

# Wisconsin ILL Guidelines 2016

*Wisconsin Department of Public Instruction*

*Tony Evers, State Superintendent*

## **Introduction**

Statewide interlibrary loan is a cooperative mechanism for connecting Wisconsin citizens with needed information and resources that are not available through local libraries or consortia. The goal is to equalize and optimize access to library collections across the state. It is a network of all types of libraries designed to identify, request, and obtain materials for users in a manner responsive to fiscal, logistical, and local concerns.

Interlibrary loan supplements, not replaces, local and consortial collection development and is used to retrieve material outside the scope of the local library's collection.

Resource sharing is one tool available to help meet user needs. Interlibrary loan also provides a means by which scarce resources can be stretched by sharing materials rather than having each library duplicate the efforts of others.

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## **Purpose of this Publication**

It is recognized that interlibrary loan service is one of many services provided by libraries and that organizational, political, and geographical factors affect the quality and breadth of library service that each library can provide. Interlibrary loan is a major means of balancing and equalizing service to Wisconsin residents.

**The Wisconsin Council on Library and Network Development (COLAND) approved the Guidelines on September 9, 2016.** As revised, they represent the most concrete effort available to provide a common understanding and give libraries guidance in how to participate in the state's interlibrary loan system. The Council urges staff in libraries of all types to review the guidelines and use them when conducting interlibrary loan activities in order that all libraries can share resources as equally as possible.

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## **Interlibrary Loan Work Group Members**

The guidelines were revised by the following work group members under the leadership of the Wisconsin Department of Public Instruction, Division for Libraries and Technology, Resources for Libraries and Lifelong Learning.

*Christine Barth, Resources for Libraries & Lifelong Learning*

*Charles Clemence, Winding Rivers Library System*

*Mary Fahndrich, South Central Library System*

*Brian Hannemann, Milwaukee County Library System*

*Michelle Rosenberg, Winnefox Library System*

*Alison Ross, Eastern Shores Library System*

*Linda Stobbe, Northern Waters Library Service*

*Maureen Welch, Indianhead Federated Library System*

*Kathy Wolkoff, South Central Library System*

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## **Wisconsin Interlibrary Loan Guidelines**

These interlibrary loan guidelines reflect the expectations of library staff and patrons participating in interlibrary loan within Wisconsin. These guidelines outline best practices in interlibrary loan statewide. Following the guidelines will best serve library users while making the statewide interlibrary loan system manageable for library staff. It is understood that consortia and libraries in shared automated systems will develop their own interlibrary loan policies.

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### **1.0 General Principles**

**1.1** Interlibrary loan is an adjunct to, not a substitute for, adequate collection development in local libraries. The statewide interlibrary loan system is used to provide access to materials beyond the scope of the borrowing library's collection and not readily available locally or via shared integrated systems or through consortia.

**1.2** ILL is primarily intended to provide an individual with a physical loan of defined duration or a non-returnable copy or scan from another library. However, requesting

libraries are permitted to seek materials through ILL for other uses (reserves or classroom use) if communicated in advance to the lender.

**1.3** All Wisconsin libraries are eligible to participate in statewide interlibrary loan.

**1.4** Any type of library may initiate an interlibrary loan request providing it is also willing to share its resources.

**1.5** Public Libraries are gateways to the interlibrary loan system for users who are not served by another type of library and who need an access point for a particular type of information.

**1.6** Every library provides staff and/or instructions that help users place requests and determine the best strategy for having their requests filled.

**1.7** The costs for providing interlibrary loan services are shared at the state, regional, and local levels.

**1.8** Library administrators should consider interlibrary loan to be a basic service and budget funds for provision of that service.

**1.9** Libraries that participate in the state's union catalog regularly update their holdings information.

**1.10** Libraries are encouraged to negotiate digital resource licenses that permit ILL.

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## **2.0 User Expectations**

**2.1** Library users are informed about interlibrary loan services.

**2.2** Library users are able to place interlibrary loan requests at access points that are convenient for them.

**2.3** Library users expect that library staff will make a reasonable effort to obtain needed information and materials.

**2.4** Library users expect that library staff will keep interlibrary loan requests confidential. Staff is discouraged from sharing patron's name to potential lenders.

**2.5** Public library users receive interlibrary loan services at no direct cost to the user.

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### **3.0 Lending and Borrowing**

**3.1** The Wisconsin Interlibrary Loan Guidelines are based on accepted national practice but reflect local needs and practices.

**3.2** Library staff will use the [Interlibrary Loan Code for the United States](#) when borrowing outside the state.

**3.3** Library staff follows statewide interlibrary loan guidelines and uses appropriate mechanisms for balancing borrowing and lending among libraries.

**3.4** Library staff applies copyright rules and fair use guidelines consistently.

**3.5** ILL may be useful for patrons needing materials owned by their library, but which are damaged or missing.

**3.6** Libraries are encouraged to lend as freely as possible and consider filling requests regardless of format. It is recognized that some materials will not be loaned, but the desired outcome is to have liberal lending policies among participating libraries. Alternatives to lending can be considered (see the Best Practices section of this document).

**3.7** A library will only request formats that it is willing to lend.

**3.8** The lending library will place a hold on a requested item only when specifically requested. This helps ensure a request can be filled in a timely manner.

**3.9** Generous loan periods are encouraged. The lending library will consider delivery time of materials when setting due dates. Users will be allowed to use materials borrowed through interlibrary loan for at least one week.

**3.10** The due date is redefined as the date by which material is due to be checked-in at the requesting library for return to the supplying library. Lending libraries should allow a grace period before sending overdue notices to account for items in transit back from the requesting library.

**3.11** The lending library acts on ILL requests as soon as possible, with the majority of requests acted upon within two working days.

**3.12** The lending library (not the borrowing library) will determine delivery method. Borrowing libraries will submit requests that do not limit by delivery mode, recognizing that it will be delivered and returned according to the policy of the lending library.

**3.13** Lenders should delivery photocopies electronically whenever possible. Copies should be complete and legible and adhere to any special instructions.

**3.14** The borrowing library should not request the following items outside of their local catalog:

- materials on bestseller lists or high demand titles in all formats (e.g..., new media),
- pre-publication titles

To help determine if an item is in high demand, see the Best Practices section of this document.

**3.15** Borrowing multiple copies of titles for group use (e.g... book discussion groups) is an exception to the general guidelines of not borrowing what is owned by the library.

**3.16** The borrowing library can make requests for renewals before the due date, and the lending library will provide a timely response to the request, usually within four working days. If the lender does not respond, the borrower may assume the renewal has been granted, extending the due date by the same length of time as the original loan.

**3.17** The borrowing library is responsible for borrowed materials from the time it leaves the lending library until it has been returned to and been received by the lending library. This includes all materials directly shipped to and/or by the user. If damage or loss occurs, the borrowing library is responsible for compensation or replacement.

**3.18** The borrowing library abides by the specific policies of lending libraries, such as costs, special handling and delivery mode. Borrowers should never affix adhesive labels or tape to a borrowed item.

**3.19** The borrowing library must comply with U.S. Copyright Law and take into consideration related guidelines, policies and procedures, such as CONTU.

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## **4.0 Resource Sharing Best Practices for Library Staff**

**4.1** Libraries are encouraged to lend as freely as possible.

It is recognized that some materials cannot or will not be loaned, but the desired outcome is to have liberal interlibrary lending policies among participating libraries. The following practices are designed to assist libraries in making the best use of interlibrary loan services.

**4.2** Interlibrary loan relies upon bibliographic records and accurate holdings of participating libraries.

Holdings in local or shared catalogs should be updated regularly. Outdated or inaccurate bibliographic records seriously impact the efficiency of an interlibrary loan system.

### 4.3 The Patron Interview

**4.3a** Determining the patron's information needs is important (either in person or through an electronic requesting process). Libraries are encouraged to treat requests for materials equally, regardless of the material desired by the borrower. The only exception should be rush requests with short deadline (need by) dates.

**4.3b** Reference and ILL Requests: When a patron has a request, the following questions and statements should be considered:

- Do you have a deadline (need by) date?
- Clarify the type and amount of information needed.

**4.3c** For guidelines on the reference interview, go to <http://www.ala.org/rusa/resources/guidelines/guidelinesbehavioral>

**4.3d** When a patron requests a specific title and it is not owned at the library, the following questions should be considered:

- Have the holdings in the shared system been checked?
- Do you have a deadline (need by) date?
- Would you accept another book as a substitute?
- Would you accept this title in a different format? (DVD instead of VHS, etc)

**4.4** A library will only borrow what it is willing to lend.

[The Interlibrary Loan Code for the United States](#), as published by the American Library Association states "It is evident that some libraries are net lenders and others are net borrowers, but the system of interlibrary loan still rests on the belief that all libraries are willing to lend if they are willing to borrow". Libraries are encouraged to treat requests for materials equally, regardless of the format desired by the borrower. Libraries may request a media format that is not owned at their library, with the expectation that if the library purchases materials in that format they would lend it.

**4.5** Possible alternatives to requesting and lending include:

- The requesting library purchases the item for its own collection instead of borrowing.
- The requesting library makes use of available electronic and virtual resources.
- The lending library photocopies a section or an article if allowable by copyright.

- The requesting library requests substitute editions when possible or appropriate.

The patron may need to travel to the owning library to use the item if no other options are available.

#### 4.6 Limitations to requesting materials

Requesting libraries should train patrons to use their local or shared online catalog.

Requests should be placed in the local catalog as a first priority and requested from outside the area if not owned locally. According to the [Interlibrary Loan Code for the United States](#), "Interlibrary loan is intended to complement local collections and is not a substitute for good library collections intended to meet the routine needs of users." The requesting library will limit requests outside of their local catalog for the following items:

- Materials on bestseller lists or high demand titles in all formats (e.g., new media)
- Materials which are on order at the requesting library
- Materials which are on order within the requesting library's shared automation system or consortium
- Materials which are in use (checked out) within the requesting library's shared automation system or consortium.
- Titles that have not yet been published but have prepublication information in verification sources
- Old and rare books. Many may be freely available online.

Interlibrary loan requests in these situations are made only if special conditions or considerations apply. Borrowing multiple copies of titles for group use (e.g., book clubs) is an exception to the general guidelines of not borrowing what the library owns, but new materials or materials in high demand should never be ordered in multiple copies.

#### 4.7 Materials in High Demand

Requesting libraries should screen requests to determine if a title is too new or popular to request outside of their library system. Using various bestseller lists and shared online catalogs may identify popular titles. To help determine if an item is in high demand, the following process is suggested.

- Review the number of holds in local or system shared integrated systems. A large number of holds would indicate that the material is in high demand. Check the [In Constant Demand List](#) compiled by Resources for Libraries & Lifelong Learning.

- Newspaper or magazine bestseller lists.
- [Minitex In Constant Demand List](#) is available for requests referred to Minitex.

#### 4.8 Book Club Requests

- Requests for multiple copies should be placed in the library's local/shared system catalog as a first priority.
- New and popular titles should not be used for book club requests.
- Public libraries should check with their library system for any System Guidelines for book club requests.
- RL&LL maintains a list of book club kits owned by Wisconsin libraries. Check this list first, before submitting multiple ILL requests.

#### [Book Discussion Kits for ILL](#)

#### 4.9 Unmediated requests

Some requesting libraries permit users to initiate online ILL requests that are sent directly to potential supplying libraries. A requesting library that chooses to allow its users to order materials through interlibrary loan without mediation accepts responsibility for these requests as if they have been placed by library staff. The supplying library may assume that the user has been authenticated and authorized to place requests and that the requesting library assumes full responsibility for transaction charges, the safety and return of material, and the expense of replacement or repair. Unmediated requests are discouraged unless your interlibrary loan software can filter requests for serials, electronic resources or items that are too new or non-circulating.

#### 4.10 Limitations by Material Type

##### 4.10a Reference materials

Reference-type materials rarely circulate. Staff should explain to the patron that it is unlikely the newest edition will be loaned and ask if an older edition could be substituted. The patron should provide the needed information if copies are possible. An index and/or table of contents could also be copied so that the patron could determine what information is needed for copies.



#### **4.10b Loose-leaf materials**

Loose-leaf materials seldom circulate, because it is too easy for pages to be removed or lost while the item is on loan. Staff should find out what information the patron would like copied.

#### **4.10c Rare books**

Rare books are often too fragile to loan or to photocopy. The book may be available for loan in microform format, if the requesting library or patron has access to a reader or reader/printer. Many titles may be available in full-text online.

#### **4.10d Periodicals**

Entire issues of periodicals are unlikely to be loaned by any library outside of one's own library system. Photocopies of tables of contents for recent issues may be available on the internet or may be requested. The patron may request a photocopy of a single article.

#### **4.10e Genealogical materials**

Genealogical materials owned at libraries seldom circulate. Items that contain any form of the words "genealogy" or "family history" in the title or subject lines of the bibliographic record can rarely be borrowed through interlibrary loan. The patron should specify the information to be copied from the genealogical source requested. The bibliographic record will indicate if the title has an index from which something may be photocopied. Requests for photocopies of information on individuals may be submitted by giving the full names and any additional relevant information such as birth and death dates.

See [Genealogical Materials](#) for more information.

#### **4.10f Electronic Resources**

Electronic resources are not available through interlibrary loan. Please use [Wisconsin's Digital Library](#) for fiction and nonfiction eBooks and Audiobooks, or [Open Access Resources for ILL](#).

#### **4.10g Textbooks**

Textbooks should only be requested with the understanding that the lender's due date must be honored.

#### **4.10h Video Games**

Video games (X-box, Playstation, etc.) should be requested only under special circumstances. These rarely circulate through ILL.

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### **5.0 Requesting and Lending Library Responsibilities**

Wisconsin complies with the [Interlibrary Loan Code for the United States](#), as published by the American Library Association.

#### **5.1 Requesting library is responsible for borrowed materials.**

According to The Interlibrary Loan Code for the United States, "the requesting library is responsible for borrowed material from the time it leaves the supplying library until it has been returned to and received by the supplying library" and "if damage or loss occurs, the requesting library is responsible for compensation or replacement, in accordance with the preference of the supplying library."

"Borrowed items should be returned in the condition in which they were received at the requesting library. In particular, a requesting library should never affix adhesive labels or tape directly to any borrowed item. The requesting library should also return sufficient identifying information with the material to allow the supplying library to identify the request and process the return quickly."

#### **5.2 Shipped items that are not received**

If the requesting library does not receive an item within two weeks of the request being updated to shipped or filled status, the staff contacts the lender. It is appropriate to ask the lender to re-ship if the item never arrived at the requesting library.

#### **5.3 Damaged items**

When the requesting library receives the item, staff notes any visible damage to the item before circulating the item to the patron. If damage is found, the staff contacts the lender to see if they were aware of the damage before shipping or if the damage occurred when shipped.

#### **5.4 Due date definition**

Due date is defined as the date by which material is due to be checked-in at the requesting library for return to the supplying library. This will require lenders to post-date due dates in their native circ system.

## **5.5 Responding to overdue notices**

If the requesting library receives an overdue notice two weeks or more after staff has returned the item, staff should contact the lender to verify that the item was received back at the lending library. If not, the requesting library asks the lender to do an additional shelf-check for the item. The requesting library checks with the patron to verify that the patron no longer has the item. If the item is lost, the requesting library will request a bill for replacement.

## **5.6 Lost Items**

If the patron reports the item lost, the requesting library contacts the lending library to ask for a bill for replacement. If the patron returns the item damaged, the requesting library contacts the lending library to ask for a bill for repair or replacement, whichever the lender prefers.

## **5.7 Bills**

An invoice for lost or damaged materials may include a processing fee that covers the cost of billing, ordering and cataloging the replacement item. The requesting library makes payment to the lending library in a timely manner, regardless of whether the patron is responsible for the loss or damage. It is the responsibility of the requesting library to gain reimbursement from their patron. If the materials are found and returned after the invoice has been issued, the lender may forgive the entire invoice or they may still charge the processing fee. The lender may also choose not to give a refund at all.

## **5.8 Responding to requests**

Lending libraries should act on requests promptly. Libraries should check each day they are open for new interlibrary loan requests as a lender. Requests with Need By dates that fall within the current two months receive priority handling. The majority of lending requests should be acted upon within two working days. The lending request database should be checked weekly to ensure that all In Process requests receive replies.

## **5.9 Responding to conditional messages**

Lenders may choose to use the Conditional status to communicate with the borrowing library. The lender may need clarification of the borrower's request, need approval to send an item in an alternate format or need the borrower's agreement to place other restrictions on the loan.

It is important for borrowers to review requests in Conditional status daily and update as appropriate.

**5.10 Due dates should allow time for reasonable use and delivery.** Due date is defined as the date by which material is due to be checked-in at the requesting library for return to the supplying library.

For more information see The [Interlibrary Loan Code for the United States](#).

### **5.11 Recalls**

The supplying library may recall material at its discretion at any time. Increasingly, some libraries are finding it more effective to request the material on ILL for a local user rather than to recall material in use by another library.

### **5.12 Renewals should be granted whenever possible**

Libraries can make requests for renewals if the patron needs to have more time to use the borrowed materials. The lending library should respond promptly to requests for renewals. If the lending library does not respond, the requesting library may assume that a renewal has been granted. According to the Interlibrary Loan Code for the United States, when the supplying library denies a renewal request the material should be returned by the original due date or as quickly as possible if the renewal is denied after the due date has passed.

### **5.13 Hold shall be placed only when specifically asked**

Lending libraries only place a hold on a title for a borrowing library outside of the system if specifically asked. Requests are filled more quickly when allowed to pass from one library to the next, where it may be on the shelf. Libraries may use their discretion and place a hold if:

- The title is not owned at other libraries in the state, or
- The item is due back within three days

### **5.14 The lender, not the borrower, will determine delivery mode for titles owned in Wisconsin.**

Borrowing libraries will submit requests not limited by delivery mode, recognizing that it will be delivered and returned according to the policy of the lending library. Lending libraries may specify how items they lend must be packaged or shipped to ensure traceability and safety.

## 6.0 Interlibrary Loan Organizational Structure and General Patterns

Interlibrary loan in Wisconsin has a long and successful history. Patrons use libraries to request a wide variety of materials including books, audio-visual, and photocopied materials. Libraries of all types and sizes borrow and lend materials to each other in ever increasing numbers to fill the needs of their patrons. Organizations involved in interlibrary loan include:

- [Resources for Libraries & Lifelong Learning \(RL&LL\)](#)
- Out-of-state consortia and libraries -- Examples: [Minitex](#), Amigos Library Services ([AMIGOS](#)), Libraries Very Interested in Sharing ([LVIS](#))
- [Public library systems](#)
- [Public libraries](#)
- Public and private school libraries
- Special libraries (medical, corporate, legal)
- State agencies, correctional and social service institution libraries
- Wisconsin Technical College System libraries -- Examples: [WTCS](#), [WISPALS](#)
- Wisconsin Historical Society ([WHS](#)) and Area Research Centers ([ARC](#))
- [UW-System libraries](#)
- private college/university library consortiums -- Examples: [WAICU](#), [SWITCH](#)

An interlibrary loan request is ultimately a loan of material from one library to another but the process is complicated by differences in technology, collection focus and ILL policy, consortium membership, etc. Because of the complications, ILL clearinghouses monitor the workflow of individual libraries and intervene when the normal library to library process is not applicable. Clearinghouses help obtain materials from libraries that might otherwise be inaccessible and ensure that requests are completed in a timely fashion. Clearinghouses act on behalf of a defined geographic area and/or a specific consortium.

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## 7.0 State-level Clearinghouses

- RL&LL serves as a clearinghouse for ILL for public library systems, public libraries, public and private school libraries, special libraries, state agencies, correctional and social service institution libraries, Wisconsin Technical College System libraries, Wisconsin Historical Society and Area Research Centers, UW System libraries,

some private college/university libraries and out of state consortia and libraries. RL&LL fills requests for Wisconsin libraries of all types using WISCAT, WorldShare ILL and email.

- Minitex is the state level clearinghouse for Minnesota, North and South Dakota. Wisconsin and Minitex have a reciprocal resource sharing agreement.

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## 8.0 Regional Library Organizations (structure and workflow patterns)

- Public Library Systems - there are 17 public library systems that act as regional clearinghouses for ILL. The degree of interaction between the clearinghouses and their member libraries vary by system. Some systems are very centralized with all ILL requests initiated by the clearinghouse while in other systems ILL requests are initiated at the individual libraries. In these decentralized systems, the clearinghouse generally only requests materials the individual members were not able to obtain independently.
- Public libraries share materials within their library system before initiating an interlibrary loan. Most public libraries use WISCAT/WISCATILL to send and receive requests from other WISCAT participants as well as OCLC libraries. Some public libraries use OCLC to send and receive requests instead of WISCAT/WISCATILL.
- Public and private school libraries generally participate in ILL using two methods. Some use WISCAT to send and receive requests directly. Others depend on RL&LL as their clearinghouse to make requests on their behalf.
- Special libraries often rely upon consortia or directly contact the owning library for interlibrary loan requests if they use WISCAT or OCLC. Special libraries may also use the public library for interlibrary loan requests.
- State agency, correctional and social service institution libraries participate as WISCAT libraries and send and receive requests directly to and from other participants. RL&LL acts as their interlibrary loan clearinghouse and refers requests to other libraries on their behalf when they are not able to obtain the materials independently.
- Technical college libraries often rely on consortia or directly contact the owning library for interlibrary loan requests. Most technical college libraries use WISCAT and/or OCLC.

- Academic libraries often rely upon consortia or directly request from an owning library. These libraries also borrow frequently from out-of-state libraries. Academic libraries frequently use OCLC, WISCAT and/or ILLiad to manage requests.
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## **9.0 Charging for Interlibrary Loan Services**

Library staff, administrators, and public officials sometimes question whether or not it is legal to charge for interlibrary loan services. Some interlibrary loan providers or commercial enterprises provide services on a fee basis. Other charges may potentially take place at several levels. Libraries may charge each other for interlibrary loan and/or libraries may want to charge customers for interlibrary loan services.

Historically, the state has paid for a portion of the interlibrary loan structure in Wisconsin through provision of state aids to public library systems, funding of Resources for Libraries & Lifelong Learning, funding of state agency and university library services and funding of state level contracts. Although no charges are levied between libraries, some libraries may receive reimbursement through these sources of funding. A great deal of interlibrary loan has also been provided on a reciprocal basis by all types of libraries.

The Division for Libraries and Technology has taken the position that public libraries cannot charge customers for interlibrary loan services and also offered advice and counsel on the appropriateness of various kinds of charges.

Other types of libraries may be in a better position to legally charge other libraries for their services. However, the Division for Libraries and Technology requests that careful consideration should be given to the impact of doing so. Charging other libraries can upset the balance that has been achieved for the provision of interlibrary loan services. The ability of many libraries to serve their customers will be greatly curtailed. The cost of maintaining records of charges may outweigh the benefits of obtaining additional funds. Libraries that are being charged may also charge other libraries defeating any benefits to be obtained by reciprocal borrowing. All libraries should consider carefully the impact of charging customers for services. In most cases, this will likely result in a decrease of services requested from the library.

### **Public Libraries and Public Library Systems**

The charging of fees to individuals for access to the information services provided by a public library including interlibrary loan violates the legislative policy and specific statutory provisions of the Wisconsin Statutes. This is true whether a public library is a member of a public library system or not. However, if the public library is a member of a

public library system, it is also violating a requirement for participation in the system. A public library that is a member of a public library system must provide its users access to the interlibrary loan service of the public library system, and it must fill interlibrary loan requests from other system member libraries within the system area. However, it is not required to forward an interlibrary loan request from a library user to any library or library organization that charges a fee for this service. If it does so, it cannot pass the fee on to the library user.

A public library system may not charge a member library or a library user for handling or filling an interlibrary loan request within the system service area, or for referring the interlibrary loan request to a library outside of the system area. It would be legal, but not desirable for a public library system to pass on an interlibrary loan charge from a library or library organization outside of the system service area to a member library. However, that charge could not be passed on to the library user, and the public library would not be under any obligation to pay the charge.

### **Supporting Attorney General's Opinions**

In an opinion issued in 1984 (OAG 26-84) the Wisconsin Attorney General adopted the following guideline which was utilized by the California Attorney General in a 1978 opinion for determining which services provided by a library were required to be free under s.43.52(2), Wis. Stats.:

If the transaction involves the satisfaction, with library resources, of a patron's request for information (whether for educational, recreational or entertainment purposes), such transaction is a "library service." Other transactions, not involving the furnishing of information, though carried out by a library, would not be a "library service"...Perhaps the essential distinction that is operative here is between those services which are reflective of a library's inherent information providing function and those ancillary services which are not unique to libraries and which can be just as effectively provided in non-library settings. Examples of such non-library services might include the furnishing of meeting rooms, allowing the use of typewriters and copying machines, rental of audiovisual equipment, etc.

In the same opinion, the Wisconsin Attorney General went on to indicate specifically that a library could not charge for borrowing 16mm films and for holding materials on reserve. It could, however, charge for the use of framed pictures, projectors, screens, and audio cassette players. The opinion also indicated that a library could charge for the rental of best sellers as long as it also made available a "reasonable number" of copies of the same item which circulated without charge.



In a 1989 opinion (OAG 30-89), the Wisconsin Attorney General indicated that a library could not charge fees for renting video cassettes or for online searching of remote commercial bibliographic and information databases. The opinion indicated that a library could charge a fee for video cassettes which are in addition to a "reasonable number" of permanent collection cassettes.

In a 1990 opinion (OAG 5-90), the Wisconsin Attorney General issued the opinion that a public library system may not charge fees for services which are inconsistent with the provision of section 43.52(2), Wis. Stats.

### **Statutory Provisions**

Section 43.001 (1) (a), Wis. Stats, states: The legislature recognizes: the importance of free access to knowledge, information and diversity of ideas by all residents of this state.

Section 43.52 (2), Wis. Stats., states in part: Every public library shall be free for the use of the inhabitants of the municipality by which it is established and maintained, subject to such reasonable regulations as the library board prescribes in order to render its use most beneficial to the greatest number.

Section 43.52 (2) also applies to joint libraries created under s. 43.53 and county libraries created under s. 43.57.

Public libraries which participate in public library systems are required to offer free service to all members of the public library system, and to participate in interlibrary loan under s. 43.15 (4) (c) 4, Wis. Stats.

Section 43.24 (2) (a) requires library systems to ensure interlibrary loan of materials among all participating public libraries.

Section 43.24 (2) (b) requires library systems to ensure the referral or routing of reference and interlibrary loan requests from libraries within the system to libraries within and outside the system.

Section 43.18 (2m) states: With the approval of the division, a public library system may expel, or reduce aids or services to, a municipality or county that fails to meet the requirements under s. 43.15 (2) and (4).

Section 43.24 (3) states in part: The division may reduce state aid payments when any system or any participant thereof fails to meet the requirements of sub (2).

## 10.0 Copyright Compliance

Copyright law is complicated and library staff seeking a full understanding of the ways that copyright affects library operations should consult additional books and articles on the subject. See also the list of [Links to Copyright Resources](#). In this section an attempt is made to summarize the principles which apply to making a copy of a work for a single customer's personal use as this is the primary transaction involved in interlibrary loan.

### Copyright Act of 1976 - Section 108

Section 108 of the Copyright Act of 1976 lists five basic requirements for making single copies of a printed copyrighted work for a library customer. The requirements apply to a customer making a request at a local library or for requests from another library on behalf of its customer. This right to copy does not apply, in general, to musical, pictorial, graphic sculptural works or motion pictures or audiovisual works, except audiovisual works dealing with the news.

- The customer must initiate the request.
- The copy must be no more than one article or other contribution to a copyrighted collection or periodical issue or a small part of any other work.
- The copy must become the property of the customer.
- The library must have no notice that the copy will be used for any purpose other than private study, scholarship or research (for this purpose, "notice" consists of actual knowledge of how a copy will be used, receipt of notice or notification of how a copy will be used or reason to know how a copy will be used from all the facts and circumstances known at the time in question).
- The library or archives must display a "warning of copyright" where the orders are accepted and on its order form.

An entire work or a substantial part of a work may be copied if all of the above requirements are met, except the second one, and if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price.

Section 108 also states that libraries and archives may participate "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 a work."

The National Commission on New Technological Uses of Copyrighted Works (CONTU) developed guidelines which serve as a workable interpretation of this section in relation to interlibrary loan photocopying of periodical articles published within five years of the date of the interlibrary loan request. The basic components of the CONTU guidelines are as follows:

- The guidelines only apply to periodical article issues published within five years of the customer's request.
- Within one calendar year, a requesting library or archives may receive no more than five copies of an article or articles published in any given periodical. This includes all issues of the periodical published in the last five years, as opposed to a single issue of the periodical.
- Interlibrary loan requests for copies or phonorecords of other materials, such as fiction, poetry, contributions to copyrighted collections, or a small part of any other copyrighted work, may not exceed five copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.
- If the library or archives which is requesting the article has subscribed to a periodical or has ordered other copyrighted materials, but they are not available, the duplication will not be considered as interlibrary loan. Rather, requirements for such duplication will fall under provisions for copying from the library's or archives' own collections.
- Requests for copies or phonorecords of materials may not be filled unless the library or archives states that the request conforms to the CONTU guidelines.
- The requesting library or archives must maintain records of all duplication requests it makes and retain the records for three years after the end of the year in which the request was made.

For more information see [U.S. Copyright Office Circular 21, Reproduction of Copyrighted Works by Educators and Librarians](#).

### **Copyright Act of 1976 - Section 107**

Section 107 of the Copyright Act of 1976 is often referred to as the "fair use" clause. This section provides that "fair use" of a copyrighted material is not an infringement of the owner's copyright in some instances. Section 107 states:

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies of phonorecords or by any other means

specified by that section, for purposes, such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.

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

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

### **Copyright Compliance Codes**

The requestor, not the supplier, is responsible for assuring that the request is appropriate under the law. To assure the supplying library that the request conforms to the law, the requesting library should use one of the following "copyright compliance codes."

- CCG - Conforms to Copyright Guidelines. This code is used:
  - When the requesting library does not own a title and has received fewer than five articles from the current five years of that title. Counting starts over each year.
  - When the requesting library owns the material, has ordered it or has placed a subscription. In this case it is treated like a copy from the requestor's own collection. As long as the copying would have been fair use locally, it is fair use on interlibrary loan.
- CCL - Conforms to Copyright Law. This code is used:
  - When the material is in the public domain.
  - When the requesting library believes that the reproduction and distribution of the copy is a fair use.
  - When the requested copy becomes the property of the user and the request is for an entire work or a substantial part of a work, and the requesting library has determined that a copy cannot be obtained at a fair price.

- o When the requested copy becomes the property of the user and the requested photocopy is from materials published earlier than five years prior to the date of the request and therefore not covered by the CONTU Guidelines.
- o When the requested copy becomes part of the collection of the requesting library and the requesting library has determined, after reasonable investigation, that an unused replacement is unavailable at a fair price.

### **Digital Resources, Copyright and ILL**

The digital age has benefited and complicated many library operations - interlibrary loan is no exception. Many digital materials, especially electronic journal titles available from libraries, are purchased from vendors through licensing agreements. Libraries are encouraged to negotiate licenses that permit ILL. Please note that a licensing agreement supersedes copyright and intellectual property law. All terms of a license must be followed when utilizing licensed content to fulfill an interlibrary loan request. For assistance navigating license agreements with vendors, please see [LIBLICENSE: Licensing Digital Content](#).

### **Creative Commons, Open Access and Public Domain**

The internet has expanded the availability of resources. There now exists many venues for accessing information, including additional free access to materials. Creative Commons is an organization that provides licensing to content creators that allows them some protections of their work, but greatly expands the availability of that work for use by others.

You can find out more about the availability of materials with a Creative Commons license by visiting the organization's website: <https://creativecommons.org>.

"Open Access" has been defined as "immediate, free availability on the public internet, permitting any users to read, download, copy, distribute, print, search or link to the full text of these articles, crawl them for indexing, pass them as data to software or use them for any other lawful purpose..." (Budapest Definition of Open Access).

A list of Open Access Resources for ILL is available in the "Where to Find More Information" Section of this document.

"Public Domain" is the phrase used to describe materials that have expired from Copyright Protection and are free of the restrictions provided by copyright. For more information on public domain, please

see <http://copyright.cornell.edu/resources/publicdomain.cfm>.

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## **11.0 Where to Find More Information**

### **Wisconsin**

[Department of Public Instruction Division for Libraries and Technology](#)

[Resources for Libraries & Lifelong Learning \(RL&LL\)](#)

[South Central Library System Delivery Service](#)

[Book Discussion Title List](#)

[In Constant Demand List](#)

[Open Access Resources for ILL](#)

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### **Nationwide**

[ALA Interlibrary Loan Code for the United States](#)

[Interlibrary Loan Code for the United States Explanatory Supplement](#)

[U.S. Copyright Office](#)

[OCLC](#)

[ILL-L Interlibrary Loan Listserv](#)

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