

COPIES FROM ELECTRONIC ARTICLES VIA ILL – PROHIBITED? ILL IN THE LIGHT OF COPYRIGHT AND LICENSE AGREEMENTS

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Abstract:

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This paper will address the question of whether or not filling Interlibrary Loan requests for articles in electronic journals is prohibited or acceptable. We will look at this from the viewpoint of various countries and groups, and then consider some specific publishers' licenses.

The European Union set out a Directive in 2001. It is titled the 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society. Article 5 reads as follows:

Exceptions and limitations

2. Member States may provide for exceptions or limitations to the reproduction right provided for in Article 2 in the following cases:

(c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;

...

5. The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases, which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

In Germany, for Document Delivery (CRL, Section 53a), paper and fax copies are allowed. However, email, ftp, etc. are restricted. In addition, ILL is allowed only if the rightholders 'apparently' do not offer service of their own at 'reasonable' rates, and only non-commercial use is permitted.

WIPO, the World Intellectual Property Organization, has a Standing Committee on Copyright and Related Rights. In its Seventeenth Session, held in Geneva from November 3 to 7, 2008, it presented a Study on Copyright Limitations and Exceptions for Libraries and Archives. It was prepared by Kenneth Crews, director of the Copyright Advisory Office at Columbia University in New York

http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_2.pdf). It is quite comprehensive and has an extensive Appendix, covering many different formats. This is its Executive Summary (pages 7-8):

This study of copyright exceptions for libraries and archives provides an overview of the nature and diversity of statutory provisions in the copyright law of the 184 countries that are members of the World Intellectual Property Organization. For the first time, it gathers library exceptions from nearly all WIPO countries and provides an analytical survey of the law. The statutory exceptions for libraries primarily address such issues as reproduction of copyrighted works for purposes such as private research and study, preservation and replacement of materials, and document supply and interlibrary lending. Some countries have statutes on the “making available” of copyrighted works. This study also encompasses library exceptions to the prohibition against circumvention of technological protection measures.

Of the 184 countries in WIPO, the research for this project collected current and translated statutes from 149 countries. Of those countries, 128 of them have at least one statutory library exception, and most of the countries have multiple statutes addressing a variety of library issues. Twenty-one countries have no library exception in their copyright law. (Three additional countries have no copyright law and hence no library exceptions: Afghanistan, Laos, and the Maldives.) These basic statistics demonstrate the widespread prevalence of library exceptions, suggesting that they play an important role in the law and in facilitating library services. The fact that statutes tend to center on pursuits such as research and preservation also suggests that copyright law has an important role in the ability of citizens to have continuing access to the rich variety of materials held in libraries.

The statutes differ greatly from one country to the next. The statutes can be distinct in nearly all respects, from their scope of applicable libraries to the specific activities encompassed. Among statutes on one topic, such as reproduction of materials for research, the statutes set widely divergent standards with respect to the scope of materials that may be copied, the conditions and requirements for making the copies, the possible application of digital formats, and the circumstances under which the copies may be delivered to and subsequently used by individual researchers. The following chart summarizes some of the findings in this study and indicates the diversity of the statutes in force around the world.

These great variations among the statutes are one of the most important findings of this study, but patterns among the statutes are

also evident. Some of the patterns are historical, such as the influence of British law in many countries. Other patterns are regional, such as the trend in many African countries to have either no library exception or a fairly general provision permitting libraries to make copies of works without many detailed requirements. Some patterns are the result of regional cooperation, most notably the European Union. As a result of a European Union directive from 2001, the library exceptions among the twenty-seven members of the E.U. bear some similarities to one another. Nevertheless, some E.U. countries have added their own distinctive touches to the legislation, leading to important variations among statutes drafted even in a context where harmonization of the law is a priority.

The specific terms of the library exceptions reveal much about the relationship of copyright law to library services in different countries. These statutes do more than simply govern library activities. They are a reflection of cultural, historical, and economic objectives. Sometimes those objectives are in conflict with one another. The statutes are therefore often a compromise among competing interests, typically permitting libraries to make certain uses of copyrighted works, while setting limits and conditions to protect the interests of copyright owners, publishers, and other rightsholders.

This study presents the law as it exists today, but it should establish a foundation for future studies related to the origins, purposes, and effects of the copyright exceptions. This study should also generate discussion about the feasibility and future of library exceptions. Many libraries may be served well by statutes allowing single copies of materials for research or limited copying for preservation. Other libraries are struggling with issues that usually reach beyond current law, such as large-scale digitization of collections and automated harvesting and collecting of Internet-based resources. The character of library exceptions today may offer good indications of the issues and complications that lie ahead as lawmakers begin to explore anew the expanding range of copyright issues affecting libraries.

The WIPO report also includes a Summary in table format (pages 8-9).

Licence Agreements

Often, publishers provide information on their websites to help library staff decide what can, and cannot, be sent via Interlibrary Loan, and how materials may be transmitted. Here are a few examples:

Springer has a helpful link describing its ILL policies -

<http://www.springerlink.de/help/faq/librarian-information.mpx#3>

- Q: What is Springer's policy regarding Inter-Library Loan (ILL)?
- A. Authorized users are allowed to output copies of articles for postal or faxed fulfillment of ILL requests for academic, research, or other non-commercial libraries. Digital transmission of articles is not permitted. Authorized users may print and store reasonable numbers of individual articles for educational purposes and off-line review.

- Q: Can we use electronic versions of Springer journals for ILL requests?
- A. Yes, but only in print format. Electronic journal articles may be printed then sent via post, fax or faxed-based services (e.g. Ariel or Prospero) to fulfill ILL requests from academic, research or other non-commercial libraries.

Wiley has similar policies -

<http://eu.wiley.com/WileyCDA/Section/id-370150.html>. They state that:

... Authorized Users may download, view, copy and save to hard disk or diskette and store or print out single copies of individual articles or items for your own personal use, scholarly, educational or scientific research or internal business use. Authorized Users may transmit to a third-party colleague in hard copy or electronically, a single article or item from **Wiley InterScience** for personal use or scholarly, educational, or scientific research or professional use but not for re-sale
...

Elsevier's policies can be found at

<http://libraryconnect.elsevier.com/lcp/0403/lcp040303.html>. Under Interlibrary Loan (ILL) they state that

- ... Elsevier grants subscribing institutes the right to use articles from subscribed ScienceDirect content as source material for interlibrary loans subject to the following conditions:
- Each ILL request must come from an academic or other noncommercial, noncorporate research library located in the same country as the subscriber.
 - Each requested article must be printed by the subscriber and mailed, faxed or transmitted by Ariel (or a similar ILL system) to the requesting library.

AGU (http://www.agu.org/pubs/institution_forms/Corporate.pdf), under #4, Supply of Copies to Other Libraries, states:

- 4.1 The Licensee may, subject to clause 5 below, supply to an Authorized User of another library not being the Licensee's (whether by post or fax or secure transmission, using Ariel or its equivalent, whereby the electronic file is deleted immediately after printing), for the purposes 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 Materials.

In conclusion, worldwide there is great variation in policies regarding use of articles from electronic journals for Interlibrary Loan (and indeed there is great variation in ILL policies in general). However, most of the large commercial publishers allow transmission via secure means (postal service, fax, or Ariel or an equivalent) as long as the requests come from noncommercial libraries, and the copies will be for personal use or scholarly, educational, or scientific research use, but not for re-sale.

References

Copyright and related rights in the information society: harmonisation of certain aspects.

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Wiley <http://eu.wiley.com/WileyCDA/Section/id-370150.html>

World Intellectual Property Organization (WIPO). Study on Copyright Limitations and Exceptions for Libraries and Archives

http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_2.pdf