



Opportunities and Challenges: The Current Situation of Copyright Protection for Document Supply in China

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Abstract

Purpose: *This study aims to explore and articulate the copyright problems of document supply resulting from changes in the digital age in China, introducing current Chinese Copyright Law and “fair use” in library services and exploring the challenges and opportunities of copyright protection for document supply in China.*

Design: *From statistical analysis of the changes to document delivery services in the digital age based on the professional experiences of National Library of China (NLC), copyright problems are presented. Current Chinese Copyright Law and “fair use” are introduced. The measures NLC has taken to protect copyright in document supply are summarized.*

Findings: *With increasing digital document delivery, the potential risks of copyright infringement in document supply have become more and more serious; we must take proper steps to protect copyright, especially in the digital age in China.*

Value: *This is the first article in English to describe the current situation of copyright protection for document supply in China. It also presents the problems based on the professional experiences of NLC and recommends solutions for the digital age today.*

Keywords: Copyright protection; Document delivery services; National Library of China; Digital Age

1. Introduction

Libraries shoulder an important mission for knowledge dissemination from the day knowledge is created. As the basic form of resources sharing, interlibrary loan (ILL) and document delivery services (DDS) are effective ways of spreading knowledge and are important expressions of library core values.

Since the 1990s, with the development of digital technology, profound changes have taken place in ILL and DDS; the scope, content, and mode of service have changed tremendously in the digital age. The changes have also brought various problems related to copyright protection to libraries.

While libraries try their best to supply documents in order to meet users' needs, they may step into the forbidden zone of copyright protection if they are careless. How to find the balance between copyright protection and document supply has become an important issue for the sustainable development of resource sharing in China. In order to illustrate the changes to document supply and the problems related to copyright protection, we take NLC as an example.

2. Changes in the digital age

NLC has a long history of ILL and DDS. NLC has been developing ILL since 1927. In 1997, a dedicated Document Delivery Center (DDC) was established to providing ILL and DDS. In order to improve work efficiency, DDC at NLC began to use an Interlibrary Loan and Document Delivery System (ILDDS) in 2007. By 2018, ILDDS had served more than 200,000 users. The types of ILDDS users cover all kinds of members, including scientific researchers, educational institutions, enterprises and institutions, as well as individual users.

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2.1 Cover a wide area and serve more users

The number of ILL and DDS transactions grew explosively after the establishment of DDC at NLC. The total number of ILL and DDS requests increased year-by-year except during 2012 to 2014, when the main NLC building was closed for remodeling and lending services for some literature was closed (Figure 1). After establishing the ILDDS, DDC filled 52,511 ILL and DDS requests per year from 2007 to 2018.

In 2010, NLC began participating in OCLC WorldShare and has formed partnerships with 603 libraries in 120 countries and regions. By 2018, DDC has cooperated with more than 600 libraries, covering 34 provinces and autonomous regions all over China. NLC's DDC has become the world's largest Chinese literature guarantee base and the largest supply center of foreign literature in China today.

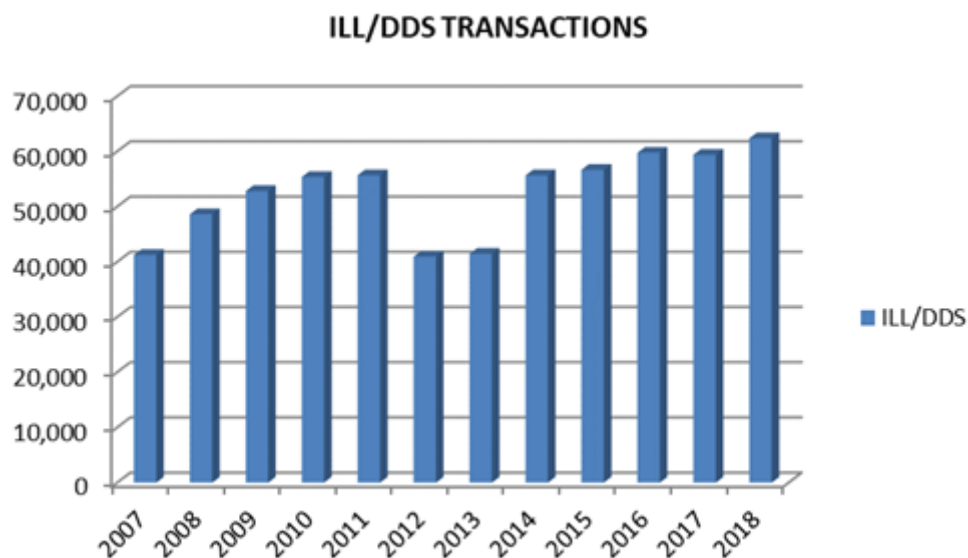


Figure 1: ILL/DDS transactions 2007-2018

2.2 Focus on special documents

Many ILL/DDS transactions focus primarily on special documents which are difficult to obtain on the market. According to an analysis of ILDDS data for the last five years (Table 1), many transactions focus on preserved books and periodicals; microform documents; Taiwanese, Hong Kong, and Macao documents; and theses. These items represent over 50 percent of the total transactions from 2014 to 2018 and have in common that they are old, rare, and difficult to obtain on the market. Although with open access has increased and while most electronic resources can be obtained by users themselves, old books and periodicals are still difficult to obtain on the Internet or market because they have not yet been digitized or cannot be bought from bookstores, so they can be supplied from libraries only.

ILL/DDS	2018		2017		2016		2015		2014	
	No.	%	No.	%	No.	%	No.	%	No.	%
Preserved books	14349	23	15445	26	16141	27	11337	20	10581	19
Preserved periodicals	11230	18	11881	20	7771	13	9069	16	10580	19
Microform documents	4991	8	5940	10	2989	5	6802	12	1114	2
Hong Kong and Macao documents	1872	3	2376	4	4185	7	1701	3	3341	6
Thesis	2496	4	593	1	1793	3	2834	5	2784	5
Total	34938	56	36235	61	32879	55	31743	56	28400	51

Table 1: Types of special documents of ILL/DDS 2014-2018

2.3 Focus on foreign literature

ILL/DDC transactions focus on foreign literature, especially Western books and periodicals; the ratio of Chinese to foreign language on annual average from 2014 to 2018 was about 1:8 (Figure 2). This highlights the important role of NLC DDC as the largest foreign language reference center in China.

Advanced information in the foreign literature has important value for scientific researchers, but it is difficult for researchers to buy the original foreign literature by themselves in China. Researchers may, if they manage to navigate the tedious purchasing process, miss the best timing for conducting research. DDC has solved this problem: we deliver foreign documents to researchers timely and effectively; therefore, they can carry out scientific research in time.

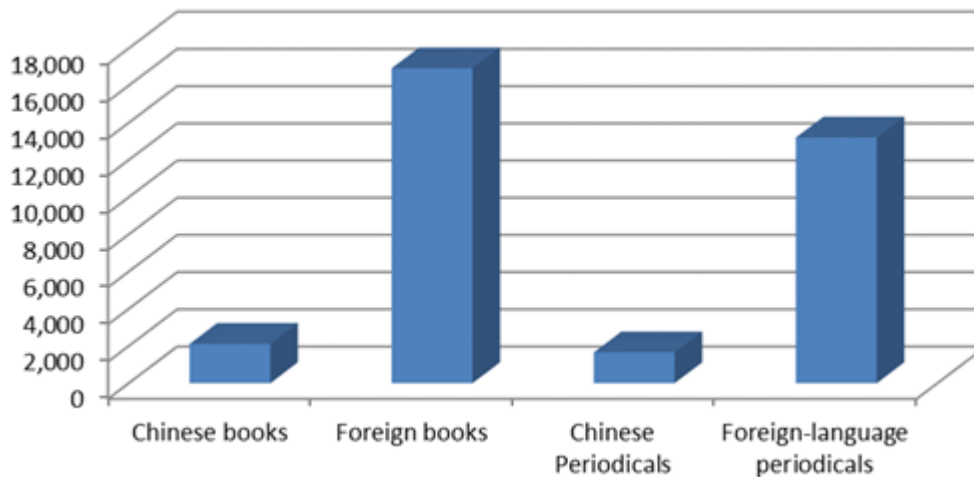


Figure 2: Transactions of Chinese and foreign documents, annual average volume, 2014-2018

2.4 Electronic delivery increasing

With the development of digital technology, users are already accustomed to the convenience and efficiency of networked services and no longer accept long waiting times for paper copies. Even if the documents are not electronic, users are more likely to obtain them by scanning the original text, taking photocopies, restoring micrographics, or other electronic delivery modes.

Libraries are paying more attention to reducing intermediary barriers to document delivery, accelerating the speed of user access to documents. The number of DDC electronic deliveries increased each year from 2008 to 2017 (Figure 3). 2010, notably, nearly doubled compared with 2008. Then, the number of annual electronic deliveries grew to over 20,000 since 2011. The main mode of document delivery has changed gradually from traditional paper mail to electronic delivery.

With more and more people relying on mobile devices to obtain information, many libraries have begun using mobile applications (apps) to solve mobile users' information needs. Some libraries have tried to open WeChat widgets or other apps for document delivery in China.

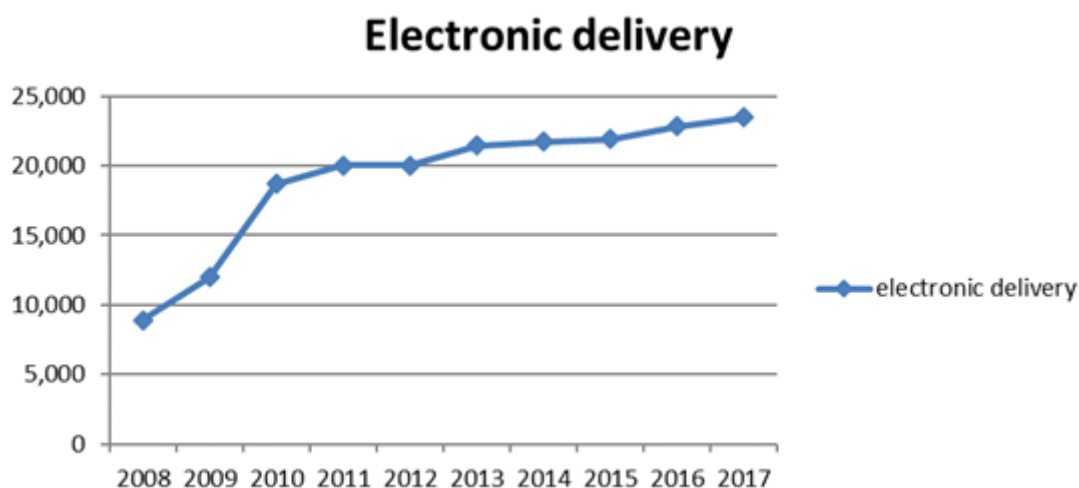


Figure 3: Number of electronic deliveries, 2008-2017

2.5 Mobile payment increasing

In 2016, ILDDS was upgraded comprehensively and an Alipay wallet was connected. The introduction of mobile payment not only shortens the users' payment times, but also caters to users' interaction needs and behavior habits in the new media age. We analyzed ILDDS Alipay wallet data of ILDDS in 2017 and the results showed (Figure 4) that users who used Alipay wallets to pay for DDS were primarily younger than 45 years old and represented over 90% of total users. Among them, the number aged 25-29 was the largest, 24.48% of the total. At the same time, this group contributed 20.06% of transactions. Only 9.83% of users were over 45 years old. This is basically consistent with the audience of social networking, online shopping, online games, and other new media services. According to market research, the majority of users of "Online To Office" (offline business websites) are 18-40 years old. Such users have a greater acceptance of novel fashion consumption patterns and have a greater understanding of unknown areas and have ever tireless curiosity.

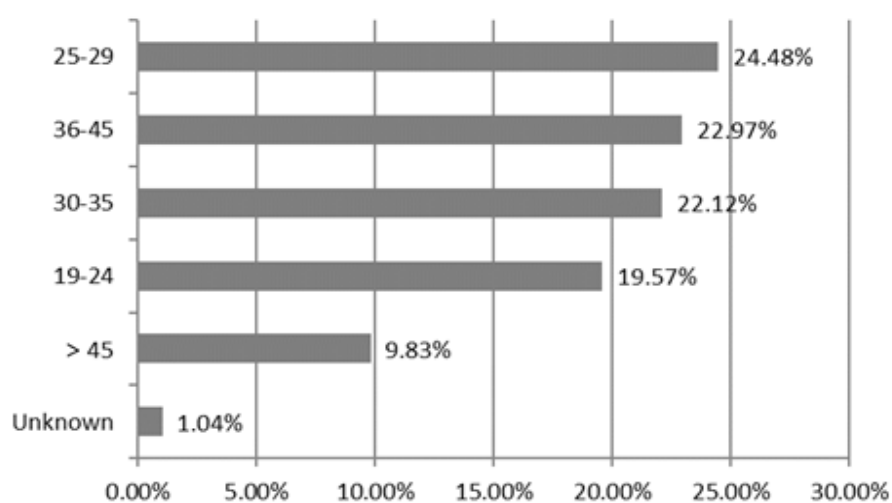


Figure 4: Age distribution of users using an ILDDS Alipay wallet, 2017

2.6 Resource sharing increasing

Document supply has a high degree of universality in the digital age; users are different from the traditional users and are moving towards integration. Convenient communication technologies promote resource sharing and break regional restrictions, becoming regionalized and internationalized. Registered users in different systems achieved unified authentication after realizing system connections through cooperation between libraries. Users can enjoy the services of other libraries nationwide or even globally in their own library systems, with “one-stop service” becoming a reality.

Since 2010, NLC established cooperative relations with BALIS (the Beijing Academic Library & Information System), CALIS (the China Academic Library & Information System), NSTL (the National Science and Technology library), OCLC, and SUBITO, respectively, allowing resource sharing to break the restrictions of library types and systems. Data from NLC DDC in 2018 showed that applications from BALIS, CALIS, and other document guarantee institutions to NLC have accounted for 47% of the total amount (Figure 5).

As early as 2008, the article “Interlibrary Loan and Document Delivery in the Digital Age” published by Chen Li, NLC’s Director, mentioned “Borrowing a Ship to Sea” and “revealing the resources and services of NLC by means of other document guarantee institutions and platforms, expanding the scope of our library's service.” Now this goal is gradually being achieved; the step of users’ cross-system convergence is unstoppable.

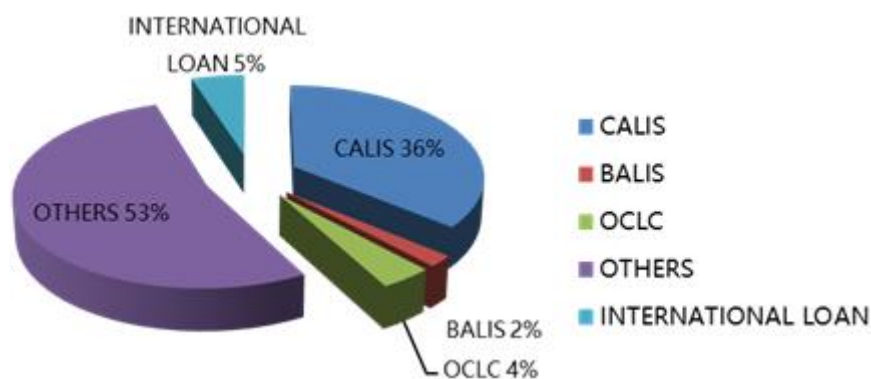


Figure 5: Applications from different platforms to NLC, 2018

2.6.1 Cooperation with BALIS

In order to make the use of NLC resources more convenient for Beijing university scientific researchers, NLC’s DDC began to cooperate with BALIS in 2010 and this cooperation has provided strong support for the literature resources of higher education literature guarantee system in metropolitan Beijing.

As can be seen from Figure 6, ILL and DDS transactions have been increasing almost every year since cooperation began. In the Beijing area, the city logistics are convenient and interlibrary loan service costs are low, so the ILL application amount is about 8-10 times of the amount of DDS.

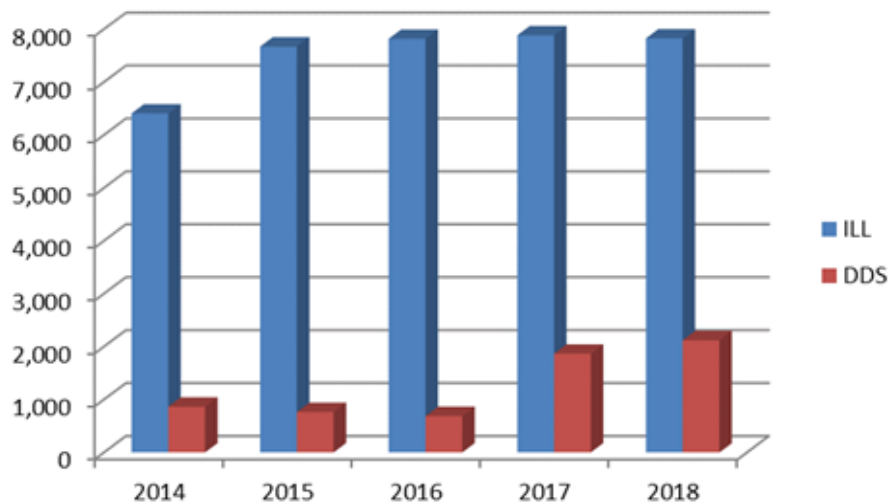


Figure 6: Volume of ILL/DDS of the NLC to BALIS, 2014-2018

The cooperation between NLC and BALIS is not limited to ILL and DDS, but also extends to quality training for readers on how to obtain information. From 2014 to 2018 (for 5 consecutive years), DDC and BALIS carried out such training. In the past five years, DDC has provided many center librarians with the opportunity to visit more than 53 colleges and universities such as Tsinghua University, Beijing Foreign Studies University, the Beijing University of Posts and Telecommunications, Beijing Normal University, the Beijing Institute of Technology, the University of Science and Technology Beijing, and so on. Face-to-face, librarians explained NLC’s resources and services for instructors and students and answered specific questions about document delivery services. The lecture activities, which lasted for one month, were warmly welcomed by instructors and students, achieved good results in cultivating users’ skills and improving service efficiency, and brought about actual application growth.

2.6.2 Cooperation with CALIS

NLC officially opened its cooperation with CALIS on November 23, 2013. Since then, users of academic libraries can obtain NLC resources and services through a cooperation platform in one place. This not only enables users to obtain more documents more conveniently, but also effectively enhances NLC’s resource security capabilities. By 2018, 296 CALIS member libraries had already conducted ILL and DDS with NLC.

The data of the cooperation between NLC and CALIS is just the opposite of BALIS, see Figure 7: the quantity of DDS is much higher than that of ILL. This is mainly because the CALIS members are located all over China, while BALIS is only in Beijing, so the costs of logistics for ILL in different cities is higher than within the same city, so the colleges outside of Beijing are more likely to choose DDS rather than ILL.

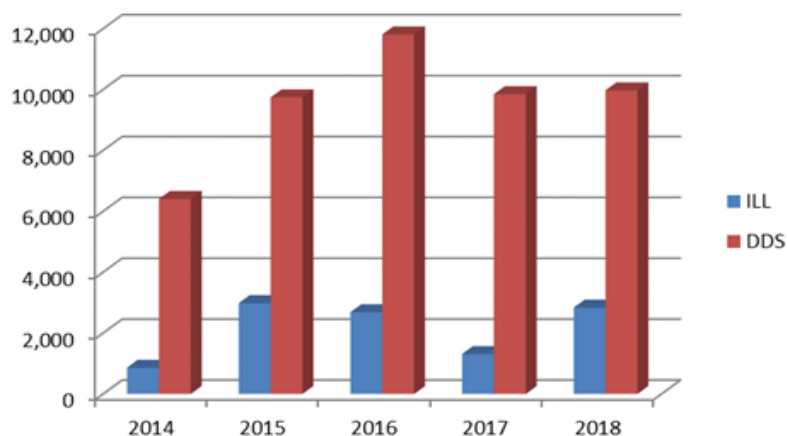


Figure 7: Volume of ILL/DDS, NLC to CALIS, 2014-2018

2.6.3 Cooperation with OCLC

In order to improve international lending, NLC joined OCLC (Online Computer Library Center, based in the U.S.) in 2010. Foreign users can find Chinese literature more effectively through OCLC and domestic users can also find literature from all over the world, so international loan transactions increased rapidly since 2010. The data cooperation contributed to a rapid sustainable growth and the amount of ILL via OCLC had increased more than 52% in comparison to 2012.

In cooperation with OCLC, we have had more lending requests than borrowing requests (see Figure 8). The annual lending requests are about 3 times more than borrowing requests and even reached as much as 7 times more than borrowing requests in 2016. This shows that the needs of users in accessing Chinese literature in various countries is very strong and growing rapidly.

Besides OCLC, NLC cooperates with the British Library, the National Diet Library, SUBITO, the Russian State Library, and other guarantee institutions to establish a widely cooperative service for international loan.

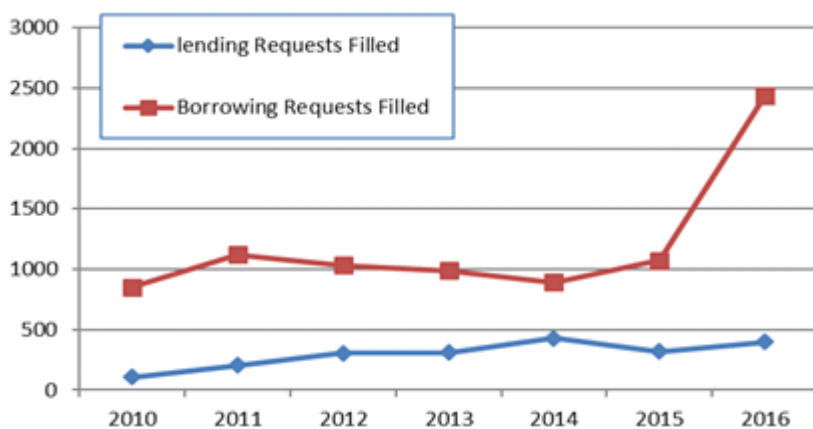


Figure 8: ILL borrowing and lending requests through OCLC, NLC volume and fill rates

3. Problems

Traditional document delivery services were mostly based on the number of items in paper collections and could be easily categorized in the category of “fair use.” Few people raised the issue of copyright protection for many years in China. But digital delivery has overcome space barriers and has expanded the scope of services in the digital age. Especially some large-scale, comprehensive and professional, cross-system and intra-system, national and regional document delivery systems such as NLC, CALIS, BALIS, and so on have realized resource sharing and collaborative services, so the scope of document delivery has become wider, which has led to some copyright problems.

3.1 Infringement of duplicate

In the process of document delivery, libraries inevitably have to copy a certain number of documents. The right of reproduction is protected by the Copyright Law of China, namely Article 10, Paragraph 5, which states: “the right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work, or by other means.”

Traditional document delivery does not have a negative impact on the literature market; any adverse impact on the interests of the owner can be ignored. On the one hand, traditional document delivery services adopt a “one-to-one” mode: documents are delivered to specific users and libraries and this is not substantially different from library lending services. On the other hand, the law usually stipulates that users or libraries who obtain the documents should not copy the documents. Even if someone copies documents without authorization, it would not only have considerable costs, but there would also be a clear “quality” difference between “duplicate” and “original”. Infringements are easy to find, identify, and combat.

But in the digital technology/networked environment, digital delivery is quite different. First, the scope of dissemination expands rapidly and a “one-to-many” mode becomes a reality. Then, in the instant of dissemination through the network, the number of users increases rapidly, which can cause great damage to the interests of the owner(s). On the other hand, using digital technologies is convenient and fast and simple “fingertip operations” can be completed. Especially compared with an “original”, the difference between “digital copy” and “original work” has no copyright significance. Infringement can be concealed and can be difficult to find and punish. As a result, a large number of copyrighted works have been copied and used by individuals, schools, and libraries; even the act of copying for profit has appeared. Even for teaching or scientific research, the number of copies is larger than the limit of “fair use” and this has caused some problems related to copyright protection in China.

3.2 Infringement of the right of communication through the information network

Article 10, Paragraph 12 of the Copyright Law of China stipulates the right of communication through the information network. It is an absolute right in China’s current copyright system. The copyright owner grants the library the digitalization right to use the owner’s works, which does not mean that the right of communication through the information network has been handed over to the library at the same time. If libraries deliver documents in the form of digitalization of traditional paper works, they should acquire

digitalization rights and network communication rights at the same time. Otherwise, the library may assume copyright liability.

3.3 Joint liabilities for readers' torts

Although the document delivery service itself does not infringe the rights of copyright, if readers obtain copies through a library and then carry out infringement, the library may bear joint infringement liability. Even if libraries can prove no fault, they are not entirely exempt from liability in China. According to the provisions of Article 5 and Article 6 of the Interpretation of Several Questions Concerning the Application of Law in the Trial of Computer Network Copyright Disputes issued by the Supreme People's Court of China in November 2001, libraries may bear joint infringement liability.

4. Current Chinese copyright law

Libraries are public service organizations; "public welfare" is their main charter. In order to ensure that libraries can fulfill their social mission, copyright laws have formulated special provisions for the rational use of copyrighted works by libraries, also known as "fair use" or "exceptions" for libraries in order to restrict the rights of copyright owners.

The Rights of the Copyright Law of China and Regulations on the Protection of the Right of Communication through the Information Network both stipulate "fair use." In some cases, a work may be used without permission and without payment of remuneration to the copyright owner. "Fair use" is also an important basis for libraries in avoiding copyright problems when carrying out document delivery.

4.1 Copyright Law of the People's Republic of China

Three of the 12 cases of "fair use" stipulated in Article 22, Section 4 (Limitations on the Rights of the Copyright Law of China) are particularly applicable to libraries:

1. Paragraph: "(1) use of another person's published work for purposes of the user's own personal study, research or appreciation."

This article guarantees readers the full right to read. Readers can freely use library books without permission or payment to the copyright owner.

2. Paragraph: "(6) translation, or reproduction in a small quantity of copies of a published work by teachers or scientific researchers for use in classroom teaching or scientific research, provided that the translation or the reproductions are not published for distribution."

This article clarifies that libraries and readers using a small amount of reproduction of published works for the purpose of teaching or scientific research is "fair use". Of course, it must be non-profit. Under this premise, whether an item is copied in a library or obtained through resource sharing, interlibrary loan and document delivery to obtain copies should be considered "fair use." If we go beyond this premise, libraries may cause infringement.

3. Paragraph: “(8) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery, etc., for the purpose of display, or preservation of a copy, of the work.”

Libraries are allowed to reproduce their collections for the purpose of displaying or preserving editions. But is it legal to copy works collected by other libraries? There is no specific provision in the Copyright Law of China. If the second case is cited, a small number of copies of published works in other libraries for teaching or scientific research may be considered “fair use.”

4.2 Regulations on the protection of the right of communication through the information network

In 2001, the revised Copyright Law of China stipulated in Article 10, Paragraph 12 “the right of communication through the information network, that is, the right to make a work available to the public by wire or by wireless means, so that people may have access to the work from a place and at a time individually chosen by them.” Since then, the “right of information network dissemination” has a legal status in China's copyright system.

On May 28, 2006, the State Council formally promulgated the Regulations on the Protection of the Right of Communication through the Information Network (hereinafter referred to as the Regulations), which specifically regulates the dissemination of works by libraries through the network:

Article 7 A library, archive, memorial hall, museum, or art gallery, and so on may make available to the service recipients on its premises through the information network a digital work in its collection which is legally published, or a work which is reproduced in digital form for the purpose of displaying, or preserving copies of the same work in accordance with law, without permission from, and without payment of remuneration to, the copyright owner, provided that no direct or indirect financial benefit is gained therefrom, unless the parties have agreed otherwise.

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The Regulations further limits the scope of digital works:

The work reproduced in digital form for display or preservation purpose, as referred to in the preceding paragraph, shall be a work of which a copy in the collection is on the brink of damage or is damaged, lost or stolen, or of which the storage format is outmoded, and which is unavailable or only available at a price obviously higher than the marked one on the market.

There are too many restrictive conditions and obvious legal uncertainties in applying the Regulations, so libraries are facing greater liability risks when applying this provision.

5. Current measures

5.1 Application of “Fair Use”

From the point of view of the current law in China, as long as document delivery is limited to “fair use” as prescribed by the Copyright Law, this activity belongs to a situation in which

documents can be transferred without permission and payment. However, “fair use” must be subject to the following conditions:

1. **Control the price charged.** Document delivery fees can still be charged, but only “at cost” should be charged. The fees can only include reasonable mailing fees, telecommunication transmission fees, network communication fees, replication fees, and so on.
2. **Control the number of deliveries.** The quantity of document delivery must be controlled within the scope of “fair use”; a large number of document deliveries beyond the scope of “fair use” should not be carried out. Article 22, Paragraph 6 of the Copyright Law does not specify whether “a small quantity of copies” refers to a small number of copies of a work or a small amount of content of a work; thus, NLC currently provides readers with no more than 1/3 of the full content of a work to ensure “a small quantity of copies.”. The reproduction of the whole content of a work should be regarded as beyond the scope of “fair use” in China.
3. **Pay attention to certain types of works which are not allowed to delivery under copyright law.** These are mainly computer software and audio-visual products. The delivery of such works must be authorized in writing by the copyright owner and royalties paid.
4. **Pay attention to copyright notice on the works.** If the author expressly declares that it delivery of their work is not allowed, the document center shall not deliver it; otherwise, the library will bear certain liability for copyright infringement. In the process of document delivery, the copyright information of a work cannot be modified or deleted at any time.

5.2 Delivery to registered users only

All users submitting applications to NLC’s DDC must be registered users of ILLDDS. Users need to provide their valid ID number, name, address, email address, and reader’s card number obtained when registering. All this information is used for preserving documents and delivery files or to investigate and verify infringements when they occur.

5.3 Necessary copyright statement

When users submit applications to NLC’s DDC through ILLDDS, they must sign a copyright protection confirmation statement. There is a clear “Copyright Notice” in the reader's interface, a prompt that “Reproduction furnished by the National Library of China Document Supply Center should be used only for purposes of private study, scholarship, or research. If a user makes a request for, or later uses a photocopy or reproduction for purposes in excess of ‘fair use’ specified by The RPOC Copyright Law, that user may be liable for copyright infringement.” (Figure 9) Users can submit their applications only after reading and clicking that they “agree” with this Copyright Notice.

There are more regulations, such as the copies transferred are not allowed to be copied, altered or forwarded, and only a single sheet of paper can be printed. In addition, all electronic versions of copies must be deleted after successful printing.

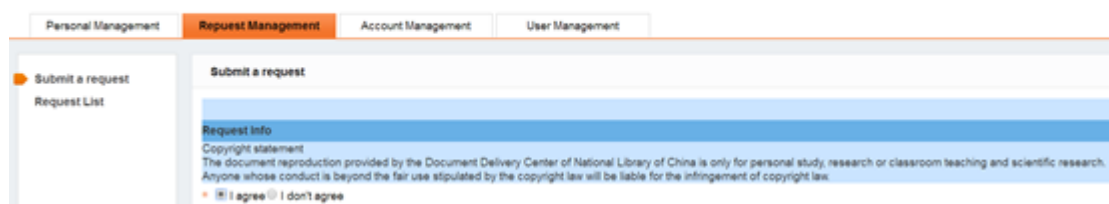


Figure 9: The NLC ILDDS Copyright Statement

5.4 Perfecting the library legal system

The role of law itself is to balance the relationship between owner and user. When the relationship between the two is not conducive to its development, it is necessary to improve the legal system and make it play its role.

There is no specific provision for electronic document delivery in China's current copyright law, so it needs to be improved. We should protect the interests of intellectual property owners and pay attention to the rights of document users as well.

6. Conclusion

In conclusion, despite the risk of infringement, ILL and DDS are still an important way to meet the needs of users in resource sharing. The core idea of copyright law is to seek a balance between copyright protection and users' rights. While emphasizing the protection of copyright and information network dissemination rights, it also increases the restrictions on these rights, thus it leaves a certain space for ILL and DDS.

To date, China has no special library law or other laws to regulate ILL and DDS. Both China's copyright law and the ordinance regarding the right to information network dissemination protect copyright-related rights from the perspective of copyright owners. There is a lack of relevant laws for libraries and readers (as the users) to protect their rights, especially in electronic delivery, this has seriously hindered the library's ability to play an important role in the dissemination of knowledge in the digital age.

Extensive cooperation ensures NLC resources are well-utilized, but NLC must solve new problems related to copyright protection in the future.

Notes

1. Available at: <http://www.nlc.cn/>
2. Available at: http://www.nlc.cn/newkyck/kyfw/201011/t20101122_11696.htm
3. Available at: <http://wxtgzx.nlc.cn:8111/gateway/login.jsf>
4. Available at: http://www.nlc.cn/dsb_zyfw/wdtsg/dzzn/dsb_gtzy/

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