

Copyright and ILL

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- How Does Copyright Law Intersect with ILL?
- How Does DOCLINE Address Copyright?
- How Do Librarians Stay on the Right Side of Copyright

Road Map

This presentation DOES NOT provide any legal advice and users of this content should consult with their own lawyer for legal advice.

Because it's in the Constitution

- The writers of the Constitution gave Congress the Power "To Promote the Progress of Science and useful Arts, by securing, for limited Times to Authors and Inventors, the exclusive Right to their Respective Writings and Discoveries."

Why Copyright?

For Copyright Owners

- Property Rights
 - Copyright creates ownership in creative works
- Profits
 - Copyright allows authors and inventors to reap the benefits of their findings

For Copyright Users

- Access
 - Copyright allows the public to access and exchange ideas (for fee)
- Eventual Free Exchange
 - Eventually, works become public property for reuse and redistribution

What Does Copyright Provide?

Copyright Expands with Technology

- While initially “maps, charts, and books” were protected, statutes and court decisions have broadened the definition of writing to incorporate new media
- Current copyright statutes protect “authorship fixed in any tangible medium of expression, now known or later developed”

But Isn't it Just Books?

The Rights of Owners

- The owner of copyright under Title 17 of the U.S Code has the exclusive rights to do and to authorize any of the following:
 - to reproduce the copyrighted work in copies or phonorecords;
 - to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

How Does Copyright Affect Access?

Public Domain

- For items first published more than ninety-five years ago, it is fairly safe to say they are in the public domain.
- If there is doubt, it is best to err on the side of caution rather than tempt fate.
- More often than not, however, ILL requests will not take advantage of the Public Domain doctrine.

**How Does Copyright Affect
Access?**

Fair Use

- Section 107 of Title 17 permits “the fair use of a copyrighted work, including such use by reproduction...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research”
- Student, faculty, and researchers’ requests for copies of journal articles are considered fair use as they are secured for educational or research purposes.

How Does Copyright Affect Access?

- Copyright law grants libraries certain privileges provided they abide by certain restrictions:
 - Rights of reproduction and distribution... 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, of no more than one article or other contribution to a copyrighted collection or periodical issue...if —
 - (1) the copy **becomes the property of the user**, and the library or archives has had **no notice that the copy would be used for any purpose other than private study, scholarship, or research**; and
 - (2) the library or archives **displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright** in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

How Does Copyright Affect Library Access?

- A "Warning Concerning Copyright Restrictions" sign should be prominently posted wherever you accept interlibrary loan requests and on interlibrary loan request forms:

Notice Warning Concerning Copyright Restrictions

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 for purposes 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.

What Should the Warning Look Like?

- Libraries are granted the additional right to make a copy of an entire work, or a substantial part of a work, for a user provided the library has determined that (1) a copy of the work cannot be obtained at a fair price, (2) the copy becomes the property of the user, (3) and the copy be used for private study, scholarship or research
 - Out of Print Titles
 - Supplements or special issues

How Does Copyright Affect Library Access

- Section 108 (g) begins to limit the uses of ILL:
 - The rights of reproduction and distribution extend to the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions

How Does Copyright Permit ILL?

- **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** 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

How Does Copyright Limit ILL?

- Or
- (2) engages in the systematic reproduction or distribution of single or multiple copies 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 for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

How Does Copyright Limit ILL?

- Basically:

- You can't contribute to violation of copyright by securing multiple copies for a single user or set of users
- OR
- Request so many articles from a work (book or journal) that your requests substitute for a subscription to or purchase of the work

WHAT???

- The US code does not specify an exact number of requests that would infringe copyright, so Congress formed the National Commission on New Technology Uses of Copyrighted Works (CONTU).
- This commission issued the “Guideline of Five” or “Suggestion of Five” to create limit on the number of requests which would qualify as substituting for the purchase or subscription to a work.

How Many is Too Many?

- **Guideline of Five**

- During one calendar year, no more than five copies may be received from any one work whose publication date is within five years of the date of the patron's request. (Hilyer, 58)
- So in 2007, a library may request up to five articles from a given publication's volumes back to 2002.

How Is the Guideline of Five Applied?

- According to CONTU guidelines, libraries should keep records for borrowing requests for three years beyond the calendar year in which the request was filled.
 - Discard these records after three years.
- Within any calendar year, examine those requests for which you followed CONTU guidelines. If you have requested more than five articles from the past five years of a given periodical title, you may have exceeded CONTU guidelines.

Monitoring the Guideline of Five

- To remain in compliance with CONTU guidelines, the sixth request must be dealt with in a different way:
 - Refusing or cancelling the request
 - Attempting to borrow the physical journal (as opposed to a copy of the individual article)
 - Requesting permission from the copyright holder
 - Refer the patron to a library that owns the specific volume
 - Purchase a copy through a document delivery service that pays royalty fees to the copyright owner (Instant Information Systems, CISTI, etc.)
 - Utilize a rights manager such as the Copyright Clearance Center
(<http://www.copyright.com/ccc/viewPage.do?pageCode=ac1-n>)

Exceeding Guideline of Five

- Articles from volumes older than five years:
 - CONTU does not specify guidelines for requesting from journal volumes older than five years
 - Without such guidelines, libraries may proceed with requests as allowed by Section 107

What About Articles Older than Five Years?

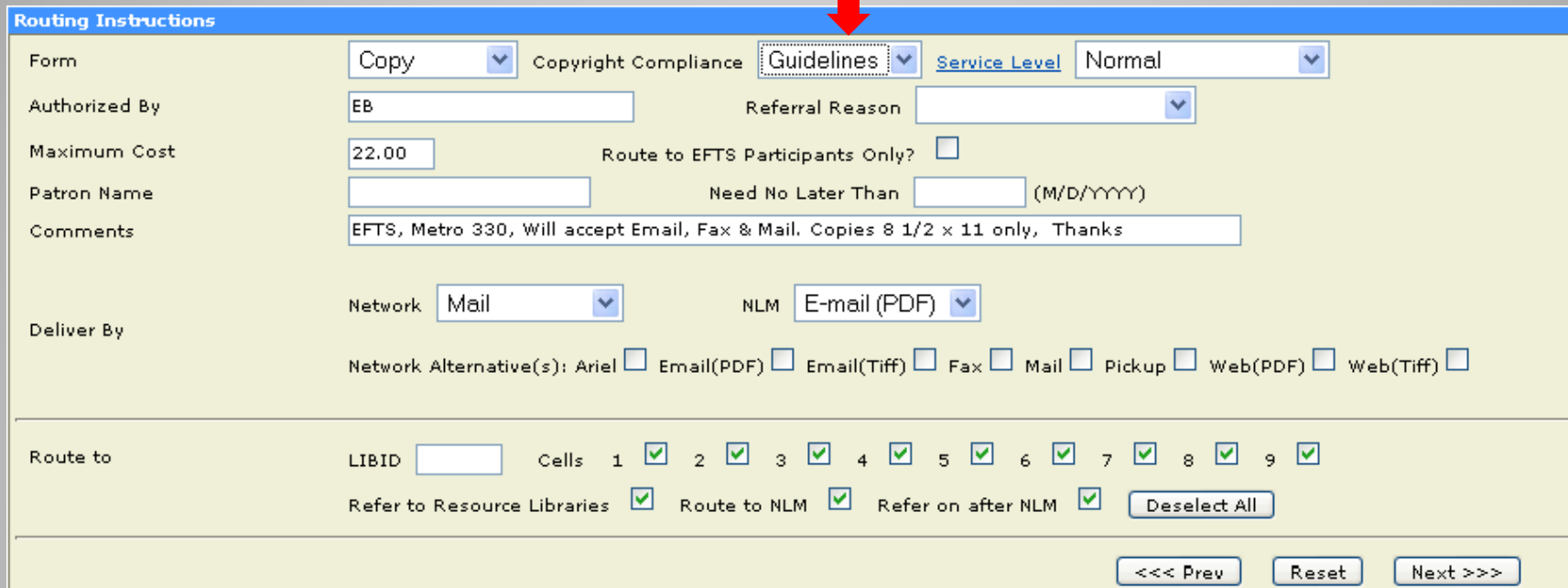
- Articles from issues not yet received by a library:
 - Requests for materials owned by the library but unavailable at the time of the request (bindery, not yet received, etc.) do not need to be counted against the Guideline of Five
 - Consider this to apply generally to print titles—the e-pub issue can be slightly more complicated

**What If I Subscribe to Something,
But Don't Have It on the Shelf?**

Questions?

At The Time of Request

- DOCLINE allows requestors to indicate copyright compliance with each request.



Routing Instructions

Form: Copy (dropdown) Copyright Compliance: Guidelines (dropdown) Service Level: Normal (dropdown)

Authorized By: EB Referral Reason: (dropdown)

Maximum Cost: 22.00 Route to EFTS Participants Only?

Patron Name: (text) Need No Later Than: (text) (M/D/YYYY)

Comments: EFTS, Metro 330, Will accept Email, Fax & Mail. Copies 8 1/2 x 11 only, Thanks

Deliver By: Network: Mail (dropdown) NLM: E-mail (PDF) (dropdown)

Network Alternative(s): Ariel Email(PDF) Email(Tiff) Fax Mail Pickup Web(PDF) Web(Tiff)

Route to: LIBID: (text) Cells: 1 2 3 4 5 6 7 8 9

Refer to Resource Libraries Route to NLM Refer on after NLM Deselect All

<<< Prev Reset Next >>>

How Does DOCLINE Factor in Copyright?

Guidelines is set as the default on routing instructions

- Per CONTU Guidelines, use 'Guidelines' when:
 - your library does not currently subscribe to a periodical title
 - **AND**
 - the material requested was published within five years of the date of the request

When To Use 'Guidelines'?

- Use Copyright Law when:
 - the material was published earlier than five years prior to the date of the request,
 - **OR**
 - if your library subscribes to the material and for some reason it is not available
 - **OR**
 - the article is in the public domain. (applies to material for which copyright has expired, material intentionally placed in the public domain, or material published by the U.S. Federal Government)

When To Use 'Law'?

- DOCLINE provides a report to help libraries monitor the guideline of five.
- Annual Report 1-8B Ranked List of Serial Titles Borrower
 - Provides number of requests for a given title and the number of requests for each year (or volume) of the title
 - Number in parentheses after the year indicates the number of requests for articles from that year of publication
 - Titles arranged by most requested to least requested
 - Two 1-8B reports are provided for the most current two years.
- This report does not replace your responsibility to keep records for three years beyond the calendar year
- Because libraries manually enter their copyright compliance with each request, the report is not authoritative in determining CONTU or Fair Use borrowing patterns

Monitoring the Guideline of Five

1-8B

NATIONAL LIBRARY OF MEDICINE
 DOCLINE STATISTICS
 RANKED LIST OF SERIAL TITLES REQUESTED
 January - December 2005
 NYUNUM - New York University School of Medicine

Number of times Requested	Number Filled	Year (Number per Year)	Title (NLM UID)
64	64	1998 (1)	Human reproduction (Oxford, England) (8701199)
		1997 (1)	
		1996 (13)	
		1995 (14)	
		1994 (8)	
		1993 (5)	
		1992 (3)	
		1991 (5)	
		1990 (2)	
		1989 (2)	
		1988 (4)	
		1987 (4)	
		1986 (2)	
46	46	2005 (1)	The international journal of lower extremity wounds. (101128359)
		2004 (9)	
		2003 (17)	
		2002 (19)	
		2001 (0)	
45	44	2005 (13)	Reproductive biomedicine online. (101122473)
		2004 (16)	
		2003 (11)	
		2002 (3)	
		2001 (2)	

Report 1-8 B

Questions?

- Abide by the Guideline of Five in requesting documents via ILL
- Request articles via DOCLINE by either 'Guidelines' or 'Law' as appropriate
- Review Report 1-8 B to assess borrowing habits
- Keep records of borrowing requests for three years beyond the calendar year in which the request was filled
- Review borrowing patterns regularly and make appropriate payments to copyright owners

**Staying on the Right Side of
Copyright Law**

- A "Warning Concerning Copyright Restrictions" sign should be prominently posted wherever you accept interlibrary loan requests and on interlibrary loan request forms:

Notice Warning Concerning Copyright Restrictions

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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 for purposes 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.

Keep Patrons Aware of Copyright

- Lending libraries should
 - Check ILL requests for an indication of copyright compliance
 - Include notice of copyright on the materials they lend
 - The original notice of copyright if it is included on the piece being copied
 - Alternately a standard notice, "Notice: This Material May be Protected by Copyright Law (Title 17 U.S.C)"
 - Ensure that materials loaned from electronic collections are eligible for ILL

Be a Responsible Lender

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Understand the Limits of Fair Use

- The copyright statute defines infringement:
 - “Anyone who violates any of the exclusive rights of a copyright owner...is an infringer.”
- The circumstantial evidence test for copyright has three parts:
 - Did the accused infringer have access to the work that is said to have been infringed?
 - Is the defendant actually guilty of copying part of the plaintiff’s protectable expression from the plaintiff’s work?
 - Is the accused work substantially similar to the work the plaintiff says was copied?

(Wilson, 22)

Understand the Measurements of Infringement

- Wilson, Lee. *Fair Use, Free Use and Use By Permission: How to Handle Copyrights in All Media*. New York: Allworth Press, 2005.
- Hilyer, Lee Andrew. *Interlibrary Loan and Document Delivery: Best Practices for Operating and Managing Interlibrary Loan Services in All Libraries*. Binghamton (NY): Haworth Information Press, 2006.
- MLA Copyright and Fair Use Position Statement (<http://www.mlanet.org/government/positions/copyright.html>)
- U.S. Copyright Office. *Copyright Basics*. (<http://www.copyright.gov/circs/circ01.pdf>)
- U.S. Copyright Office. *Reproduction of Copyrighted Works by Educators and Librarians*. (<http://www.copyright.gov/circs/circ21.pdf>)
- Copyright Clearance Center. *Copyright Guidelines and Best Practices*. (<http://www.copyright.com/media/pdfs/ILL-Brochure.pdf>)
- Association of American Universities. *Campus Copyright Rights and Responsibilities*. (<http://www.aau.edu/WorkArea/showcontent.aspx?id=472>)
- Copyright Clearance Center. *The Campus Guide to Copyright Compliance*. (<http://www.copyright.com/Services/copyrightoncampus/intro/index.html>)

Resources

- E-Pub Ahead of Print

- Really is a licensing issue for both the borrowing and lending library.
- If you own the print version or an electronic version, but do not have access to the e-pub ahead of print article at the time of request, this request should not count as fair use
- If you have access to an e-pub head of print article and want to fill from that resource, make certain that the license allows it. If your license does not allow, reject as "LIC."

My List of Issues

- Excessive Requests From a Borrowing Library

- Consider the nature of the requests—are they all from the same issue, repeated articles, all for the same user, etc.
- Consider if by your filling the requests you are substituting for a reasonable subscription to or purchase of the resource by the library.
- Remember that it is within your right to contact the library and let them know of your concern.
- Avoid rejecting using Copyright (COP) as reason as this will retire the request.

My List of Issues

• Journal Clubs and Reading Lists

- Scenario 1: The library owns the physical journal or a subscription to a database with an article that is being used in a journal club. Can the library make multiple copies of the article for all journal club participants? Can they upload a copy of the article to a central server and point all affiliated users to this place on the server?
- The person I consulted with thought both scenarios would be acceptable. As the library has already purchased the journal and/or subscribed to the resource for use at their own institution, they should be within their right to copy the article and distribute it to the club members. Regarding posting to a central server, this may be complicated for licensed databases which may place certain restrictions on such posting. You may want to check with the terms of your license or check with your sales representative. Again, this information is for titles which the library has already purchased or licensed and for service to users at the institution.
- To complicate things, increasingly in the UK, copyright law is trending on the side of each individual being responsible for securing their own copy of the article, whether the library owns the resource or not.
- A more acceptable practice for licensed electronic resources might be to e-mail the journal or article link to all members and encourage them to access the article themselves.

My List of Issues

- **Journal Clubs and Reading Lists**

- Scenario 2: The library does not own or license the article or journal and therefore must resort to ILL. Does each journal club member need to submit a separate ILL request? Does the librarian need to count each individual request against normal CONTU guidelines? Or can the librarian make one request and make multiple copies for each member and/or provide the single copy to the club coordinator to reproduce?
- I was advised that each individual club member should submit a separate ILL request. That being said, this scenario would probably be better resolved by seeking the rights holder (publisher or Copyright Clearance Center) and requesting a for-fee use of the individual article by the number of club members rather than submitting multiple ILL requests for the same material.
- Finally, if you were to choose to submit the multiple requests, do not count these requests as part of the CONTU Guideline of Five. CONTU is not really law, but rather a guideline. As a guideline, it was developed to provide guidance for multiple unique requests, not for multiple requests for the same article. Utilize a rights permission tool like the Copyright Clearance Center to make payments for the multiple uses of an article from the most recent five years.

My List of Issues

- **Journal Clubs and Reading Lists**

- The following page from the Ohio College of Podiatric Medicine Library offers very clear and direct policies for copyright (<http://www.ocpm.edu/departments/library/copyright.asp>).
- It does in many ways seem to contradict the advice I was given (especially regarding distribution from print resources) but it is a model for clear, effective policy for users of the library.
- Guidelines addressing Journal Clubs include:
 - Scanning a print article and making it available or sending it out constitutes "multiple" copies. One print copy can be placed in the Library and citation can be sent to inform people of chosen article. They may follow up individually as they choose.
 - If article is from a journal that the college subscribes to electronic access, the journal license must be checked to see if an electronic copy can be sent out or if just the web site should be posted.
 - If article is from Library-subscribed database, students should get article themselves by accessing Library website

My List of Issues