



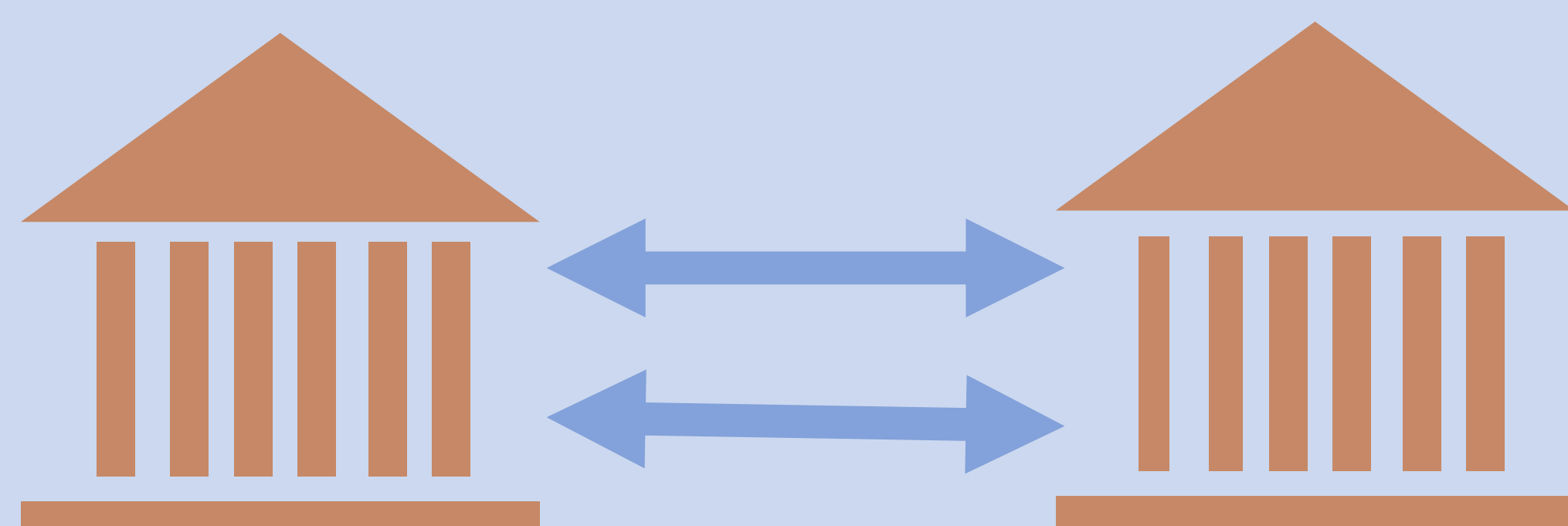
Distribution vs. Reproduction: Understanding Copyright Policy in Interlibrary Loan (ILL) Services

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What is Interlibrary Loan?

Interlibrary loan (ILL) is a cooperative library service that enables patrons from one library may borrow materials from another. It helps libraries to supplement their collections and serve their community's needs by providing their patrons with access to materials the library might not own, whether that is due to the collection's scope, budgetary limitations, or the material's rarity ([Beaubien, 2007](#)).



ILL is a reciprocal lending service between libraries.

Returnable vs. Non-returnable

Patrons can request **returnables** such as print books, media items, or microforms which can be mailed to the lending library and returned after use, as well as **non-returnables**, like photocopies of articles, dissertations, and conference papers, which are usually delivered digitally, though sometimes by mail ([Beaubien, 2007](#)).

In terms of copyright law, these two types of items are governed very differently; the lending of returnables constitutes **"distribution"** (because the same purchased copy is being lent and returned to the library) whereas the lending of non-returnables constitutes **"reproduction"** (because a new copy is being made, whether digital or physical) ([Müller, 2012](#)).

Laws and Policies Guiding ILL

There are a couple of particular laws and policies which govern and guide different aspects of the practice of interlibrary loan services in the United States today.

1976 Copyright Act of 1976

NON-RETURABLES (Section 108)

Section 108 addresses the reproduction of copyrighted materials for many purposes, ILL included. It states that libraries may share portions of copyrighted works that do not constitute an **"aggregate quantity"** which would "substitute for a subscription to or purchase of such work" ([Copyright Clearance Center, 2013](#); [17 U.S.C. § 108](#)). Thus, if reproductions of large portions of a work are requested (such as several chapter of a book, or several articles from one journal), then libraries should consider purchasing or subscribing to them. However, what constitutes an "aggregate quantity" was **not clearly defined by Section 108**, leaving this up to interpretation in practice ([Copyright Clearance Center, 2013](#)). It was somewhat clarified by the 1978 CONTU guidelines, outlined below.

RETURABLES (Section 109)

Section 109 codifies what is known as the **"first sale doctrine,"** the legal basis for libraries' ability to lend books and other items to their patrons ([Kristof, 2011](#)). First sale doctrine declares that the owner of an item is entitled, "without the authority of the copyright owner," to lend, resell, or otherwise dispose of the item as they wish ([17 U.S.C. § 109](#)). Because of this, libraries are free to share returnable items with other libraries, as well.

However, first sale doctrine **does not yet extend to e-books**, because as with other digital objects, they are considered non-returnables ([Müller, 2012](#)). Most digital materials are not actually owned by libraries, but **licensed** to them by publishers. Many publishers do not include ILL rights in their database licenses, so librarians must proactively negotiate them into their contracts ([Croft, 2005](#)).

1978 National Commission on New Technological Uses of Copyrighted Works (CONTU)

Congress established the National Commission on New Technological Uses of Copyrighted Works (CONTU) in 1978 to clarify some of the vagueries of the Copyright Act. Though CONTU was **never codified into law**, it established some important guidelines which are still used today. It particularly helped to define the term **"aggregate quantities"** and determine how much of a single work a library may reproduce before infringing upon copyright ([Kristof, 2011](#)).

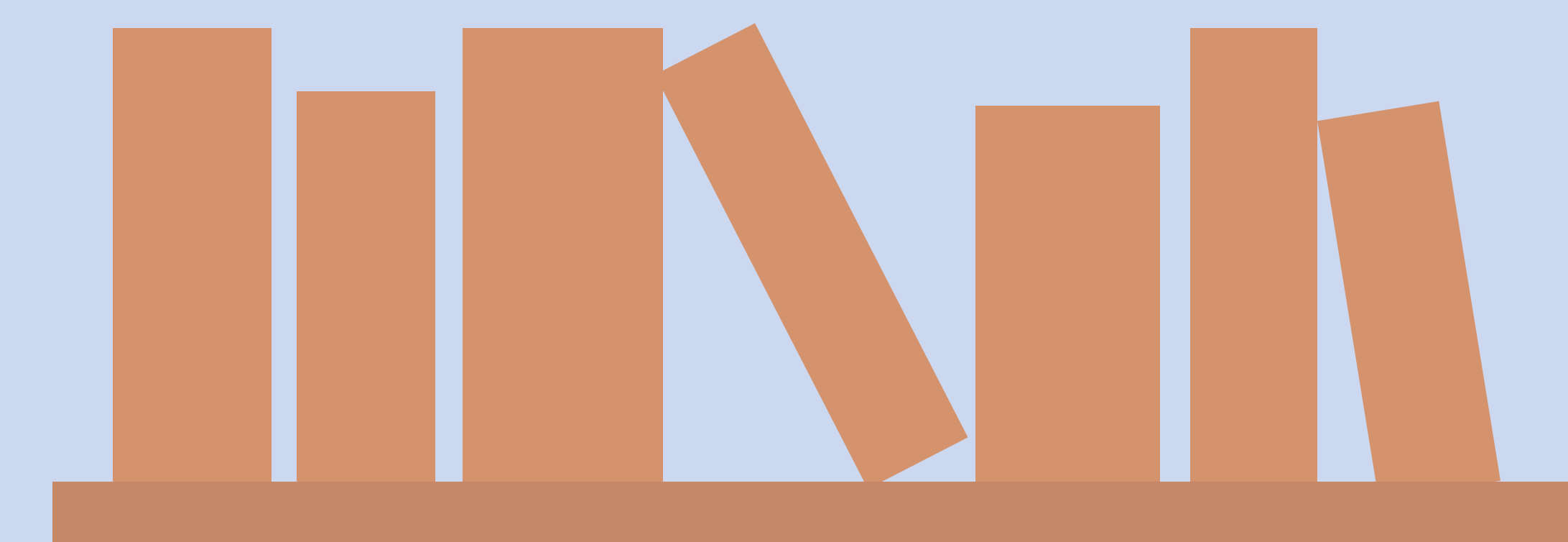
Practical Rules of Thumb

Most ILL librarians are not copyright scholars, nor need they be. From these laws and policies, a couple of practical guidelines and rules of thumb may be extrapolated for everyday use:

2 "Rule of Two": One article, per journal issue, per patron can be copied without seeking copyright permission. Permission must be granted and royalties paid for subsequent copies (per Section 108) ([Copyright Clearance Center, 2013](#)).

5 "Suggestion of Five": Libraries can receive copies of 5 articles from a particular journal title (not just from the same issue) per year before royalties must be paid and libraries should consider purchasing the item or subscribing to the journal. This also applies to "small portions of non-periodical works," including book chapters ([Copyright Clearance Center, 2013](#)). This rule comes from the CONTU guidelines.

These concrete guidelines help ILL libraries stay within copyright compliance. CONTU also suggests that librarians should also **keep detailed records** of copyright usage, **report transactions annually**, and **request copyright permission** once guidelines have been exceeded ([Copyright Clearance Center, 2013](#)). Many ILL management systems help to track copyright.



"An extensive knowledge of every nuance of copyright law is not required for successful (and legal) operation of an ILL department." - **Lee Andrew Hilyer**
(cited in Kristof, 2011)



Works Cited

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Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord. 17 U.S.C. § 109.

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