RUSA Model Interlibrary Loan License Clause

Introduction

This model clause was developed by the RUSA STARS Legislation & Licensing Committee to advocate for more standardized, modernized license language that highlights the legal rights of U.S. libraries to share copyrighted materials.

This model clause is recommended to all libraries for their use in negotiating interlibrary loan license terms with electronic resource vendors. It is also offered to electronic resource vendors as suggested text for inclusion in license agreements in order to promote our shared interests and objectives in enabling access to information.

1. Overview of Interlibrary Loan

Interlibrary loan is a core service that enables libraries to meet the informational needs of their patrons by supplying materials from other libraries. Libraries have provided interlibrary loan services widely in the United States of America for over 100 years, beginning with the lending of physical books. Libraries have been providing copies of articles, chapters, and other materials as common practice since the 1970s. Libraries send documents using the dominant transmission methods of the time, from mailed photocopies, fax, email, and now primarily through secure electronic transmission.

2. Legal basis for Interlibrary Loan

Interlibrary loan in the United States finds its legal basis for physical loans in the first sale doctrine (17 U.S. Code § 109) and for copies of articles, chapters, and other materials in the fair use doctrine and library exemption (17 U.S. Code §107 and §108) in the U.S. copyright law.

3. Vendor Licenses and Interlibrary Loan

Electronic resource licensing contracts specify under what conditions the materials may be used by the licensing library and its patrons, and the terms are a result of negotiations between the vendor and the library. Licenses may restrict use beyond what copyright law might otherwise allow. Vendors' licensing contract templates do not have clear and consistent language relating to interlibrary loan use. Libraries are strongly encouraged to negotiate to replace restrictive or unclear terms with the model interlibrary loan license clause in section 6 of this document. If this is not possible, libraries are encouraged to negotiate favorable license terms for electronic content which allow interlibrary loan and eliminate cumbersome restrictions that do not exist when filling from print. Examples of restrictive terms to avoid include requirements to print and mail paper copies, prohibiting international lending, restricting whole eBook lending, mandatory CONTU compliance, or placing restrictions on a requesting library that a supplying library cannot administer.
4. **Role of Interlibrary Loan Practitioners**

While Interlibrary Loan practitioners may not be directly involved in license negotiation, they should advocate for use of this license within their libraries and/or the negotiation of favorable terms, as outlined above. Likewise, they should collaborate with colleagues responsible for licensing of e-resources to ensure those who are lending materials have ready access to license terms for their library’s electronic collections to inform responsible sharing. They should also collaborate with consortia as these groups have stronger positions to negotiate favorable terms.

5. **Purpose of a Model Interlibrary Loan License**

The model interlibrary loan license clause stated in section 6 is recommended to libraries and vendors to adopt in all electronic resource licenses. The goal is to standardize, simplify, and modernize license language for interlibrary loan purposes and to broaden the availability of licensed materials for interlibrary loan use. The clause is based upon the LibLicense 2014 Model License language and the ASERL 2022 licensing principles.²

6. **Model Interlibrary Loan License Clause**

“The Licensee may fulfill requests from other libraries or archives, a practice commonly called Interlibrary Loan. The Licensee agrees to fulfill such requests in accordance with Sections 107 and 108 of the U.S. Copyright Act. Requests may be fulfilled using electronic, paper, or intermediated means, including but not limited to the prevailing technology of the day. In the event that any content included in the licensed content is in the public domain or has been issued under a Creative Commons or other open license, Licensor shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.”

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