

License Agreements-A Barrier to Interlibrary Loan?

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ABSTRACT

Increase in scholarly electronic resources and the availability of technology to host the resources have created a situation where in the expectations of patrons have increased to a level where they expect everything they need is possible to have. Libraries are under tremendous strain to keep up with the expectations of their patrons with ever shrinking budgets. Whatever may be the size of the budget of a Library, there is always a segment of information requirement that cannot be fulfilled by the host Library. This segment of information required by their patrons is fulfilled through Inter-Library Loan (ILL)/Document Delivery Services (DDS). Hence, ILL/DDS has always been a part of Library services right from the 'print only' days. With the advent of electronic age where the electronic resources are licensed rather than owned, ILL/DDS services have been very challenging with the restrictions imposed by the publishers. The clauses or conditions regarding ILL/DDS vary widely from publisher to publisher. The licensor sets out the terms for what can be used, by whom, how, for how long and at what cost. This work has examined license agreements of 43 publishers. The observations made may be useful for libraries to negotiate better terms and conditions so that an equitable solution is sought for both the libraries and the publishers.

Keywords: License agreements, Copyright laws, ILL, Interlibrary loan, Document delivery services, Publishers, Interlibrary lending

INTRODUCTION

With the increase in demand for academic endeavour, and an increase in information resources, especially in electronic formats, and because of the availability of online databases and web-based discovery tools, researchers now have access to many more references than ever before. This has resulted in an increase in their expectations to be able to access all the information they need. Libraries have an obligation to obtain materials to meet the information needs of users. Even though the volume of electronic resources

has increased many folds, and to commensurate with this the expectations of the patrons to access the required information has also increased, but the library budgets have not increased proportionately.

The only way out for libraries to keep up to the expectations of their patrons in providing them information they require, is by sharing each other's resources through Inter-Library Loan (ILL) or Consortia. Maximum number of libraries in the world are already part of one or the other Consortia. Such Consortia, again, can take care of only a part of the

information requirements of their patrons. The information requirements are not covered by the library subscriptions or Consortia which have to be fulfilled through ILL. ILL is a service that has been in existence even when all library materials existed in print form only. It's the process by which a library requests materials from, or supplies materials to another library.

Following the advent of the Digital Revolution, libraries began incorporating electronic information resources (both offline and online) into their collections and services. Electronic resources are not owned but licensed through certain terms and conditions. The terms and conditions in the License Agreement generally include subscription fee to access the information; the period of accessibility; specifies who has a right to access; how the content may be used and may not be used; how the content may be transmitted; whether the content is available perpetually or only during the subscription period; actions included as violations or misuse; archiving policy. The libraries have to abide by these terms and conditions and provide ILL services within the framework, thereby making ILL a complex process. The introduction of licensing agreements for e-journals with print counterparts changed the way libraries share articles (Okamoto, 2012).

OBJECTIVE OF THE STUDY

The objective of this study is to examine the license terms and conditions of some of the prominent scientific publishers regarding ILL. Depending on the restrictions imposed by the publishers, libraries can negotiate better terms and conditions so that an equitable solution is sought for both the libraries and the publishers.

LITERATURE REVIEW

The analysis on ILL agreements in publisher terms and conditions are very rare but few studies have

reviewed copyright agreements of journal publishers towards author self-archiving. Gadd *et al.* (2003); Antelman (2006); and Coleman (2007) have analysed license agreements regarding the issue of author self-archiving. A study by Wiley (2004) on publisher restrictions on document delivery opined that library staff is being restricted by the publisher agreements. Coleman (2007) analysed the self-archiving and the copyright transfer agreements of 52 ISI-ranked library and information science journals. Gadd *et al.* (2003) compared the self-archiving and the copyright transfer agreements of 80 different scholarly journals. Tiessen (2012) has explained some of the licensing issues facing Canadian libraries because of the conflicting terms in the American copyright law and the Canadian copyright law. Brown (2012) suggests from the evidence drawn from his study that the option offered by publishers 'pay-per-view' is a cost-saving alternative for requests that require payment of copyright royalties. Chamberlain and MacAlpine (2008) have opined in his paper that for some situations and institutions, pay-per-view may be a viable means of providing access to content into the foreseeable future.

METHODOLOGY

In this paper, License agreements of 43 scientific publishers are examined. These license agreements pertaining to institutional subscriptions are downloaded from their respective websites. Each of them was carefully examined for their policy on ILL based on the following 10 questions generally covered in agreements on ILL:

1. How many articles may be sent through ILL at a time?
2. Can the electronic file be sent or not?
3. Should the print of the electronic version be taken and sent the hardcopy?
4. Should the files be deleted after sending to the requester or not?

5. Should it be for research or private use?
6. Whether denied for commercial use or not?
7. Did they recommend sending the files through Ariel software or equivalent?
8. Did they demand for sending the articles via fax or by ordinary post
9. Did they mention about following Section 108(g) (2) of the U.S. Copyright Law/CONTU guidelines for sharing articles?
10. Can the articles be sent only to the same country of the library?

OBSERVATIONS

The license agreements varied from being very brief (2 pages) to very elaborate (25 pages). Majority agreements have used the ‘Inter-Library Loan’ term for mentioning sharing of journal articles with other libraries or individuals. The details are given in Table 1. Seven publishers did have not mention anything about sharing of articles with unauthorised users (seven publishers did not mention any clause regarding ILL). This may be still more confusing for library professionals when providing ILL services.

The agreements of 32 publishers in which conditions are laid down regarding ILL are further examined for

Table 1: Terminologies Used and Mention about Interlibrary Loan in 43 Publisher License Agreements

Terms used for ILL in the agreements	No. of publishers
Interlibrary loan	26
Interlibrary lending	1
No specific terms used for ILL	5
‘Document delivery or information brokerage service’ term used but totally denied ILL services	1
No specific term used for ILL but totally denied ILL services	3
No mention about ILL services	7

particular part or feature on ILL restrictions as discussed in Methodology. A number of publishers who have mentioned about the 10 aspects are presented in Figure 1. Few of the publishers who mentioned only individual articles are to be shared with others and 20 publishers have specifically stated that the transfer can be electronic. There are 13 publishers who laid down conditions for deletion of electronic files after getting them printed at the receiving end. The other condition was getting a written notice from the lending library that the supplied article will be deleted immediately after printing. Some of the publishers especially based in the US have clearly stated complying with

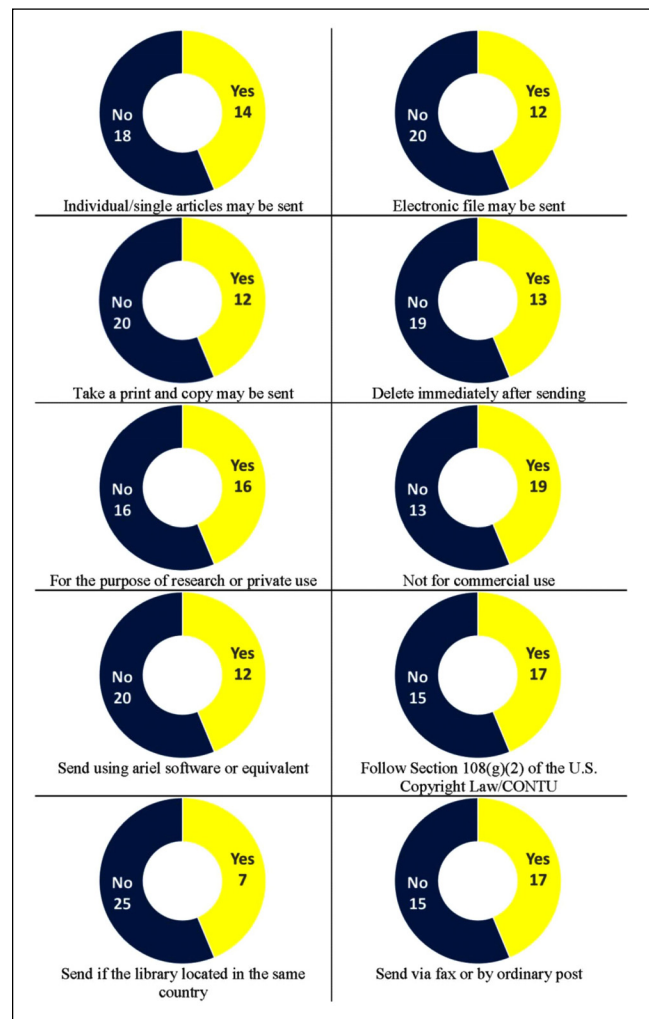


Figure 1: Number of Publishers Out of 32 Who Laid the Different Terms in Their Agreements on ILL

CONTU guidelines National Commission on New Uses of Copyrighted Works and section 108 (g) (2) of US copyright law. There are few publishers who agree only to share articles within their country. There are restrictions of five articles per year from a particular journal (for journals published within the last 5 years).

Constraints on ILL Service

- Libraries have to suffice with shoddy or bad copies sent by issuing library because the original electronic copy cannot be sent on ILL.
- The process of downloading, taking a print out and sending to the requesting library is time consuming and labour intensive. This puts a strain on the workforce.
- Libraries find it difficult to cater to urgent requirements because of the time consuming process to be followed.
- ILL is not a substitute for a subscription, but restriction of no more than five articles per journal in a year poses a problem when the whole issue may be relevant (special issue). The only option then is, getting Copyright clearances, purchase through a document delivery service, or pay-per-view. This again puts financial strain on the library budget.
- Difficult for Libraries to deal with conflicting clauses about ILL in the countries of the licensee and the licensor.

CONCLUSION

Restrictions to ILL services are related to who is authorised, what can be authorised, and under what conditions such as to whom (type of library) and how (delivery). However, robust the ILL system may be libraries have to curb their services, which in turn hinders the progress of their researchers because they have a limitation to what they can request. When a library signs a license agreement it infers that it has

agreed to all the terms and conditions, including any limitations on the use of materials in ILL. Some of the terms may be very restrictive. It is, therefore, essential that libraries negotiate the terms so that an equitable solution is sought for both, the libraries and the publishers. During the negotiations, libraries should keep in mind the interests of the patrons, giving special attention to issues pertaining to fair use which deals with use of information for educational, instructional for non-commercial and research purposes.

Access to license details may be an important factor when library staff go for ILL services as they should know what is allowed and not. Nevertheless, libraries should be familiar with the terms of their various licenses, so that they are not entangled in legal issues. Work with those vendors or publishers who have less restrictions may be another option for smooth ILL services.

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