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# License to Deny? Publisher restrictions on document delivery from e-licensed journals

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## Keywords

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## Abstract

The licensing of electronic journals is affecting interlibrary loan and document delivery services. This article reports on a survey done in 2003 at 13 large research libraries on how licensing affects both the lending and borrowing operations at those libraries. 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. ILL data is presented to illustrate that the volume of use per title is not what publishers may imagine. The shift to leasing electronic titles and therefore the requirements that underlie licensing are still relatively new; the article recommends that libraries take every opportunity to converse and negotiate with publishers as access evolves.

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## Electronic access

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## Introduction

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 for the electronic titles 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 relating to digital content licensing in libraries and specifically how these affect 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 13 large research libraries in the Midwest of the USA 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. The results are presented here as an 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

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The author gratefully acknowledges the help of ILL colleagues at the CIC Libraries in the USA in reviewing and then participating in the survey. The CIC is the Committee on Institutional Cooperation, and full information on the CIC Center for Library Initiatives is available at: <http://www.cic.uiuc.edu/programs/CenterForLibraryInitiatives/>



(Table I). The survey indicates that while ILL staff have in most cases, some access 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 cannot 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 to keep track of any restrictions, though 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. In practice a number of libraries are using only one record for either format and borrowers will not necessarily be able to distinguish who owns what format in order to better anticipate restriction problems (Davis, 2002). 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 problem is confirmed as an issue in the library literature (Croft and Murphy, 2002).

### 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, confront many clauses restricting ILL (Table II). A few details about the nature of the restrictions were identified. Most respondents noted that there were cases when: ILL was prohibited entirely; when the delivery mechanism

**Table I** License knowledge and availability

	Yes	No
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

was restricted, such as in “electronic delivery”; when the type of library requesting the article determined the restriction. Typically the commercial or for profit libraries requests were not authorized. 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.

Despite the extra work, these research libraries were making every attempt to fill requests (Table III). 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 first, so the lender could not take advantage of the efficiencies of an online fill. Others libraries noted that they filled from the online titles and thereby balanced the time spent to check the terms against the time saved from pulling the bound volumes. Many of the libraries noted that checking was 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 they do cancel sometimes because of 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 six-month period, but bear watching for any increase. The last question gave data on the amount filled using the online title. Over half of the libraries reported that this represented a small fraction of the total transactions handled (0–5 per cent). It appears that there is potential to use the online titles for a fill but the license checking that is required inhibits fulfillment more than the license restrictions do themselves.

### ILL impact – borrowing

The survey was attempting to collect data on the impact on borrowing but it became clear that this question required more study (Table IV). 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

Table II ILL and license details

	Yes	No
Is ILL for Ejournal articles restricted in the licenses contracted at your institution? <sup>a</sup>	13	0
Total prohibition of ILL	9	
No electronic delivery <sup>b</sup>	9	
Forbidden to some borrowers i.e. commercial or foreign forbidden	6	

Notes: <sup>a</sup>Restrictions: (note in- complete response, four have no knowledge of licenses)  
<sup>b</sup>But six libraries noted fax was OK

Table III Impact of restrictions – lending

	Yes	No		
Will try to fill rather than cancel outright	9	3		
Typical adjustment:fill from print	12	1		
Forced to cancel requests sometimes?	9	2		
Cancel frequency (low 150 High 600)	less than 200	200-400	400-600	unknown
Library responses:	4	3	2	4
Percentage of total Lending that could be filled with Ejournal articles:				
0-5 per cent	8			
6-10 per cent	3			
11-20 per cent	2			

version for a fill. Indeed there is not a specific reason defined for an unfill for a license restriction in the ISO protocol other than “policy problem”. Some libraries try to convey that by saying the title is non-circulating, which is better than the non-specific “other”. Many did report that the titles that existed only 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 on doing the right thing in obtaining material for their researchers. In alerting our colleagues about the dangers of the ILL licenses and in highlighting

Table IV Borrowing

	Yes	No
Is it harder to borrow some titles?	10	2
Do you use a supplier then and pay permission fees? (Permission fee included)	7 <sup>a</sup>	3

Note: <sup>a</sup>The yeses indicated these were small in number

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.

## Print cancellation

Many libraries are facing extreme budget cuts because 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 (Foster, 2002) and renegotiated with one result being that less print is purchased. This was confirmed in the survey with all but one research library cancelling the print version of their online titles (Table V). It was heartening to see that ILL staff were involved in those discussions but perhaps not surprising to hear that the existence of ILL prohibitions for the online was not a primary consideration. Cost and budget needs were the first priority though at least there is an awareness of

Table V Future impact

	Yes	No
Is your library canceling the print version of a title and retaining the online?	12	1
Is protection of ILL activity considered?	7	6

Note: Those that 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

the issue. But as libraries do cancel and as ILL restriction clauses proliferate, the consequences will be felt in ILL especially if lenders are not aware of what is possible in filling from their online titles.

To sum up the survey results:

- (1) The data indicate research libraries have signed licenses that prohibit ILL activity.
- (2) ILL Offices are not able to access that license information easily.
- (3) Lenders may respond as follows depending on local conditions:
- (4) bullet within list: not fill from any online title, defaulting always to the print;
- (5) fill from the online if they have access to the license and can proceed;
- (6) cancel any request if the serial is not available in print;
- (7) cancel any request where only the online is available and ILL is prohibited.

ILL is affected as a result in the delays experienced, with a higher incidence of unfills when requests are cancelled, with the extra labor involved when more steps are added, and in the unavailability of articles from a few titles. When ILL is allowed but only under strict conditions, some lenders may choose not to fill rather than add time to their fill process. However most libraries will elect to adjust workflow and then fill a request but this is working only because print is an option. With cancellations underway at the libraries surveyed, this may not be so for much longer. It is possible that those low cancellation numbers may grow which will result in more ILL problems. A consequence is that libraries absorb the extra labor and time delays to receive an article. Libraries can act to minimize this 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 does not agree and then does not lease. The contract may carry provisions that restrict use contrary to that supported by copyright legislation. The fear is that the contract may override provisions in the copyright legislation that support the services that 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 as happens with the infamous “shrink-wrap” or “click through” licenses. There are also many 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 received an invoice. 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 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 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” (Harris, 1997-2003a).

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 at Urbana Champaign reveals many variations as follows:

### 1. ILL is authorized broadly

The 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

### **2. 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

### **3. ILL is denied**

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

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 for example to North American ILL practitioners that Canadian or Mexican libraries were acceptable. Commercial libraries are frequently mentioned as not being acceptable 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 acceptable to print and send, is it acceptable to print and scan? Is 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 hardcopy to a library.

Are all licenses the same for all libraries? This is hard to answer as often licenses have non-disclosure clauses. With consortia agreements, the group of course can see the whole

license. Consortia 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 Web site 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 with whom libraries may wish to work in order 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 (Association of Research Libraries, 2002).

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, Section 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 its guidelines.

In the USA, 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, Section 108, as well as 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:

- (1) the purpose of the use;
- (2) nature of the copyrighted material;
- (3) substantiality of use; and
- (4) 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. Section 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 (Nixon, 2003). 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 the author's*).

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, or 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 or 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 of phonorecords or 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 [1].

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 entitled "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 (University of Texas, 2001a).

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

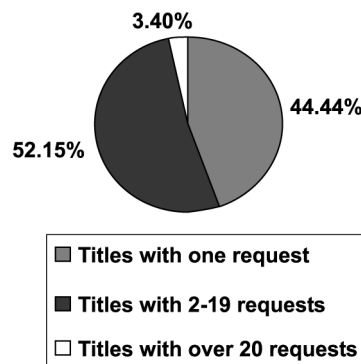
The National Commission on New Technological Uses of Copyrighted Works (CONTU) was commissioned while the 1976 law was being developed, to provide guidelines for libraries on what may be allowable before there would be reason to believe that copying was in such "aggregate quantities so as to substitute 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 on the "suggestion of five" where use of any five articles from any one title within the last five years of the request date was acceptable in one calendar year of ILL activity (Library of Congress, 1979). 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 (the US organization that brokers 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 USA have been dutiful in keeping track, making recommendations for purchase, and paying appropriate fees for years. One thing the CONTU did not cover was the issue on titles older than five years. It is also important to note that the CONTU suggestion of five 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 in order to obtain a piece of information that does not arrive when wanted is unsatisfactory. A subscription is best but may not always be appropriate. It is interesting to consider what the suggestion of five allows libraries and publishers. It provides time for a new title to generate readership, provides libraries with 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 tracking and assessing use before making what is now a very large commitment – investing in a new serial title. Libraries are being held accountable 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 tried 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 and was therefore inaccessible.

Does ILL use go over the CONTU restriction 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 per cent of the ILL transactions were for a single article from one title (Figure 1). The average use for any title requested by the 26 was not over the CONTU suggested limit of five (Wiley and Chrzastowski, 2002). ILL numbers in general are not a large percentage of

Figure 1 1999/2000 title frequency for requests filled in-state



any libraries circulation. One study using the Association of Research Libraries (ARL) statistics concluded that ILL is only 2 per cent of the total [2]. ILL volume decreased last year in ARL libraries as well (Association of Research Libraries, 2003). The totals look woefully small when contrasted with the use of 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 cannot 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 is prepared to work toward that end. The models and principles detailed by researchers, associations and consortium will benefit those leasing econtent by clarifying the license sections, outlining what is required, showing the benefits of check lists, and in suggesting model language to negotiate in finalizing use of the content. Croft and Murphy (2002) offer an excellent summary in their article.

In ILL, libraries work with hundreds of other libraries and rely on guidelines to direct their processes covered in the Interlibrary Loan Code for the USA [3]. 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" (Harris, 1997-2003b). Without 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; if this language can be inserted into a license, the need to

qualify the ILL conditions can be eliminated. The following is excerpted from the LibLicense site:

Interlibrary Loan. Licensee may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. The 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 (Liblicense, 1996).

## Negotiation

Negotiations can often be very effective. Consortia can show the way. While they may be negotiating rights across a small group, their collective leverage paves the way for others to do the same while guaranteeing equal access for the group (Allen, 1996). The University of Texas site on copyright includes this statement "very rarely do vendors refuse to negotiate their terms" (University of Texas, 2001b). 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 [4].

It takes time to change. Publishers have been concerned that their market would be eroded by ILL substituting for a subscription. When this fear can be alleviated, with the help of libraries and library associations, then publisher restrictions may gradually loosen to allow for more ILL use. There are indications that this is happening. Many publishers are allowing paper copies to be distributed and this may soon be enhanced. The CIC has had success recently in removing prohibitions on Ariel delivery from licensing terms. 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 their ILL concerns. Data on how restrictions affect service can be helpful in quantifying the problem.

## Conclusions

Licenses have affected the ease with which libraries can 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 users on 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 must remain focused on maintaining access for their users. The title of this article is "License to Deny" . . . which may well be true in some cases now but perhaps this can change to "License to Fill" as long as we keep working together.

Remember that copyright in the USA was based on the principle that all need access to information for the good of all. As Charles Mann (1998) 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".

## Notes

- 1 17 U.S.C. § 108 g
- 2 CONFU Interlibrary Loan Working Group Summary of Discussions Held March 27, 1996 in The UT System Crash Course on Copyright, Available <http://www.utsystem.edu/ogc/intellectualproperty/illconfu.htm>
- 3 Interlibrary Loan Code for the United States, ALA Reference and User Services Association (1994, revised 2001) Available [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)
- 4 Content Licensing-definition and issues (1999) <http://www.factiva.com/infopro/resources/Unit9CopyrightLicensing.doc>

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