

An Alternative to CONTU

**Developing and implementing your
own ILL copyright compliance policy**



GEORGETOWN UNIVERSITY

Who We Are

Amanda Rudd

**Interlibrary Loan Services
Supervisor**

Georgetown University

Brian Miller

**Head, Interlibrary Services
Ohio State University Libraries**



Rationale for Creating the Copyright Policy

Considerations

CONTU guidelines

- When and why they were developed
- How did the rule of five come to be
- Do the guidelines still do what they should

Section 108

ILL codes and CONTU guidelines

Expertise and experience available at our library

CONTU Guidelines

A library may receive copies of up to five articles from a single periodical title each year without paying any fees.

For each subsequent copy, a license fee is required.

Guidelines apply to the most recent five years.

CONTU in Context

National Commission on New Technological Uses of Copyrighted Works (CONTU) issued its [Final Report](#) in July 1978.

“The CONTU guidelines were developed to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law.” (Final Report)

Guidelines are meant to provide guidance for following Section 108 of the Copyright Act.

Section 108

Section 108 of the Copyright Act, *Limitations on exclusive rights: Reproduction by libraries and archives*, addresses library copying generally, and contains the following subsection that specifically addresses interlibrary loan:

- (g) *The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy ... of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—*
 - (1) *is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies ... of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or*
 - (2) *engages in the systematic reproduction or distribution of single or multiple [copies] of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such [copies] for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.*

Scholarly Publishing Then and Now: Estimated Average Costs

	1978	1978 Cost Adjusted for Inflation	Actual Cost in 2016
Business journal	\$21.09	\$77.63	\$944
History journal	\$13.71	\$50.47	\$466
Physics journal	\$108.22	\$398.37	\$4,180
Political Science journal	\$15.62	\$57.50	\$776
Psychology journal	\$34.21	\$125.93	\$942
ILL borrowing	\$9.50	\$34.97	\$43-\$48
Copyright fee	\$1.25	\$4.60	\$15-\$35

Table from Georgetown University Library Interlibrary Loan - Borrowing Policy for Copyright Compliance
 1978 journal subscription prices from *University Libraries and Scholarly Communication: A Study Prepared for The Mellon Foundation* (1992), Appendix Table 6.2
 1978 ILL cost and copyright fee from *Final Report of the National Commission on New Technological Uses of Copyrighted Works* (1978), p. 70
 1978 costs adjusted for inflation – calculated using the [BLS CPI Inflation Calculator](#)
 2016 journal subscription prices from [LJ Periodicals Price Survey 2016](#)
 2016 ILL cost from George Mason University Libraries Interlibrary Loan [FAQs](#)

CONTU in Context

“A typical crossover point for the add/drop decision is four or five uses per journal title per year. This is the result, for example, with a subscription price of forty dollars and external lending fees of eight dollars.”

“It is unlikely, then, that libraries will be engaging in much interlibrary lending activity that falls outside the limits specified by the CONTU guidelines ... which permit each requesting library up to five copies of articles from the most recent five years of each journal title to which it does not subscribe. This is especially true given libraries’ current tendency to maintain subscriptions even at very low levels of usage.”

- CONTU [Final Report](#)

CONTU in Context

“The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases, now or in the future. It is recognized that their purpose is to provide guidance in the most commonly encountered interlibrary photocopying situations, that they are not intended to be limiting or determinative in themselves or with respect, to others situations, and that they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment. With these qualifications, the conference committee agrees that the guidelines are a reasonable interpretation of the proviso of section 108 (g) (2) in the most common situations to which they apply today.”

[H.R. Rep. No. 94-1773](#) at 71-72 (1976).

Interlibrary Loan Codes

Interlibrary Loan Code for the United States from ALA

The Interlibrary Loan Code states that libraries must “4.8 Comply with U.S copyright law (Title 17, U.S. Code) and be aware of related guidelines for copy requests.

Guidelines on the Use of Copyrighted Works by Law Libraries (Section 2.2.1) from the American Association of Law Libraries

“Libraries may request print or electronic copies of works through interlibrary loan, but borrowing libraries of all types should be aware of the CONTU Guidelines (National Commission on New Technological Uses of Copyright Works) suggestion of five. [footnote omitted] The more a library exceeds the suggestion of five, the less likely it is that the interlibrary loan request is exempt.”



Georgetown University Library's New Policy



New Policy: Annual Title List

ILL unit prepares list of all articles, including journal titles and dates, that have been filled during the previous calendar year.

“Each person receiving the Annual Title List will review it to determine whether, in his or her opinion, there are any titles for which the interlibrary loan borrowing is done “in such aggregate quantities as to substitute for a subscription to or purchase of such work.”

Annual Title List Review

If we have borrowed a significant number of articles from a journal the Library does not subscribe to, then the Head of Research Services, AUL for Scholarly Research and Services, and Director of Copyright will determine if the amount of borrowing is outside the scope of Sections 107 and 108 of copyright law.



Developing and Implementing an ILL Copyright Compliance Policy

Brian Miller

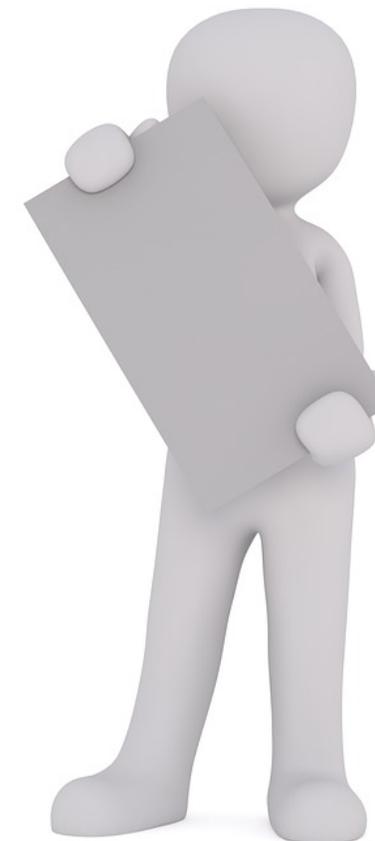
Head, Interlibrary Services
The Ohio State University Libraries

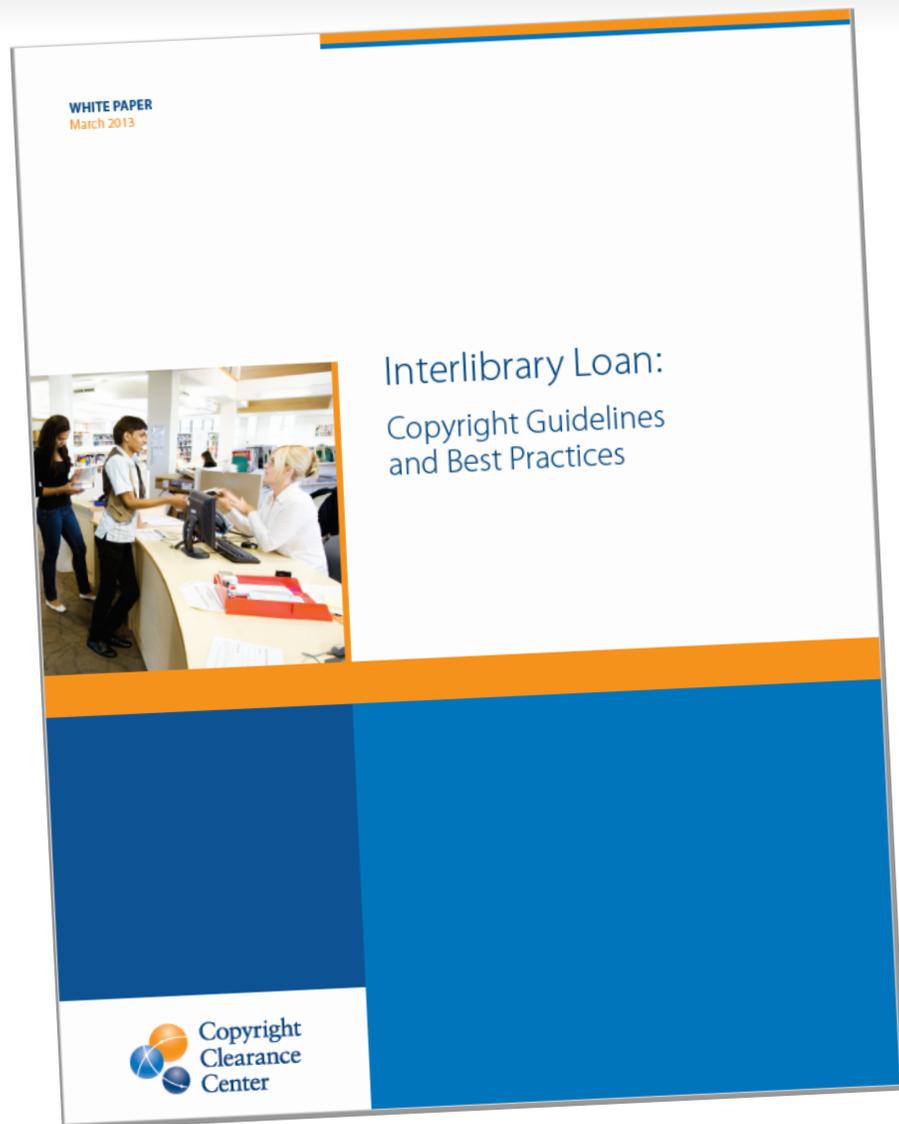




Points to Remember

1. Not legal advice; only information sharing
2. CONTU is not law
3. CONTU is a mechanism to abide by Copyright Law, but is not the only mechanism regarding: *ILL cannot “in such aggregate quantities . . . substitute for a subscription to or purchase of such work.”*





- “Section 108 does not define ‘aggregate quantity,’ leaving librarians to interpret the spirit of the law.” pg.1
- “These [CONTU] guidelines were never enacted into law, but were accepted by the library, publishing, and author communities at the time as reasonable accommodations for everyday use.” pg.1
- Regarding the “**Suggestion of Five**”: “Starting with the sixth copy, copyright permission and royalty fees may be required and you must evaluate whether the copies requested would substitute for a subscription to, or purchase of, the journal.” pg.3





Advice for Developing an ILL Copyright Policy



- Ask other libraries about their policies and practices
- Consult with:
 - Your library administration
 - Your collections librarian(s)
 - Your electronic resources librarian
 - Your copyright librarian
 - Your institution's legal counsel
- Expect multiple draft iterations

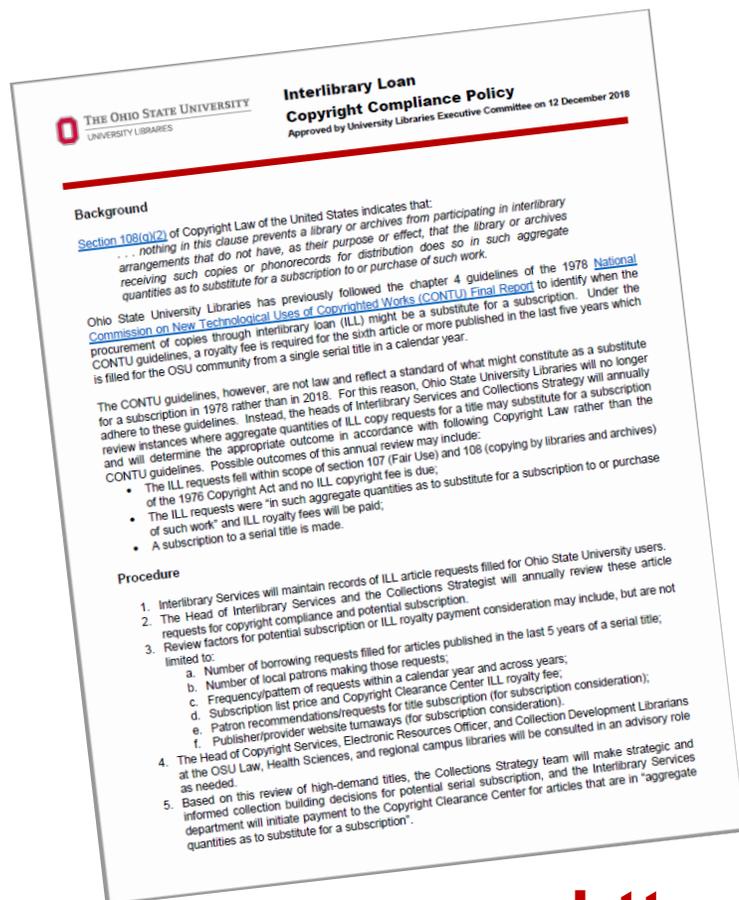




Ohio State University Libraries ILL Copyright Policy

- One page document
- Two parts . . .

1. **Background** (The What and The Why)
2. **Procedure** (The Who and The How)



<https://go.osu.edu/ILLcopyright>



Ohio State University Libraries ILL Copyright Policy

Part 1: Background (The What and The Why)

This section addresses . . .

- **What** the law is
- **Why** we don't follow CONTU
- **What** we will do instead of CONTU to follow the law
- **What** the possible outcomes are when applying our policy
 1. No copyright fee due as requests fall within Sections 107 and/or 108 of law.
 2. Copyright fee will be paid as the aggregate quantities substitute for a subscription.
 3. A subscription to the serial is made.





Ohio State University Libraries ILL Copyright Policy

Part 2: Procedure (The Who and The How)

This section addresses . . .

- **Who** reviews our borrowing copy requests
- **How** they are reviewed

The review factors:

1. # of borrowing articles filled that were published in the last 5 years
2. # of patrons making those requests
3. Frequency/pattern of requests within calendar year or across years
4. Subscription price and CCC ILL royalty fee
5. Patron recommendations/requests (for subscription consideration)
6. Publisher/provider website turnaways (for subscription consideration)





Old copyright compliance process at OSU Libraries (Pre-2018)

1. Requests published in last five years **stopped** in ILLiad's 'Awaiting Copyright Clearance' queue. If 5 requests were filled already this calendar year, Borrowing staff **compared prices** for:
 - a. CCC ILL royalty fee
 - b. Get It Now
 - c. Reprints Desk
 - d. Publisher web site purchase
2. **Harmonize** titles by end of calendar year.
3. **Review** titles with 6 or more requests.
4. **Submit to CCC** for the 6th request and beyond *(If not obtained through Get It Now, Reprints Desk, publisher web site.)*





New set-up: copyright compliance at OSU Libraries

All copy requests with ISSN or OCLC# **bypass Awaiting Copyright Clearance** via ILLiad routing rule and go out through Direct Request.

RuleNo	21
RuleActive	Yes
ProcessType	Borrowing
TransactionStatus	Awaiting Copyright Clearance
MatchString	(t.ISSN > " or t.ESPNumber > ") and u.Cleared = 'Yes' and t.RequestType = 'Article' and (t.LendingString = " or t.LendingString is NULL) and u.NVTGC in ('OSU')
NewProcessType	Borrowing
NewTransactionStatus	Awaiting Direct Request Sending
RuleDescription	Default Direct Request for article rule



All copy requests without ISSN **bypass Awaiting Copyright Clearance** via ILLiad routing rule and go to custom queue: To be searched

RuleNo	24
RuleActive	Yes
ProcessType	Borrowing
TransactionStatus	Awaiting Copyright Clearance
MatchString	t.RequestType='Article' and (t.ISSN = " or t.ISSN is NULL) and u.nvtgc = 'OSU'
NewProcessType	Borrowing
NewTransactionStatus	To be searched
RuleDescription	Any age article transaction WITHOUT ISSN route from Awaiting Copyright Clearance TO Borrowing To Be Searched



New set-up: copyright compliance at OSU Libraries

Make sure all borrowing copy requests are marked **CCL** (not CCG)

The screenshot shows the OCLC Resource Sharing Settings - ILLiad Client interface. The 'Name' field is set to 'ARTICLE'. The 'Copyright Compliance' field is highlighted with a red box and contains the value 'CCL'. Other fields include Affiliation (OhioLINK, Big Ten Academic Alliance, SHARES), Bill To Attention (Interlibrary Services), and various address and contact information for Ohio State University Libraries.

The screenshot shows the ILLiad Customization Manager (bmiller) interface. The 'WorkFormMapping' table is highlighted with a red box. The table has columns for NVTGC, WorkFormType, OCLCFieldName, ILLiadFields, and ConstantDataAction. The 'ConstantDataAction' column is highlighted with a red box and contains the value 'IgnoreIfValue' for all rows.

NVTGC	WorkFormType	OCLCFieldName	ILLiadFields	ConstantDataAction
OSU	OCLC Article	copyrightCompliance	<#Copyright>	IgnoreIfValue
OSU	Blank Article	copyrightCompliance	<#Copyright>	IgnoreIfValue
OSU	Article	copyrightCompliance	<#Copyright>	IgnoreIfValue



New copyright compliance process at OSU Libraries (2018 -)

1. **Harmonize** titles by end of calendar year. *(Also done in old process)*
2. **Look up subscription cost** by title and CCC article fee. *(Augmented step)*
3. **Prepare spreadsheet, apply review factors/Fair Use.** *(New analysis)*
4. **Submit to CCC** if substituting for a subscription. *(Also done in old process)*

Let's look at these in more detail . . .





1. Harmonizing journal titles

Custom Request Search

And

- [Transactions.ProcessType] Equals Borrowing
- [Transactions.RequestType] Equals Article
- [Transactions.PhotoJournalYear] Is greater than or equal to 2014
- [Transactions.CreationDate] Is between 1/1/2018 and 1/1/2019
- [Transactions.SystemID] Does not equal LOCL

Or

- [Transactions.TransactionStatus] Equals Request Finished
- [Transactions.TransactionStatus] Equals Delivered to Web
- [Transactions.TransactionStatus] Equals Request Sent

From this:

1543895	5/15/2018	Biological & chemical studies : an international journal	2018
1520929	2/20/2018	Biological and chemical studies	2015
1565465	6/27/2018	Biological and chemical studies : an international journal	2016
1587655	11/1/2018	Biological and chemical studies : an international journal.	2018

To this:

1543895	5/15/2018	Biological & chemical studies : an international journal	2018
1565465	6/27/2018	Biological & chemical studies : an international journal	2016
1587655	11/1/2018	Biological & chemical studies : an international journal	2018
1595571	12/4/2018	Biological & chemical studies : an international journal	2017





2. Look up subscription cost and CCC ILL article fee

Serial online subscription price found in EBSCOOnet, pub web site, Ulrichs.

Entered in ILLiad item record's Item Info 5 field.

CCC ILL article fee found in ILLiad Client Gateway Search.

Entered in ILLiad item record's Reference Number field.

The screenshot shows the ILLiad Client Gateway Search interface. The search filters are:

- And
- [Transactions.ProcessType] Equals Borrowing
- [Transactions.RequestType] Equals Article
- [Transactions.PhotoJournalYear] Is greater than or equal to 2014
- [Transactions.CreationDate] Is between 1/1/2018 and 1/1/2019
- [Transactions.SystemID] Does not equal LOCL
- Or

The results table is as follows:

Transa...	Creation Date	Photo Journal Title	Photo...	Ph...	Phot...	Photo Jo...	Photo Article Title	ISSN	Transaction Status	Reference ...	Item Info5
1594359	12/4/2018 5:01 PM	[REDACTED]	2014	30	4	253-263	[REDACTED]	[REDACTED]	Request Finished	58.50	495.00
1594368	12/4/2018 5:13 PM	[REDACTED]	2018	35	1	1-20	[REDACTED]	[REDACTED]	Request Finished	58.50	
1594369	12/4/2018 5:16 PM	[REDACTED]	2018	34	4	258-267	[REDACTED]	[REDACTED]	Request Finished	58.50	
1594370	12/4/2018 5:16 PM	[REDACTED]	2018	34	3	199-210	[REDACTED]	[REDACTED]	Request Finished	58.50	
1594371	12/4/2018 5:18 PM	[REDACTED]	2017	34	2	132-140	[REDACTED]	[REDACTED]	Request Finished	58.50	
1594373	12/4/2018 5:19 PM	[REDACTED]	2018	34	1	53-69	[REDACTED]	[REDACTED]	Request Finished	58.50	





3. Prepare spreadsheet, apply review factors/Fair Use

a. Determine what ILLiad fields (i.e. columns) needed for your review.

- Transaction #
- Transaction Status
- Creation Date
- Journal Title
- Journal Year
- Volume
- Issue
- Pages
- Article Title
- Publisher
- ISSN
- Username
- Lending Library (e.g. *GETIT, REPRINTS, pcard*)
- Maxcost (*amount if already paid*)
- Reference Number (*what CCC fee would be*)
- Item Info5 (*what subscription price would be*)

Custom Request Search

And

- [Transactions.ProcessType] Equals Borrowing
- [Transactions.RequestType] Equals Article
- [Transactions.PhotoJournalYear] Is greater than or equal to 2014
- [Transactions.CreationDate] Is between 1/1/2018 and 1/1/2019
- [Transactions.SystemID] Does not equal LOCL

Or

Customization

- Photo Item Author
- Photo Item Edition
- Photo Item Place
- Photo Journal Month
- Pieces
- PMID
- Priority Shipping

Drag a column header here to group by that column

Transa...	Creation Date	Photo Journal Title	Photo Journal Year	Photo Journal Volume	Photo Journal Issue
-----------	---------------	---------------------	--------------------	----------------------	---------------------



3. Prepare spreadsheet, apply review factors/Fair Use

- b. Export ILLiad custom query results to Excel spreadsheet and sort.
- c. To identify titles with > 5 requests, create new column D using Excel formula:

=COUNTIF(\$C\$2:\$C\$6564,C2)>5

	A	B	C	D	E	F	G	H	
1	Transacti	Creation	Journal Title	6 or more?	Year	Volume	Issue	Pages	Art
2	1515525	2/4/2018	Absolutely Chemistry Journal	FALSE	2014			1-14	Tor
3	1560435	8/1/2018	Academic pathology	FALSE	2018	8	2	347-391	Imj
4	1579358	10/10/2018	Academic pathology	FALSE	2018	8	3	738-751	Ge
5	1506652	1/10/2018	Academy of Educational Theory	TRUE	2014	8	1	57-125	Ser
6	1548885	6/7/2018	Academy of Educational Theory	TRUE	2017	11	1	33-72	Un
7	1555735	7/10/2018	Academy of Educational Theory	TRUE	2014	8	1	181-235	Put
8	1565619	8/24/2018	Academy of Educational Theory	TRUE	2017	11	1	33-72	Un
9	1569753	9/7/2018	Academy of Educational Theory	TRUE	2015	9	1	803-843	The
10	1571303	9/12/2018	Academy of Educational Theory	TRUE	2014	8	1	57-125	Ser
11	1587382	11/7/2018	Academy of Educational Theory	TRUE	2018		Oct 15	e-pub	Brc
12	1587383	11/7/2018	Academy of Educational Theory	TRUE	2018		Oct 15	e-pub	Lea
13	1593860	12/3/2018	Academy of Educational Theory	TRUE	2014	8	1	397-441	Ad
14	1569668	9/7/2018	Academy of historical perspectives	FALSE	2014	28	2	NA	Att

- d. Sort by Column D. Review the TRUE, set aside for now the FALSE.



Example #1

6 requests in 2018 (7 in 2017), 6 different users, \$291 CCC article fees, \$1778.00 subscription

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
1	Transacti	Creation	Journal Title	Year	Volume	Issue	Pages	Article Title	Publishe	ISSN	Base Fee	Maxcost	U	Transacti	Referenc	Item Info	
415	1504557	1/3/2018	Journal of La Di Da	2018	12	1	164-173	Review of organization	CaresALot	1234-5678				le Request Fin	48.50		
416	1559003	7/25/2018	Journal of La Di Da	2018		Jun 21	e-pub	An observational study	CaresALot	1234-5678				co Request Fin	48.50		
417	1561153	8/5/2018	Journal of La Di Da	2018		May 3	e-pub	Proposal to create an in	CaresALot	1234-5678				oj Request Fin	48.50		
418	1573576	9/20/2018	Journal of La Di Da	2018		Aug 10	e-pub	Effects of a participator	CaresALot	1234-5678				to Request Fin	48.50		
419	1593425	11/30/2018	Journal of La Di Da	2018	12	10	2071-2079	Effects of grain alcohol	CaresALot	1234-5678				er Request Fin	48.50		
420	1595262	12/7/2018	Journal of La Di Da	2018		Dec 3	e-pub	System-wide associatio	CaresALot	1234-5678				ta Request Fin	48.50	1,778.00	



Example #2

22 requests in 2018 (only 2 in 2017), 2 users, \$82.20 CCC article fees, \$65 subscription

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
	Transacti	Creation	Journal Title	Year	Volume	Issue	Pages	Article Title	Publisher	ISSN	Base Fee	Maxcost		Transacti	Referenc	Item Infc	
292	1551261	6/19/2018	Review of Academy Studies	2018	45	2	57-67	Still continuing as an O	ASTGB	9876-5432				Request Fin	4.05		
293	1551309	6/19/2018	Review of Academy Studies	2016	44	1	18-30	Unbecoming Robins	ASTGB	9876-5432				Request Fin	4.15		
294	1551311	6/19/2018	Review of Academy Studies	2015	42	2	37-44	Reading with "Darkness	ASTGB	9876-5432				Request Fin	3.90		
295	1551312	6/19/2018	Review of Academy Studies	2014	41	2	15-24	Beyond Weird: The Oly	ASTGB	9876-5432				Request Fin	4.00		
296	1554671	7/5/2018	Review of Academy Studies	2017	45	1	72-83	April and the Struggle f	ASTGB	9876-5432				Request Fin	4.10		
297	1554721	7/5/2018	Review of Academy Studies	2015	42	2	68-79	Complicating Reason: R	ASTGB	9876-5432				Request Fin	4.10		
298	1554740	7/5/2018	Review of Academy Studies	2014	41	3	84-88	Beyond Personal: Creat	ASTGB	9876-5432				Request Fin	3.75		
299	1554741	7/5/2018	Review of Academy Studies	2017	44	2	16-30	"Just Take Four Steps":	ASTGB	9876-5432				Request Fin	4.25		
300	1554746	7/5/2018	Review of Academy Studies	2016	43	2	6-10	Trusting Adolescents ar	ASTGB	9876-5432				Request Fin	3.75		
301	1556656	7/13/2018	Review of Academy Studies	2015	42	2	80-90	Misunderstanding Dive	ASTGB	9876-5432				Request Fin	3.55		
302	1556657	7/13/2018	Review of Academy Studies	2015	42	2	91-102	"I liked this poem, ever	ASTGB	9876-5432				Request Fin	3.55		
303	1556658	7/13/2018	Review of Academy Studies	2014	41	3	24-30	Troubling the Double S	ASTGB	9876-5432				Request Fin	3.55		
304	1557506	7/18/2018	Review of Academy Studies	2017	45	1	22-31	Above the Surface Leve	ASTGB	9876-5432				Request Fin	3.55		
305	1557507	7/18/2018	Review of Academy Studies	2015	42	2	8-14	Race Can Matter: A Coll	ASTGB	9876-5432				Request Fin	3.55		
306	1557510	7/18/2018	Review of Academy Studies	2017	45	1	7-11	Advocation, Grant Orie	ASTGB	9876-5432				Request Fin	3.55		
307	1557511	7/18/2018	Review of Academy Studies	2016	44	1	98-104	Fear of Oneself: Explor	ASTGB	9876-5432				Request Fin	3.55		
308	1557512	7/18/2018	Review of Academy Studies	2014	41	3	79-83	Young Teen Literature: A	ASTGB	9876-5432				Request Fin	3.55		
309	1557519	7/18/2018	Review of Academy Studies	2018	45	3	6-13	Marketing Innovators: A	ASTGB	9876-5432				Request Fin	3.55		
310	1557520	7/18/2018	Review of Academy Studies	2018	45	3	19-30	Bringing In the Trash: C	ASTGB	9876-5432				Request Fin	3.55		
311	1558032	7/20/2018	Review of Academy Studies	2017	44	2	7-10	Our Traditional Shamar	ASTGB	9876-5432				Request Fin	3.55		
312	1560283	7/31/2018	Review of Academy Studies	2018	45	3	31-41	Legendary, Experientia	ASTGB	9876-5432				Request Fin	3.55		
313	1563412	8/15/2018	Review of Academy Studies	2017	44	2	31-42	Putting Up Walls: Coun	ASTGB	9876-5432				Request Fin	3.55	65.00	



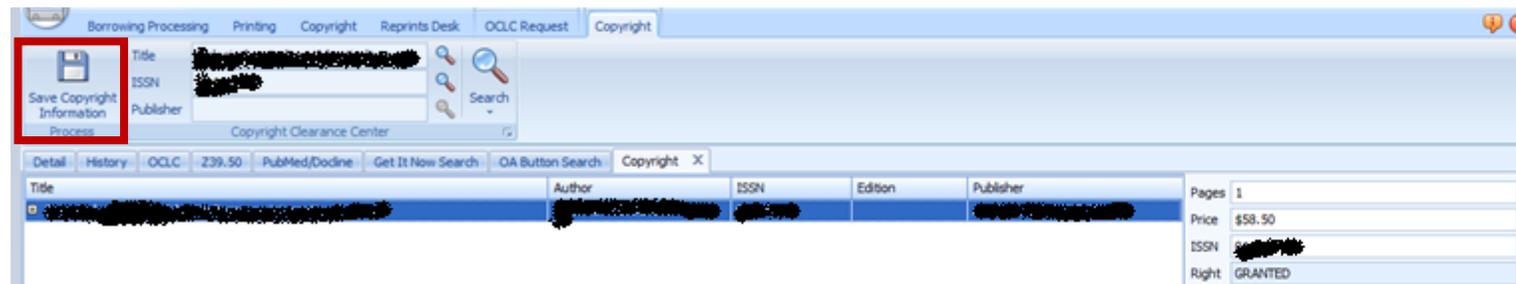
4. Submit to CCC.

For those determined to be a substitute for subscription or beyond Fair Use:

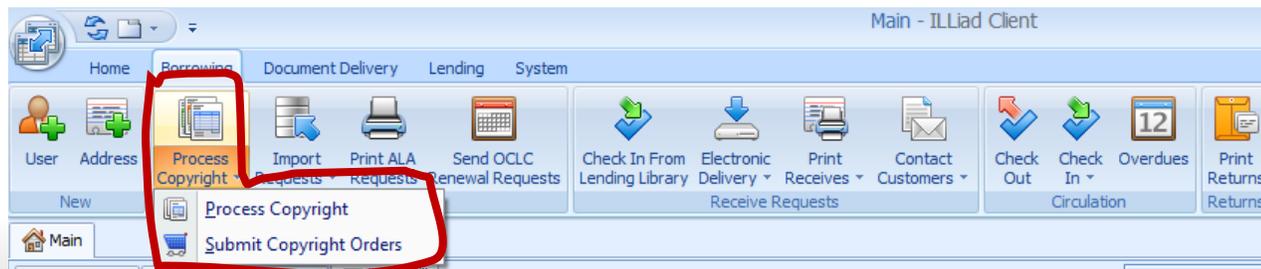
a) Do Gateway Search in ILLiad Client for each transaction.



b) Save Copyright Information for each article.



c) Process Copyright when all appropriate requests are marked.





A few observations about our CY2018 process

- We reviewed 219 titles; 31 needed copyright payment.
- Review time: about 10 hours of ILL staff time.
- Copyright payments are down.
- For us, goal is not about saving money. It is about: following the law, knowing what our users need, and determining whether ILL or a subscription is most appropriate to address those needs.





Questions and discussion



Amanda Rudd
Georgetown University Library
ar427@georgetown.edu

Brian Miller
The Ohio State University Libraries
miller.2507@osu.edu