Inter-library Loan, Fair Dealing and the Electronic Environment

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A robust view of what rights libraries need in order to provide a full information service to faculty and students; and the importance of fair dealing and inter-library loan in electronic material.

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The most important consideration for any librarian is the quality of service he or she can provide with the funds available. Librarians recognize that service costs money. Indeed they recognize that much more than many library users, who often think that libraries can be provided on the cheap. Librarians also recognize that *information* costs money - we see the invoices that arrive in the post. Many times I have been aghast at the bottom line of an invoice and wondered whether the cost was really justified. The attitude of a librarian towards any payment for information is determined by the amount requested as payment in relation to the value of the information to the library users. A key factor in this topic of inter-library loans is the perception of the value of the information supplied through inter-library loan, and for most libraries books or journal articles supplied through inter-library loan represent second-level material. The most important material - the material that is most heavily-used - we shall purchase to add to stock, and only use inter-library loan when demand is not sufficient to justify purchase. Of course a particular item may be extremely important to a particular user, and that user may think it worth a large payment to obtain that item, but in general users of libraries, like librarians, treat inter-library loans as a secondary resource and wish the library to purchase for retention as much information as possible. All of which is not to say that inter-library loans are not important. No library service can be complete without arrangements to access material not in stock, but it is important for publishers, in their expectations of income from document delivery, to understand that most of what is supplied through the inter-library loan network is material which receives relatively-low use and therefore is unlikely, in the minds of librarians or library users, to justify a large payment. Users want the material, but that need will quickly evaporate if the cost is perceived to be too high or if there are obstables to obtaining it.

Value for money

A second point to bear in mind is that librarians in the academic or public sector are very conscious that taxpayers' money is paying for the service we provide. Even if you come across a spendthrift librarian, you may be sure that there is somebody like a finance officer who is looking over the librarian's shoulder to ensure that public money is not wasted. Value for money is the watchword. So, although I am sometimes appalled at the cost of some journal subscriptions, I may be even more appalled at the thought of paying what I consider to be a large sum of money for a one-off item like a book or journal article obtained through the inter-library loan service. At least when we purchase a journal we have something on the library shelves to show for the money that has been spent. What can I show an auditor to justify a large expenditure on inter-library loans? To anticipate a criticism, can I say now that I am not confusing cost with value. Quite the reverse; the point I am making is that by and large the value of material obtained on inter-library loan is not perceived by those who hold the purse-strings to be worth a high cost because a particular item will only benefit one individual rather than the community at large, whereas a book purchased to place on library shelves can be used by a large number of people. Financial authorities in universities do understand the value of the inter-library loan service, but in the context of reducing costs rather than increasing the amount of money flowing from libraries to publishers. The inter-library loan service is perceived as a public good which is worth paying for only to the extent that it achieves better value for expenditure from the public purse.

A third point which leads into a consideration of the importance of fair dealing is the concept that most research is also paid for by the taxpayer and therefore is considered to be almost common property. Funding bodies expect university libraries to co-operate because they are all funded from the public purse and they expect that those who do research should be free to share their results without further cost to the taxpayer. This feeling is also strong among academics not because they want to make a profit from research but because they want to do work which will be recognised by their peers as being of value. Publication is therefore only a means to an end, not an end it itself, and publishers are seen as the agents of that process. Publication is the means by which recognition by other academics and the public at large can learn about research. Publishers are necessary therefore to assist scholarly communication not to hinder it, and the cost of publication is accepted only in so far as it is necessary to disseminate the results of research. What those engaged in academic research are beginning to think is that publishers are hindering scholarly communication through the high prices that are charged for journals, and that the concept of the free flow of information is being lost. In the context of document delivery this view might be expressed as a wish for any journal article to be supplied free of charge or only at cost to any academic in the world. Such a thought no doubt sends shivers down the spines of publishers, but in the context of research as a public good funded by the taxpayer, that way of thinking has a lot of appeal. The big question is how much value a publisher adds to the publication process, and how much it is worth paying for that value through subscription rates or document delivery charges. Academics would certainly not wish to reduce publishers' income to the point that publication of research was no longer viable, but there is a feeling in academia that publishers have been looking to document delivery fees not only to support the publication of journals but also to maintain high profit margins threatened by cancellations of subscriptions.

Fair dealing

It is against this general context that the question of fair dealing is seen. The purpose of fair dealing is perceived to be to enable academic information to be shared openly. Fair dealing is not seen as *getting* something for nothing but as *giving* something for nothing. Fair dealing is seen as a by-product of the expenditure on research. Not only is the public good enhanced by the research itself but also by the free availability of the results of research. It is recognized that costs are incurred in making the results of research available, but those costs are perceived as being transmission costs rather than production costs, transmission costs being whatever has to be paid to get a copy of the information from one academic to another rather than the costs incurred in publishing the information in the first place. Publishers may say that such a view is unrealistic but in the context of publicly-funded research it makes a lot of sense. What all parties in the scholarly communication process should realise is that we are all in this together and that we have got to work out a *modus vivendi* in the electronic age. Publishers need the goodwill of academics to continue feeding them with high-quality material. Academics need publishers to provide the rewards of publication. Libraries need both publishers and academics: publishers to provide the material we make available to our users, academics to support and to use what is purchased. The bottom line is that we will all be out of a job if the scholarly communication process collapses. That is a big incentive to finding a way of working together.

I would like to look upon the fair dealing principle as a positive way of working together. Inherent in the principle is the concept that publishers have a legitimate right to make a profit from their business and that what is done in the name of fair dealing should not damage a publisher's profitability. Also inherent in the principle is the concept that education and research are for the public good and everybody in society, including publishers, benefits from the encouragement of learning. This may sound idealistic, but I have found that many publishers share that idealism. The problem comes in the operation of fair dealing, applying the principle in such a way as to keep those two concepts of publisher profitability and public good in tension. Rightly or wrongly publishers have felt that in recent years the public good imperative in fair dealing has threatened their profitability. They feel that the pendulum has swung too far one way, and they are concerned that in the electronic era the public good concept could drive them out of business. I can understand that fear although I do not share it. The concern has surfaced most strongly in relation to inter-library loans. I can fully understand the nightmare situation for a publisher of one purchase of an electronic subscription being used to supply libraries throughout the world. However, if I am right that we need publishers in the scholarly communication process, it is up to librarians to ensure that that nightmare does not become reality. It would soon turn into a nightmare for librarians as well if too-liberal inter-library loan arrangements led to the disappearance of the journals we need to make available to our users. Nevertheless, there is justified concern by librarians that some publishers are trying to use the licenses for electronic document delivery to take away statutory privileges for fair dealing in paper publications. That does not help good relations between librarians and publishers. I would like to extend into discussions on electronic inter-library loan the very positive and pragmatic approach we were able to adopt on other aspects of fair dealing in the Joint Information Services Committee/Publishers' Association (JISC/PA) Working Party on Fair Dealing.

Electronic inter-library loan

The term 'inter-library loan' is of course not very accurate in describing copies of journal articles which are not returned, but I shall continue to use the term to describe copies of journal articles sent electronically from one library to another, as against document delivery from a publisher's server. There are a number of ways in which an electronic inter-library loan system could operate under the fair dealing principle without damaging publisher profitability. The ways which I have heard discussed most frequently are through technical safeguards like watermarking to make it obvious when an illegal copy is supplied. I do think we need such technical developments but I would never put all my trust in technology; we also need procedural arrangements. By and large librarians are law-abiding people and if procedures for fair dealing are laid down they will abide by them. One such procedure could be that a copy of a journal article should not be supplied on inter-library loan until one year after publication. This would conform with the spirit of fair dealing, in that academic libraries would normally expect to purchase recent publications not obtain them on inter-library loan, and it would also protect publisher profitability, as publishers reputedly obtain the highest level of income from recent publications. Technically such a block upon recent material being sent on inter-library loan could be operated by publishers when the electronic journal is accessed from their server, and it could be built into the licence agreement. I would like to see publishers talking positively to librarians about such arrangements for fair dealing, rather than asking their lawyers to draw up licence agreements which say that inter-library loan is not possible under any circumstances.

Library consortia

Another way in which fair dealing in inter-library loan is possible in electronic publications without damaging publisher profitability is through arrangements with library consortia. I have found publishers very willing to talk to library consortia about licencing arrangements, generally in order to increase the exposure to users of the journals they publish and to protect their products against cancellation. I would like to suggest that consortial deals also provide a way of allowing for fair dealing in inter-library loan in a controlled environment. Surely the fear of publishers about inter-library loan in electronic publication is a fear of lack of control. Library consortia can provide that vital element of control. Although in principle librarians would like to be free to send a copy of an article to any academic anywhere in the world, in practice most of the requests we receive come from a limited number of individuals in institutions known to us. In the paper world there has been longstanding legal requirement in the UK that we only supply to another library which we would know had obtained an undertaking from the user that the copy was required for personal education or research. Most journal articles supplied have been from low-use journals which would not have been purchased. I see no reason why consortial arrangements should not be used to continue such a service, which has not damaged the interests of publishers. A consortium of libraries could agree to supply electronic copies of journal articles only to members of the consortium. The most critical factor would be the size of the consortium, and the financial arrangements would have to take that into account. I do not feel that it matters whether a consortium has only local, national or even international members as long as the consortium has sufficient internal strength to reassure publishers that inter-library loan will only take place between consortium members according to agreed guidelines. All the consortia that I am involved with have membership criteria which are taken seriously. If a member of a consortium was flouting fair dealing privileges, using consortial inter-library arrangements to supply commercial organisations outside the consortium, that this would be grounds for expulsion from the consortium. Publishers can trust library consortia to behave responsibly. The consortial approach to electronic inter-library loan could provide the element of control that publishers would like to see and at the same time preserve the freedom of academic libraries to supply single copies of journal articles under the fair dealing privileges. That is not to rule out the occasional supply of copyrighted material to libraries outside a particular consortium, or supply to members of another consortium which has parallel arrangements with the same publishers, but the basic framework of the consortial approach would prevent the uncontrolled 'free-for-all' that publishers fear most about electronic inter-library loan.

Clearly this approach will not make huge additional profits for publishers. As I indicated earlier, I believe that publishers' hopes of making large sums of money from document delivery are pipe-dreams. It may be possible if a library cancels virtually all of its journals and relies upon document delivery for almost all access to journals, but not many libraries will go down that road. For most academic libraries subscription will continue to form the basis of most access to journal literature and document delivery from publishers or inter-library loan from another library will continue to be the minor element. The balance will shift, with fewer subscriptions and more document delivery, and subscriptions may be in the form of Web access to publishers' servers, but pressure from users to provide a high quality service will ensure that many subscriptions continue through consortia and that inter-library loan of electronic materials will not dominate the services provided by academic libraries. If I am right in my assessment, I hope that publishers will adopt a more realistic approach to the inter-library loan issue and talk to librarians about how we can operate electronic inter-library loan in a way which allows for fair dealing in a controlled environment.