

# RL&LL/WiLS ILL Meeting: Licensing & Copyright in Interlibrary Loan (ILL)

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# Points

- Copyright vs License Law
- Print to electronic materials impact
- Types of agreements and resources libraries negotiate for
- Interlibrary Loan clauses in licenses
- ILL and ebooks
- Challenges with ILL and Licensing



# What is a contract?

“A contract is an agreement reached between human beings using incomplete forms of communication for complicated ideas. It is an agreement reached on topics about which the parties often have strong differing viewpoints. The contract language is often what the parties finally think they can agree to. In other words, contracts were not written to say something in the clearest possible way”.

# Copyright vs License Law

## Copyright

- Character of use governed by fair use principles
- Copyright is supported by “first sale” by U.S.C. Title 17, Section 109

## License

- License is a grant of rights by a publisher who owns or has rightful possession of a property; license is not a sale of property
- ILL is supported by U.S.C. Title 17, Section 108(d) and further defined by CONTU Guidelines
- Type of use may be restricted (academic, non-commercial)
- “Lending” of the materials might be controlled and only to “users” and may prohibit distributing copies outside of institution (ILL)

# Print to electronic materials impact

## Print

- Governed by fair use and copyright laws
- Same institutional rate
- Item does not disappear after cancellation
- Who can use material is determined by locally by library (closed stacks, etc.)

## Electronic

- Governed by licenses
- Cost can vary depending on FTE, number of campuses, etc.
- Need to negotiate post-cancellation rights/perpetual access
- License often defines who are authorized users

Source: Diane Carroll

# Types of Agreements and Resources libraries negotiate for

## Agreements

- Licenses/ Contracts
- Terms and Conditions
- Click-through Licenses

## Resources

- Journals/Databases
- Videos
- Datasets
- Images
- Ebooks



# ILL clauses and licensing

- 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 Section 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.

## ILL phrasing, cont'd.

- “Institutions shall be permitted to use **Reasonable Amounts** of the Licensed Materials to fulfill occasional requests from another... The electronic form of the Content may be used as a source for ILL. **Secure electronic transmission** as used by Ariel or Prospero, or its equivalents, to fulfill ILL requests is permitted. Participating Libraries agree that **copyright notices** will be sent on all ILL transmissions. Fulfillment of Loansome DocR service requests is permitted. **Non-secure electronic transmission of files is not permitted.**”



## ILL clauses, cont'd.

- “Notwithstanding the provisions of Clauses 3.1 and 3.3, it is understood and agreed that **neither the Licensee nor Authorized User may provide, by electronic means, to a user at another library...**”

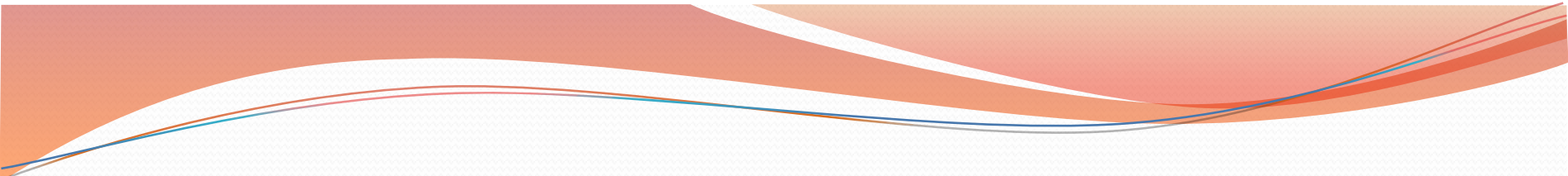
## ILL clauses, cont'd.

- “Where the Licensee is an academic library or part of a non-commercial organization, the Licensee may, subject to clause 6 below, supply to an **Authorized User** of another academic library within the **same country** as the Licensee or another non-commercial organization within the same country 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”.



# ILL and Ebooks

- Licenses often do not allow for ILL or are silent
- If licenses do permit ILL, there may not be an established workflow or are restrictive in permissions to support lending
- Technical challenges because of downloading and printing limitations
- Too time consuming to find out what ebook providers allow ILL when there is no ERM
- Minimal amount of requests for ebooks to develop workflow
- Concern about the demise of ILL if libraries fail to advocate for lending rights on ebooks



# Challenges with ILL and Licensing

- No single licensing standard for ILL
- Deliverability limitations
- When licenses are “silent” on ILL
- Communication of rights (locally created webpage or database or Electronic Resource Management-ERM)
- Greater need on part of publishers and negotiating librarians to understand ILL workflow and the tools used to support it
- Different approaches to licenses (reactive vs proactive)

# Sources

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# Questions?

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