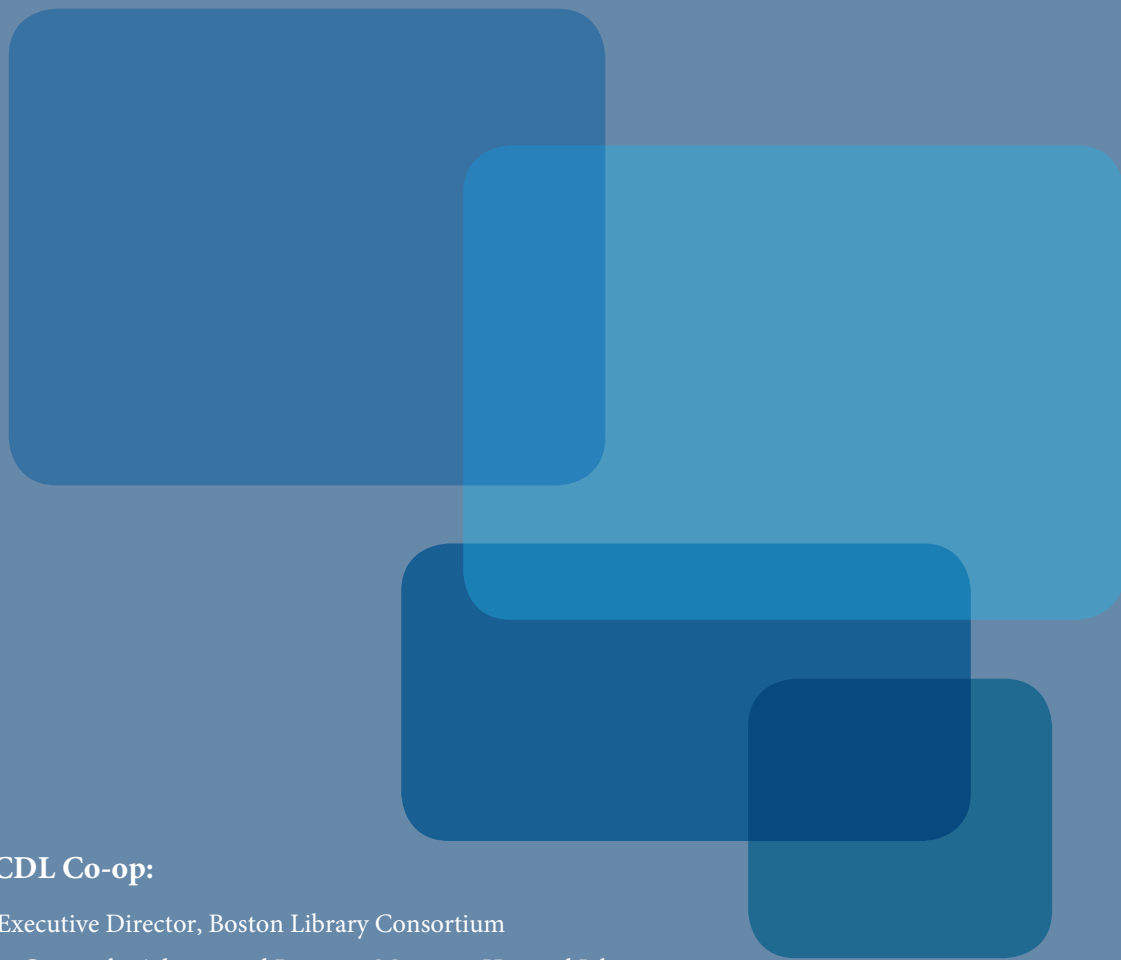


Statement on Using Controlled Digital Lending as a Mechanism for Interlibrary Loan

Last Updated: October 2021



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Introduction

Many libraries and consortia practicing interlibrary loan (ILL) are unsure how and when controlled digital lending (CDL) can be applied in the context of resource sharing. Libraries want to ensure their practices are aligned with both their mission and the law. This Statement was developed to 1) increase awareness of CDL controlled digital lending in this context, 2) affirm libraries' rights to use CDL, and 3) to improve services provided by the library resource sharing community by ensuring libraries and consortia are operating with the same set of assumptions and principles.

To help address this uncertainty, members of the CDL Co-Op identified a need to build on the original Controlled Digital Lending white paper with a complementary paper addressing CDL in the context of ILL.

The Value of Interlibrary Loan

Sharing materials between libraries, known as ILL, is a core library service that is a long-standing, legally-protected practice within Section 108 of the U.S. Copyright Act. ILL is so foundational to libraries that the American Library Association (ALA) has maintained the Interlibrary Loan Code for the United States (ILL Code) (originally termed the Code of Practice for Interlibrary Loans) for over a hundred years (Baich et. al., 2016). ILL specifically, "is the process by which a library requests material from, or supplies material to, another library," and its purpose is to "obtain, upon request of a library user, material not available in the user's local library" (ILL Code, 2016). No library collects everything, and ILL is a way for libraries to support each other as trusted institutions in providing needed resources to their communities and augmenting collections (Shrauger & Sharf, 2017). ILL is what allows a researcher in a small rural library to access materials their library could never afford to collect; it is what connects academic users in super specialized fields to the books and articles curated at great expense by large research institutions; and it can be a critical way to fill gaps for users caused by major disasters, such as floods and hurricanes.

Materials are loaned through ILL in both physical and digital format, determined by the needs of the user, the original format of the materials, and the contractual or copyright restrictions that apply to a given resource. Within the resource sharing landscape there are clear opportunities and needs for the heightened service, efficiencies, and sustainability that digital lending offers in this arena. These needs were brought even more into focus during the COVID-19 pandemic and the rapid switch to remote learning and digital only library services. Although the research is just beginning on the impact of the pandemic in 2020 and 2021, many libraries' physical locations were closed to communities, students, and researchers, making print collections inaccessible for circulation or ILL purposes (Creazzo et. al., 2021). Digital and digitized materials were often the only way users could obtain library resources through interlibrary loan.

Defining Controlled Digital Lending

Controlled Digital Lending (CDL) is a modern method for libraries to loan digitized items from their print collection to their patrons in a "lend like print" fashion (Controlled Digital Lending, 2018). Using this method, libraries digitize an owned physical item from their collection, then lend out this secured digital version to one user at a time while the original, printed copy, is simultaneously made unavailable to other users. Technical controls in CDL interactions ensure a consistent "owned-to-loaned" ratio, meaning the library circulates the exact number of copies of a specific title it owns, regardless of format, putting controls in place to prevent users from redistributing or copying the digitized version. We advocate that CDL, like ILL, is another tool that enables libraries to fulfill their vital role in society by lending legally acquired copies of their collections. Similarly, CDL is permissible by virtue of U.S. copyright law, specifically the fair use doctrine. Even with these definitions, many libraries and consortia practicing ILL are unsure how and when CDL can be applied in the context of resource sharing. Libraries want to ensure their practices are aligned with both their mission and the law.

This is not a new space for libraries. As institutions, they have long balanced the rights of creators with the needs of users by investing in the works of authors while simultaneously providing long-term access to these same works. This is why libraries spend enormous amounts on resources to develop collections through subscription and purchase. According to the IMLS Public Library Survey data, U.S. public libraries spent \$1,427,447,000 on collections in 2019, and \$747,982,228 of that on print material expenditures. Likewise in 2019, IPEDS reports that academic libraries spent \$3,186,632,737 on collections, \$558,915,240 of which was spent on non-subscription resources. Employing the provisions within copyright law that allow libraries to fulfill their purpose and lend these valuable resources is critical to the work of libraries. CDL and ILL are both mechanisms that enable this work.

Building a Shared Understanding of CDL for Resource Sharing

To help address uncertainties about how CDL can be applied in the context of resource sharing, members of the newly formed CDL Co-Op--a group of U.S.-based library professionals working on issues in resource sharing, ILL, and CDL--began reviewing these issues. Beginning in April 2021, the CDL Co-Op coordinated a series of disparate library-centered efforts around CDL to develop cohesion within the library community on specific topics, and to facilitate the flow of information and concentrate on select issues across working groups. The CDL Co-Op's first effort was to examine CDL as a mechanism for supporting interlibrary lending, and they quickly identified a need to build upon the original White Paper on Controlled Digital Lending of Library Books to provide ILL practitioners, library leaders, and consortia with a set of clear statements and supporting rationale for the use of controlled digital lending in the context of interlibrary lending. Importantly, this grassroots

lending. Importantly, this grassroots community-led effort is not aligned or led with any singular organization.

CDL is a mechanism for lending to any eligible patron, whether the patron is served locally or via ILL, just as a library circulates any print book in its collection to its own patrons or via ILL. While there are many communities that may benefit from greater understanding of the concepts and applications of CDL, the Statement on Using Controlled Digital Lending as a Mechanism for Interlibrary Loan was developed to 1) increase awareness of CDL in this context, 2) affirm libraries' rights to use CDL, and 3) to improve services provided by the library resource sharing community by ensuring libraries and consortia are operating with the same set of assumptions and principles.

Thank you to the many that provided their time, insight, and feedback to this Statement. What follows is a shared interpretation, developed with deep community input, and is not meant to replace legal advice for local contexts. The issues summarized here will be expanded on in a forthcoming white paper produced by members of this group that will delve more deeply into the issues and rationale for the use of this contemporary ILL method. The following Statement (LINK below) is the first step towards affirming libraries' use of CDL for ILL.

To gain the context to fully consider the statements provided, we suggest reading this introduction together with the Statement below. Although the Statement represents a U.S.-focused perspective, we encourage other information professionals in international settings to modify and build on this work to better suit their local perspectives. We also wish to note that the statements below were developed solely for building an understanding of controlled digital lending in the context of owned print books which a library may wish to lend in digital fashion. We do not apply the same principles to media or other forms of digitally licensed materials, which introduce complexities not meant to be addressed here, and were therefore considered out of scope for this purpose.

Ten Statements on Using CDL for ILL

1. Interlibrary loan (ILL) is a foundational, Congressionally protected library practice, long empowered by copyright law, in which libraries lend materials to one another for a variety of purposes.
2. Libraries support the copyright ecology and the rights of copyright holders by acquiring copyrighted works. Interlibrary loan is one way libraries provision materials for their patrons and is a key consideration as libraries develop their collections in concert with each other.
3. Interlibrary loan of library materials (both digitized and born-digital) is directly in keeping with the core purpose of libraries, and builds upon existing infrastructure and best practices for temporarily lending materials.
4. Controlled Digital Lending is a modern method of lending that replicates a library's right to loan legally acquired physical materials in a digital format under controlled conditions.
5. Controlled Digital Lending directly supports the ALA core values of librarianship by providing the "highest level of service to all library users" and equitable access to library materials "regardless of technology, format, or methods of delivery" using sustainable and efficient "practices that are environmentally sound, economically feasible and socially equitable."
6. Controlled Digital Lending also directly supports the ALA Interlibrary Loan Code for the United States, specifically:
 - a. 5.8 Ship material by the fastest method reasonably available to the location specified by the requesting library and
 - b. 5.11 Deliver copies electronically whenever possible.
7. Interlibrary loan is lending among libraries; libraries are trusted institutions that balance the rights of the creators with the rights of the public to access.
8. Interlibrary lending--physically or digitally--is a legally protected activity within the marketplace; using Controlled Digital Lending as a mechanism for ILL has the same effect on the marketplace as other methods of ILL.
9. Librarians and library staff are experts, well-versed in digitization for lending, review of materials for copyright concerns, and technology used on controlled resource sharing platforms.
10. Determining parameters for Controlled Digital Lending for interlibrary loan is within the rights, powers, obligations, and judgments which librarians make every day.

Signatories

Institutional:

Association of Southeastern Research Libraries (ASERL)
Boston Library Consortium (BLC)
Duke University Libraries
Eastern Academic Scholars' Trust (EAST)
Fordham University
Library Futures Institute

Orbis Cascade Alliance
PALCI Board of Directors
Private Academic Library Network of Indiana (PALNI)
Triangle Research Libraries Network (TRLN)
University of Pittsburgh Libraries
Virtual Library of Virginia (VIVA)

References

- American Library Association. (2016a, November 1). Interlibrary Loan Code for the United States. Reference & User Services Association (RUSA). <https://www.ala.org/rusa/guidelines/interlibrary>
- American Library Association. (2016b, January). Interlibrary Loan Code for the United States Explanatory Supplement. Reference and User Services Association. https://www.ala.org/rusa/sites/ala.org/rusa/files/content/ILL%20Code%20with%20Supplement_11-20-17_updated-link.pdf
- Baich, T., Dethloff, N., & Miller, B. (2015). Unlocking the Interlibrary Loan Code for the United States. *Journal of Interlibrary Loan, Document Delivery & Electronic Reserve*, 25(3–5), 75–88. <https://doi.org/10.1080/1072303x.2016.1254702>
- Courtney, K. K. & Hansen, D. R. (2018, September 24). A White Paper on Controlled Digital Lending of Library Books. <https://dash.harvard.edu/handle/1/42664235>
- Creazzo, J., Bakker, C., Koos, J. A., Jo, P., & Alpi, K. M. (2020). Report from the Field: Researching Interlibrary Loan/Document Delivery Usage by Health Sciences Libraries during the COVID-19 Pandemic. *Journal of Interlibrary Loan, Document Delivery & Electronic Reserve*, 29(3–5), 171–179. <https://doi.org/10.1080/1072303x.2021.1936739>
- U.S. Department of Education's National Center for Education Statistics, (n.d.). Use the data (FY19). The Integrated Postsecondary Education Data System. Retrieved September 16, 2021, from <https://nces.ed.gov/ipeds/use-the-data>
- Institute of Museum and Library Services (IMLS). (n.d.). Public Libraries Survey. Public Libraries Survey. Retrieved August 27, 2021, from <https://www.imls.gov/research-evaluation/data-collection/public-libraries-survey>
- Library Futures Institute. (2018). Controlled Digital Lending by Libraries. Controlled Digital Lending. Retrieved August 27, 2021, from <https://controlleddigitallending.org/>
- Shrauger, K., & Scharf, M. (2017). Exploring the Value of Interlibrary Loan. ACRL Conference Proceedings. <https://www.ala.org/acrl/sites/ala.org/acrl/files/content/conferences/confsandpreconfs/2017/ExploringValueofInterlibraryLoan.pdf>