. The group also wanted to take the summary data back to their administrations as an update on interlibrary loan and document delivery issues. A brief survey was developed (see the Appendix for the full

survey). The results are presented here as indication of what some major research libraries are experiencing in fulfilling ILL requests from online journals.

### **License content availability**

The content of the licensing information is hard to come by in a way that is useable to ILL Office staff (Table 1). The survey indicates that while the ILL staff has in most cases, some availability to the license details, this access requires separate steps to look up and interpret the details. A full quarter of the respondents have no access to the ILL clauses and as a result, do not fill any requests for EJournal content as they can't be sure what is allowed. Those that do have some access to the restrictions are filling requests from the online titles but most often are checking an internal list that requires another search, adding another step in the fulfillment process. From the comments provided in the survey, it was seen that some libraries keep a paper list, others have a database, and a few are now purchasing a serial solution type software that may help them keep track any restrictions but these have not yet been implemented. Some keep notes in OCLC local holdings records that allow them to check for the record holdings and restrictions. As lenders the hope is that the requesting library will check those notes before ordering, a borrowing step that can be overlooked. Borrowing libraries may also use the online version of the bibliographic record for a serial title to order from instead of the record for the print format, assuming the holdings are interchangeable. And indeed, in practice a number of libraries are using only one record for either format and borrowers will the not necessarily be able to distinguish who owns what format to better anticipate restriction problems.<sup>1</sup> Using bibliographic records or holding records to track the ILL restrictions is problematic in any case as the licenses can change year to year making maintenance, especially for deals involving hundreds of titles, a nightmare. This issue is confirmed in literature.<sup>2</sup>

<b>TABLE 1. License knowledge and availability</b>	<b>YES</b>	<b>NO</b>
Does the ILL staff have any access to ILL clauses in licenses?	9	4
Does the ILL staff check a separate list?	6	7
Can ILL staff search for restrictions while checking titles for article fulfillment?	2	11

### **ILL Impact - Lending**

It is clear that the respondents who do have access to the license clauses and even those who may not see all the detail, that there are indeed many restrictive clauses regarding ILL activity (Table 2). A few details about the nature of the restrictions were determined. Most respondents noted that there were cases when: ILL was prohibited entirely; when the delivery mechanism was restricted such as in “electronic “delivery; or when the type of library requesting the article determined the restriction. Typically the commercial or for profit libraries requests were not authorized though one respondent noted that only requests to domestic libraries were allowable under the terms of some agreements.

So not only are the license details not easily available or searchable, but also the conditions vary widely publisher to publisher, adding another level of exception checking to the ILL workflow.

<b>TABLE 2. ILL And License Details</b>	<b>YES</b>	<b>NO</b>
Is ILL for Ejournal articles restricted in the licenses contracted at your institution?	13	0
Restrictions: (note in- complete response, 4 have no knowledge of licenses)		
Total prohibition of ILL	9	
No electronic delivery*	9	
Forbidden to some borrowers i.e. commercial or foreign forbidden	6	
* But 6 libraries noted fax was OK		

Despite the extra work, these research libraries were making every attempt to fill requests (Table 3). Some simply went to the print first and only tried to fill from the online if the print was unavailable. Then the license was checked and action was taken as appropriate. But this meant that the online titles that do allow ILL were not utilized, so the lender could not take advantage of the efficiencies in an online fill. Others libraries noted that they filled from the online titles and spent the time to check the terms with the idea that the time saved from pulling the bound volumes was a trade off for the time spent checking the terms upfront depending on what local tools they had to check the terms. Many of the libraries noted that the checking was indeed cumbersome; a natural outcome would be delays or unfilled transactions. It was already noted that requests were cancelled outright when libraries do not have access to the title licenses. Those that did have access to license terms and checked them reported that indeed they do cancel at times in following the terms of the license. Typically this is when there is a prohibition and only the online version is available. The numbers were not large, no higher than 600 over a 6-month period but bear watching. The last question gave data on the amount filled using the online title. Over half of the libraries reported that it covered a small fraction of the total transactions

handled (0-5%). It appears that there is potential to use the online more but license checking workflow was inhibiting that more than more than the actual licenses themselves as the cancellations were low.

<b>TABLE 3. Impact of Restrictions- LENDING</b>	<b>YES</b>	<b>NO</b>		
Will try to fill rather than cancel outright	9	3		
Typical adjustment:fill from print Forced to cancel requests sometimes?	12	1		
Cancel frequency(low 150 High 600)	<b>less than 200</b>	<b>200-400</b>	<b>400-600</b>	<b>unknown</b>
Library responses:	4	3	2	4
Percentage of total Lending that could be filled with Ejournal articles:				
0-5%	8			
6-10%	3			
11-20%	2			

### **ILL Impact - Borrowing**

The survey was attempting to collect data on the impact in Borrowing but it became clear that this question required more study (Table 4). The libraries surveyed reported anecdotally that they were seeing their requests go unfilled but couldn't be sure of the reason. They inferred from their knowledge of the bibliographic record used to find the source and initiate the order (online version) that ILL restrictions played a part.

Reasons for unfills are not always given however or are not specific about whether that title had a restriction or if that lender as a rule never utilized the online version for a fill. Indeed there is not a specific reason defined for an unfill for a license restriction in the ISO protocol. Some libraries try to convey that in saying the title is noncirculating, which is better at than the non-specific "Other". Many did report that the titles that existed only as in digital form were more likely to be canceled or go to an unfill status. Libraries reported that it was their perception that the numbers were not huge and that

only a few journal titles may be involved. In some cases however, they were unable to obtain the article requested even from a supplier, as they could not locate any such supplier. The articles were also not available from the publisher on a “buy by the piece” basis; only subscribers to the full title had access. Follow up needs to be done to see if these requests resulted in the requesting library making subscriptions. Some of the titles are fairly recent and so may not be available in any other form. ILL offices are intent upon doing the right thing in obtaining material for their researchers. In alerting our colleagues about the dangers of the ILL licenses and in highlighting how complex and cumbersome they are do we unwittingly add to the “unfill when in doubt response”? Or is the lack of access the largest issue? More work must be done to answer that question.

<b>Table 4. Borrowing</b>	<b>YES</b>	<b>NO</b>
Is it harder to borrow some titles?	10	2
Do you use a supplier then and pay permission fees?	7*	3
(permission fee included)		
*the yeses indicated these were small in number		

### **Print Cancellation**

Many libraries are facing extreme budget cuts now, a repercussion of the recent economic downturn. In an effort to cover inflation and to balance the budget, print titles are being cut. The aggregator deals are being reassessed<sup>3</sup> and renegotiated with one result being less print purchased. This was confirmed in the survey with all but one research library engaged in cancellation projects involving the print version of their online titles (Table 5). It was heartening to see that ILL was somewhat involved in those discussions but perhaps not surprising to hear that the existence of ILL prohibitions for the online could not be a primary consideration. Cost and budget

needs were the first priority. But at least there is an awareness of the issue. But as libraries do cancel and as ILL clauses proliferate, the consequences will be felt in ILL especially if more lenders are not aware of what is possible in filling from their online titles.

<b>Table 5. Future Impact</b>	<b>YES</b>	<b>NO</b>
Is your library canceling the print version of a title and retaining the online?	12	1
Is protection of ILL activity considered?	7	6
Comments, those responded in the affirmative agreed that it was important but not the first consideration, those responding NO said it wasn't a large issue or that the budget was a larger priority		

To sum up the survey results: the data indicate research libraries have signed licenses that prohibit ILL activity. ILL Offices are not able to access that license information easily.

Lenders may respond as follows depending on local conditions:

1. not fill from any online title, defaulting always to the print
2. fill from the online if they have access to the license and can proceed
3. cancel any request if the serial is not available in print
4. cancel any request where only the online is available and ILL is prohibited

ILL is impacted as a result in the delays experienced, a higher incidence of unfills when requests are cancelled, and the extra labor involved when more steps are added, and in the unavailability of articles from a few titles. When ILL is allowed but under strict conditions, then some lenders may choose to not fill rather the add time to their fill process but most libraries will elect to adjust workflow and then fill a request but this is working now because the print is an option. With cancellations underway at the libraries surveyed, this may not be an option for much longer. It is possible that those

low cancellation numbers may grow which will result in a larger volume of ILL problems.

A consequence is that all libraries absorb an impact in the extra labor and time delays to receive an article. Libraries can act to minimize this possibility by understanding their licenses and how to protect library rights when working with them.

## **Licenses**

When libraries began acquiring electronic titles they entered into a new world, from purchasing print or analog to leasing the digital. This leasing is arranged under the terms of a license, an agreement that is a binding contract. The vendor outlines the terms, the prospective licensee either agrees, negotiates new terms, or doesn't agree and then doesn't lease. The contract may carry provisions that restrict use contrary to that supported by copyright legislation. The fear is that the contract can trump the provisions in the copyright legislation that support the services libraries deliver. There are as many licenses as there are vendors and as many again for the products the vendors provide and are applied variously to the buyer of that product. These licenses can be provided in ways that lock the consumer into compliance...the infamous shrink-wrap or click through licenses. There are also many of a type where negotiation is possible. The often-complex terms and legal language require that the library carefully review the document. At the same time, a library's governing body will want to review the document and add their local provisions. It used to be that a library signed up to subscribe and simply got the invoice to pay. Licenses take considerably longer to finalize and require expertise, a careful eye, and often staff skilled in negotiating terms that cover much more than just the cost.

## **Anatomy of a license**

A license will have a number of parts in it that must be carefully reviewed. The supplier sets out the terms for what is used, by whom, how, how long and for what cost. One lawyer lists the all the possible components as follows:

...the clauses cover:

The parties to the agreement, the content covered, definitions (where any special meaning of a word should be clearly defined, a grant clause where the rights being granted are described; the obligations of both the licensor and licensee or library warrant their own section each. Then payment, the duration of the agreement, permitted uses where how the material provided may be used or not are delineated, a section defining authorized users and then perhaps one that describes security measures for tracking use. Harris then adds that a number of “Boiler Plates” or general clauses are usually part of the agreement and cover such things as confidential information or nondisclosure terms, warranties, Indemnity/limitation of liability, dispute resolution, Force Majeure (dissolution of the contract because of events beyond the control of either party such as a natural disaster), Governing Law (where library’s’ governing body may have a say as to what law takes precedence), an amendment agreement that generally stipulates that changes are in writing and require both parties signatures and then finally a statement on the “Complete Agreement”.<sup>4</sup>

One license to review is bad enough...libraries go through hundreds if not thousands of these. Of particular concern are the often very detailed restrictions on interlibrary loan.

## **ILL Clauses in License**

A review of a few of the ILL clauses at the University of Illinois Urbana Champaign reveals a lot of variation and are categorized as follows in these examples:

### **ILL is authorized broadly**

Subscribing institution is granted a ...right to..make one hard copy of the output of any search and share such hard copy with third parties to the same extent as the print edition or to the extent permitted under the fair use provisions of the Copyright Act of 1976.

.....The Licensee may make up to 5 free article copies from each (publisher name) journal title per year for ILL purposes

### **ILL is authorized conditionally....maybe, maybe not.**

... the licensee may, subject to clauses 3 and 4, supply to an authorized user if another library within the same country as the licensee for purpose of research or private study and not for commercial use, a single paper copy of an

electronic original of an individual document being part of the licensed material.....neither the licensee or Authorized user may provide, by electronic means, to a user at another library a copy of any part of the licensed material....May print fax, mail or hand deliver....so long as the requesting institution is a noncommercial library located in the same country

Neither the Licensee nor Authorized User may provide by electronic means, to a user at another library or elsewhere, a retained electronic copy of any part... All other uses are prohibited without specific permission of xxxx including but not limited to....making copies print or electronic for transmission to institutions other than authorized users of Licenses

### **Or ILL is denied**

Articles and matter made available online may not be used for the purpose of interlibrary loan

under supply of copies to other libraries “It is understood and agreed that neither the licenses nor authorized Users may provide by electronic means, to a user at another institution a copy of any part of the Licensed material for research or private study ,...” for example, the use of the online journals for document delivery services, including but not limited to interlibrary loan is prohibited

The restrictions are related to who is authorized, what can be authorized, and under what conditions such as to whom (type of library) and how (delivery). It is difficult to determine what an authorized user is if it is not spelled out. Some vendors add clauses that prohibit sending a copy of any of the online content in any form to libraries overseas so it would seem that Canadian or Mexican libraries were OK. Commercial libraries are frequently mentioned as not being OK but “commercial” may not be well defined.

How the content may be delivered is also not explained well. What is electronic delivery? Is it only meant to mean copying and sending from the original file? Is it OK to print and send, is it OK to print and scan? Is a fax delivery electronic? And in some cases the language is just plain contradictory...where ILL may be prohibited in one clause but then in a later one, the licensee is allowed to send a printed copy to a library.

Are all licenses the same for all libraries? That is hard to know as often that information cannot be shared, as it is part of the nondisclosure clauses that often exist in the license. It is worth checking to be sure. With consortia agreements, the group of course can see the whole license. Consortiums that can effectively negotiate with the vendors do make it easier for the next licensee so that all libraries can benefit from one negotiation. There is also a new project designed to help ILL offices anticipate restrictions. The LibLicense website offers a link to the Interlibrary Loan Project, a database of ILL restrictions where the publishers input their information directly. The site offers help to ILL staff who want to know what may be restricted but it also can be a checkpoint for libraries updating their licenses and it may help to clarify language in local licenses, as those inputting the data must consistently categorize the restrictions. It also has the potential to identify those publishers libraries may wish to work with to negotiate fewer restrictions. The database is available at: <http://images.library.yale.edu/liblicense/>. Currently several publishers have input their ILL policy and the project members are hopeful that more will soon follow suit.

Having guidance on these issues is important. The Association of Research Libraries offers this from their online guide on Licensing Electronic Resources: “A License may not explicitly mention fair use, educational and library copying rights, or other rights permitted under the Copyright Act. This does not mean, however, that such rights are not protected or have been given up.”<sup>5</sup>

ILL Offices do need immediate help in navigating the clauses in their licenses. Some libraries are seeking help from their consortium or networks, others

look to tools such as Serial Solutions or TDNet. Support in these efforts must come locally in the form of encouragement to use the online whenever possible and in providing tools that can highlight those titles with restrictions. In the face of no information, an ILL office may default to cancelling. Libraries must continue to assert Fair Use and hold on to those rights provided in copyright legislation.

## **Copyright and ILL**

### **Fair Use, 107 and limitations on rights Section 108**

Libraries have been engaged in ILL, and article copying under that name for quite some time and in doing so they have complied with copyright law and guidelines. In the United States, Congress provided for limitations on the exclusive rights of copyright holders for reproductions done by libraries and archives in the Copyright Law of 1976 U.S.C. Title 17 108, as well providing for Fair Use in section 107. The latter is a well-known doctrine that supports the right to reproduce copyrighted material provided that the copying is for educational use and in consideration of four factors. These are: the purpose of the use, nature of the copyrighted material, substantiality of use, and effect of use. Those factors look at whether the use is commercial or non-commercial, the nature of the content creative or factual, how much was used, and the effect of the use on the marketplace. All four factors are considered together in determining whether or not the doctrine may be applied. 107 has broad application while Section 108 covers library copying specifically. Librarians cite Fair Use and or cite library rights of reproduction and distribution in continuing with the critical work of ILL. These sections and doctrines have been long and well utilized, though not unchallenged by copyright holders, in the print world.<sup>6</sup> Specific

mention of ILL appears in Section 108 (g) (2), which covers the need to balance publishers concerns with libraries' goal to provide copies to their users. (italics mine).

The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecords of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee –

(1) is aware of 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 of more individuals or for separate use by the individual members of a group; or

(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.<sup>7</sup>

These limitations to exclusive rights do include more requirements for libraries to meet the conditions of copying. The University of Texas Crash Copyright Course offers this quick summary:

As requesting (Borrowing) party, the library must comply with Sections 108(d) & (g) and the CONTU Guidelines:

- The copy must become the property of the patron;
- The library should have no notice that the copy will be used for a purpose other than private study, scholarship or research;
- The library should have both a display and order form "Warning of Copyright."
- The library must not be aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material;
- Since the CONTU Guidelines apply to periodicals and small parts of other works, the library must make its request with a representation that it has complied with copyright law and the Guidelines;
- The library will pay royalties on any copy of a periodical article that exceeds the "suggestion of five;"
- The library will maintain its records of the request for three years.<sup>8</sup>

Most of the conditions apply to the “requesting” or borrowing library though the responder or lending library does have one condition to meet. Responders must look

for copyright compliance on the requests received. The Lenders are not themselves responsible for compliance, but the practice of asking for the compliance from the initiator of the request has become standard. It reinforces that the Lender is not “... aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material”.

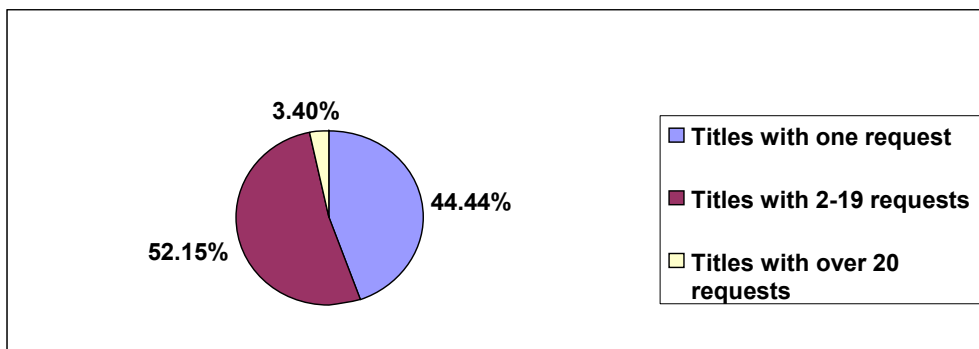
### **CONTU**

The National Commission on New Technological Uses of Copyrighted Works (CONTU) was commissioned while the 1976 law was being developed, to provide guidelines for libraries on what may be allowable before there would be reason to believe that copying was in such “aggregate quantities so as to substitute for subscription” or that the library was “engaged in related or concerted reproduction or distribution of multiple copies of the same material”. The Commission agreed upon the “suggestion of 5” where use of any 5 articles from any one title within the last 5 years of the request date was acceptable in one calendar year of ILL activity.<sup>9</sup> Any use after that warranted a look at the title generating that interest. It might mean that libraries would follow up with a subscription. Libraries have either done that or kept track and paid fees after the fifth to publishers or to the Copyright Clearinghouse Center (who broker publisher reimbursements) or used a supplier that charged permission fees up front and that then reimbursed publishers or the Library may have told the individual who had asked for the article in the first place that the library could not supply it. Guidelines on ILL record retention were also covered. ILL staff in the United States have been dutiful in keeping track, making recommendations for purchase, and paying appropriate fees for years. One thing the CONTU did not cover was titles older than 5 years. It is also important to note that the CONTU suggestion of 5 are guidelines only and not law though the report was appended to the law.

Most libraries agree that to pay permission fees, ILL transaction fees and to pay for all the indirect associated costs of ILL to obtain a piece of information that does not arrive in the most timely manner is not preferred. A subscription is best but may not always be appropriate. It is interesting to consider what the suggestion of 5 allows libraries and publishers. It provides time for a new title to generate readership, provides libraries a mechanism to track user needs as expressed via ILL for new research and collaboration areas that can not be anticipated by library collection managers. It provides for the process to track and assess use before making what is now a very large commitment- investing in a new serial title. Libraries are being held accountability to their funding agencies, public or private and must show hard data to justify purchases or non-purchases. Publishers can win when their titles generate the use that results in a subscription. Allowing researchers access to the titles allows access to information that may not otherwise be shared. Researchers also want to be published in titles that are accessible. A scientist at the University of Illinois Urbana Champaign was trying to obtain an article from an online journal but no library could share it due to their restrictive agreements. That scientist's response was to declare to never publish in that journal as the research could not be disseminated making that research inaccessible.

Does ILL-use go over CONTU in general? There is evidence that use across groups of libraries of any one title is not so high as might be expected. A study of 26 academic libraries collective ILL use in 1999/2000 showed that very few titles were requested more than 20 times by the group and over 40 % of the ILL transactions were for the single article from one title (Figure 1). The average use for any title requested by the 26 was not over the CONTU suggested 5.<sup>10</sup> ILL numbers in general are not a large percentage of any libraries circulation. One study using the Association of Research

Libraries (ARL) statistics concluded that ILL is only 2% of the total.<sup>11</sup> ILL volume decreased last year in ARL libraries as well.<sup>12</sup> The totals look woefully small when looking at the use of the online titles. All libraries need to highlight this data in their work with publishers to show them that ILL use continues to be at a low volume. ILL is a laborious process and can not replicate online access but it is a service necessary for research.



### **Model Licenses**

The ILL restrictions are cumbersome and it would be ideal if libraries could work to eliminate them. There is very real help available to any library working with licenses that could work toward that end. The models and principles detailed by researchers, associations and consortium will benefit those leasing EContent in clarifying the license sections, outlining what is required, showing the benefits of check lists, and in suggesting model language to negotiate for in finalizing use of the content. Janet Croft offers an excellent summary in her recent article.<sup>13</sup>

In ILL, libraries work with hundreds of other libraries and rely on guidelines to direct their processes such as are covered in the Interlibrary Loan Code for the United States.<sup>14</sup> The License models can be equally important here to promote consistency in the treatment of requests for online journal articles. We need the models “to increase

industry wide efficiency and improve access”.<sup>15</sup> Without some expectation of consistency, ILL Borrowers can be left guessing why an article was not filled as lenders may be guessing on what is possible to do. Model language such as that from the LibLicense site supports interlibrary lending practices and if this language can be this inserted into a license, it eliminates the need to qualify the ILL conditions.

Interlibrary Loan. Licensee may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works.<sup>16</sup>

## **Negotiation**

There is every indication that negotiation is very effective. Consortiums can often show the way, while they may be negotiating rights across a small group, their collective leverage paves the way for others to do same while guaranteeing equal access for the group.<sup>17</sup> The University of Texas site on copyright included this statement “very rarely do vendors refuse to negotiate their terms”.<sup>18</sup> Another site on licensing notes:

Cordial relationships with vendors can become somewhat tense in licensing discussions. A way to alleviate the tension is to strive for that cliché—a “win-win” situation. Vendors are interested in terms and conditions that maximize the value of their intellectual property more than in terms and conditions mandating that their content be used in tightly restricted conditions. In most cases, vendors are anxious that their information be widely available to support client business initiatives.<sup>19</sup>

It takes time for change. Publishers have been concerned that their market would be eroded if ILL substituted for a subscription. When this fear can be alleviated, with the help of libraries, and library associations then restrictions may gradually shift to allow for more ILL use. There are indications that publishers are indeed loosening the ILL restrictions. Many publishers are allowing the paper copies to be distributed and even

that may be enhanced soon. The CIC has had success recently in removing prohibitions on Ariel delivery from licensing terms that previously prohibited electronic transmission. As more libraries work together to re-negotiate contracts, more change is anticipated. It is important that ILL staff work with their collection development staff and or acquisitions agent to communicate the ILL concerns. Data on how restrictions impact service can be helpful in noting how real the problem can be.

## **Conclusions**

Licenses have indeed impacted on how libraries can easily obtain articles through the interlibrary loan process. Libraries and library associations have been very effective in working with publishers to negotiate better terms and educate on how to proceed in handling license agreements. ILL units must seek information about their local licenses, seek to use their electronic resources to fill requests, and provide their organizations with information on how access may be affected. The transition from analog to digital continues to challenge all information providers. Libraries will keep focused on maintaining access to their users. "License to Deny"...yes but perhaps this can change to "License to Fill" as long as we keep working together.

Remember that copyright in the United States was based on the principle that all need access to information for the good of all. As Charles Mann noted in an article on copyright:

Products of the human mind "cannot, in nature, be a subject of property," Thomas Jefferson wrote. "He who receives an idea from me, receives instructions himself without lessening mine; as he who lights his taper at mine, receives light without darkening me."<sup>20</sup>

**Appendix: Survey for CIC ILL Offices – Impact of Licenses on ILL**

Survey

Your Name \_\_\_\_\_

Institution name \_\_\_\_\_

Date of Survey \_\_\_\_\_

(Please place an X in front of the answer where appropriate)

Lending

1. Do you routinely attempt to fill requests utilizing your EJournal content whenever possible?

Yes or No

2. Do you have access to the ILL clauses for the licenses that cover your full text titles?

a. Yes

i. Can you see the restrictions as you search? Yes or No

OR

ii. Does your library maintain an internal list to check? Yes or No

b. If NO(skip to 4)

3. Can you categorize the ILL restrictions as follows; circle any / all that apply to your institution's licenses for any title:

- a. ILL prohibited totally
- b. Electronic distribution by any means prohibited
- c. ILL for commercial institution requesters prohibited
- d. ILL prohibited for foreign institutions
- e. Internet delivery prohibited but fax OK
- f. Titles available in electronic version only are not available for ILL
- g. Other

4. Can you provide the percentage of the article requests filled in the past 6 months (July 2002 through Dec 2002) that were from your Ejournals? Estimates are fine; we are just trying to get a sense of the amount of traffic here.

a. Do you know what % of these filled requests that required you to add more steps to your work process to fill? You need not count those that required you to rescan the article as it is assumed that you are not supplying the image directly from the publisher. Please supply the % (estimates fine) and then identify the extra steps required, check all that apply

- License checking
- Borrower type identified and screened
- Delivery Exceptions
- Other

5. How many ILL requests did you actually cancel in the last 6 months due to licensing restrictions?

6. Did you fill from the print copy instead where possible? Yes or No

7. Do you make an attempt to change work flow to adjust to the license agreements or do you find that any restriction will result in the cancellation of that order?

- Try to adjust
- Cancel rather than change workflow

Borrowing:

1. As a Borrower, have you seen access to titles via ILL from libraries you request from curtailed due to licensing restrictions? Yes or No
2. If yes, are you purchasing from publishers or commercial suppliers more often as a result? Yes or No
3. Can you provide any information on the increased costs you may be experiencing because you must either pay a royalty fee from a supplier or pay a high publisher fee for copies covered under Fair Use?  
Insert comment:
4. Please feel free to include any anecdotal information about your recent experiences here.

Other experiences:

Print Retention

1. Are print copies of EJournal titles being canceled locally? If yes, what are the percentage and/or number of titles being cancelled? Yes or No  
Numbers and or % if Yes
2. Are ILL license restrictions considered before canceling the print? Yes or No
3. Is your library storing the print serial runs offsite for any EJournal titles? Yes or No  
If yes. are current volumes included (1995-present)?
4. Are the ILL license restrictions considered before a decision is made on remote storage? Yes or No

Please add any additional comments about print retention or storage decisions at your institution.

## NOTES

1. Davis, G.M. Serials Holdings in an online environment—a comparison of fifty academic libraries in the United States. 2002 thesis, University of North Carolina Chapel Hill.
2. Croft, Janet and Murphy, Molly. "Licensing and the Interlibrary Workflow: the best solution is prevention." 1(2) *Journal of Access Services*, 5-14 (2002).
3. Foster, Andrea, "Aggregators: Second thoughts on bundled E-Journals." 49(4) *Chronicle of Higher Education*, September 20, 2002.
4. Harris, Lesley E., Getting What You Bargained For – Essential Terms Every Librarian Should Include In A Licensing Agreement <http://copyrightlaws.com/index2.html> visited 10/01/30.
5. Association of Research Libraries, Licensing Electronic Resources: strategic and practical considerations for signing electronic information delivery agreements. <http://www.arl.org/scomm/licensing/licbooklet.html>, visited 10/01/03.
6. Nixon, Donna, "Copyright and Interlibrary Loan Rights" 13 (3) *Journal of Interlibrary Loan, Document Delivery and Information Supply*, 55-89 (2003).
- 7.17 U.S.C. § 108 g
8. University of Texas Copyright in the Library- Interlibrary Loan in The UT System Crash Course on Copyright <http://www.utsystem.edu/ogc/intellectualproperty/l-108g.htm> visited 10/1/03
9. Final Report of the National Commission on New Technological Uses of Copyrighted Works, July 31, 1978, Library of Congress, Washington, DC, 1979, pages 54-55. available courtesy of CNI at: <http://www.cni.org/docs/infopols/CONTU.html>, visited 10/01/03.
10. Wiley, Lynn and Chrzastowski, Tina E. "The Illinois Interlibrary Loan Assessment Project II: revisiting statewide article sharing and assessing the impact of electronic full-text journals" 26/1 *Library Collections, Acquisitions, and Technical Services*, 19-33 (2002).
11. CONFU Interlibrary Loan Working Group Summary of Discussions Held March 27, 1996 in The UT System Crash Course on Copyright, <http://www.utsystem.edu/ogc/intellectualproperty/illconfu.htm>
12. Association of Research Libraries, Supply and Demand in ARL Libraries 1986-2002. <http://www.arl.org/stats/arlstat/graphs/2002/2002t3.html>
13. Croft, Janet and Murphy, Molly. "Licensing and the Interlibrary Workflow: the best solution is prevention." 1(2) *Journal of Access Services*, 5-14 (2002).
- 14 Interlibrary Loan Code for the United States, ALA Reference and User Services Association 1994, revised 2001, ALA approved January 2001, [http://www.ala.org/Content/NavigationMenu/RUSA/Professional\\_Tools4/Reference\\_Guidelines/Interlibrary\\_Loan\\_Code\\_for\\_the\\_United\\_States.htm](http://www.ala.org/Content/NavigationMenu/RUSA/Professional_Tools4/Reference_Guidelines/Interlibrary_Loan_Code_for_the_United_States.htm), visited 10/01/03.
- 15 Harris, Lesley E, "Are Model Licenses the Answer?" <http://copyrightlaws.com/index2.html> visited 10/01 03.
- 16 Liblicense: Licensing Terms & Descriptions: Authorized Use of Licensed Materials. <http://www.library.yale.edu/~license/usecls.shtml>, visited 10/01/03.

17. Allen, Barbara in the Association of Research Libraries, Let There be Light: Licensing Electronic Resources: State of the Evolving Art, Summary of Proceedings, December 8-9, 1996, <http://www.arl.org/scomm/licensing/sum.html>, visited 10/01/03.
18. University of Texas, Copyright in the Library: Acquisition Under Contract in The UT System Crash Course on Copyright.  
<http://www.utsystem.edu/ogc/intellectualproperty/l-cntrct.htm>, visited 10/01/03.
19. Content Licensing-definition and issues.  
<http://www.factiva.com/infopro/resources/Unit9CopyrightLicensing.doc>, visited 10/01/03.
20. Mann, Charles. "Who Will Own Your Next Good Idea?" 282(3) *Atlantic Monthly*, 57 – 82 (1998).