Licensed to fail

HOW LICENSING CAN DECREASE ACCESS TO INFORMATION

EIFL investigates how licensing ended international non-commercial document supply at one of the world's largest research libraries

Document delivery is a vital service in meeting the particular information needs of individual researchers, students and scholars.

In December 2011 the British Library, one of the world's largest research libraries, ceased its international document supply service, which was supported by a copyright exception (known as the Overseas Library Privilege Service), to protect the library from claims of copyright infringement. The "established and respected" Overseas Library Privilege Service had been meeting the needs of the world's research community for five decades.

The service was replaced with a publisher-approved licensing arrangement, known as the International Non-Commercial Document Supply (INCD) service. Launched on 1 January 2012, the licensed service was hailed by publishers as a new model for "delivering greater resources to professionals and scholars worldwide". In reality, the service withered on the vine. On 1 July 2016, the British Library terminated the service as no longer sustainable due to the significant decline in requests.

Data obtained by EIFL under Freedom of Information requests documents the reasons behind the sharp decline in demand and shows that the impact on access to information has been dramatic.

The demise of the British Library service illustrates that international document delivery for non-commercial purposes should be regulated by copyright law, not by licence.

eifl KNOWLEDGE WITHOUT BOUNDARIES

How libraries meet the information needs of their communities

> "Research libraries have an important and longstanding role in facilitating the growth of knowledge and the sharing of information. These libraries provide resources to faculty, researchers, students and members of the public to engage in research, education, and learning to advance knowledge. Increasingly, collaboration among these communities is interdisciplinary and global."
>
> **ARL Report of the Task Force on International Library Loan and Document Delivery Practices**[1]

Libraries of all types fulfil their mission by serving the information needs of their user communities. Academic and research libraries provide access to scholarly print and electronic resources required by researchers, scientists, and students. Typically most resources are available in the user's home institution. Specialist information, or material that is out of scope for the library's collection may be requested from another library (in the same country, or otherwise sourced from abroad). The service is known as inter-library document supply (ILDS).

Inter-library document supply is a managed system of resource sharing between libraries that enables an end user to access specific resources that are not otherwise available to them.

> Inter-library document supply is a library-to-library service. The supply library provides a copy of an item, such as a journal article or a book chapter to the requesting library on behalf of a library user. The request is made on a non-commercial basis taking into account any copyright or licensing conditions. The concept of Inter-library Document Supply, that is institution-to-institution, is analogous to the notion of 'authorized entity' set out in the Marrakesh Treaty.[2]

No library is an island

New opportunities for search and discovery enabled by the internet, as well as policies that encourage collaboration in international research & development, are driving a demand for access to materials held in libraries in other countries. In addition, national border changes, emigration, shared languages, and a host of other reasons mean that a library or archive in one country often has content of unique cultural and historical significance to people in other countries. For example,

- libraries and archives in the Baltic and Nordic countries contain socially valuable material that reflect the shared histories of people across the region. For example, the printed heritage of Latvia is scattered across institutions in Estonia, Finland and Russia;

1. http://publications.arl.org/rli275/2
2. http://www.wipo.int/treaties/en/text.jsp?file_id=301016#art2

- the University at Buffalo in New York holds the James Joyce Collection, said to be the largest collection in the world of works by and about the Irish author;
- the "Ghana Collection" at the Kwame Nkrumah University of Science and Technology (KNUST) has a collection of rare and out-of-print documents that give a real account of the rise of nationalism and events before independence. The collection is much sought after by visiting researchers and historians from Africa and around the world.

Libraries have problems with cross-border delivery

When librarians in EIFL partner countries[3] are asked to comment on copyright or licensing restrictions that affect their work, the topic of international inter-library document supply is repeatedly raised.

For example in EIFL's response to the European Commission's copyright consultation in March 2014, libraries in partner countries Estonia, Lithuania, Malawi and in south-eastern Europe[4] reported a host of difficulties obtaining material from other countries requested by their academics and researchers.

In a statement to WIPO's Standing Committee on Copyright and Related Rights in December 2014, the EIFL representative from Armenia recounted how requests sent through their international document supply system are often denied due to copyright restrictions, even for chapters from books that are long out-of-print and are not available anywhere in Armenia.[5]

In an EIFL blog to mark World IP Day 2015, another librarian complained how requests for electronic resources – in this case an article reviewing the literature of surgical techniques and outcomes for certain preoperative procedures – are denied due to licensing restrictions, even though the supply library in the other country belongs to the same network of academic institutions.[6]

We also know from library responses to the European Commission's Public Consultation on the Review of EU Copyright Rules (2014) that cross-border supply is not permitted in licences, even in Nordic countries with extensive and well-developed licensing schemes.[7]

3. http://www.eifl.net/where-we-work
4. http://www.eifl.net/resources/eifl-response-european-commission-public-consultation-review-eu-copyright-rules-2014
5. http://lists.keionline.org/pipermail/a2k_lists.keionline.org/2014-December/002905.html
6. http://www.eifl.net/blogs/copyright-and-libraries-186-varieties-time-one-global-framework
7. http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm

Regulating international document supply: copyright or licensing?

At the same time, publisher representatives provide examples of commercial licensing schemes that are, they say, dramatically improving access with cheap and efficient models, such as pay-per-view and rental options. Publishers rule out using a copyright exception for international document delivery that should, they maintain, be conducted under a licence with the permission of rightsholders in the country of supply and in the country of reception.[8]

For policy-makers trying to decide how, or whether, to legislate in this field, the different viewpoints might be confusing. Should international document supply be regulated by a copyright exception, or by a publisher licence?

One way to evaluate is to compare a copyright-based document delivery scheme with a licensed-based service. What would happen if an international service that operates under a copyright exception became a licence-based service? Would more people get access? Would more journals become available? Would prices be affected?

An opportunity arose to undertake just such a comparison.

Freedom of Information (FOI) requests to the British Library

In December 2011 the British Library, one of the world's largest research libraries, ceased its copyright-based international document supply service (the Overseas Library Privilege Service) to protect the Library from claims of copyright infringement. The service was replaced with a publisher-approved licensing arrangement, known as the International Non-Commercial Document (INCD) supply service.

To evaluate the impact of the licensed service on access to information, EIFL submitted requests in April 2015 and March 2016 to the British Library under the UK Freedom of Information Act, 2000. In order to get an accurate 'before and after' picture, EIFL asked a number of questions such as:

- How many journal titles were available in 2011 (the last year of the copyright-based service), and how many are available under the licensed service that replaced it?
- How many countries received information in 2011, and how many countries has the British Library supplied under the licensed service?
- In 2011, how many requests for material were refused on copyright grounds? In 2012, how many requests were refused on licensing grounds?
- How many requests were satisfied in 2011, and how many satisfied requests are there now?

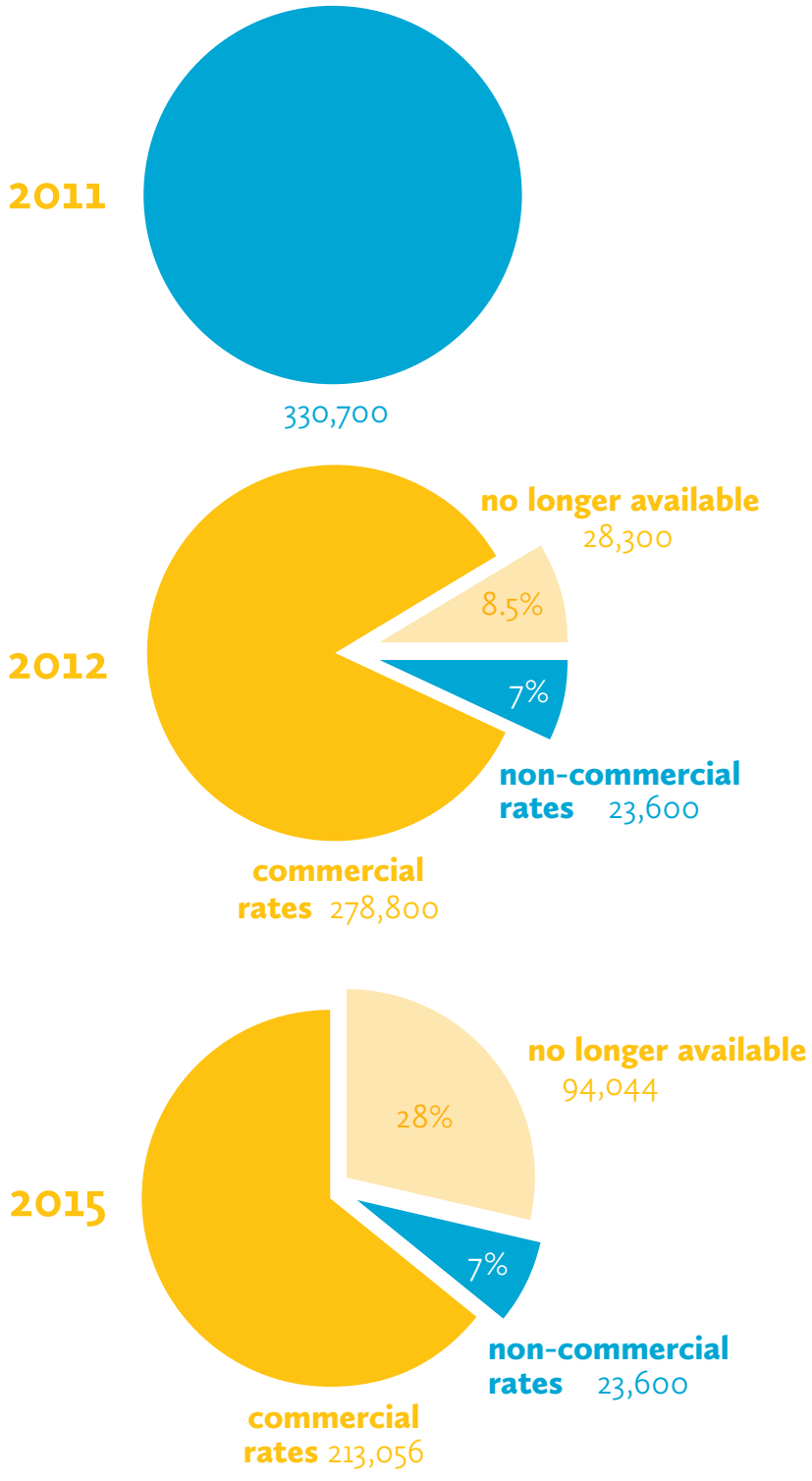
To obtain a full and fair picture, data was requested not only for 2012, the first year of the licensed service, but also for the following years. This is because we reckoned it may take a little time for the new service to establish itself.

8. Draft report http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=272007

In December 2011, the British Library ceased its copyright-based international document supply service. The service was replaced with a publisher-approved licensing arrangement.

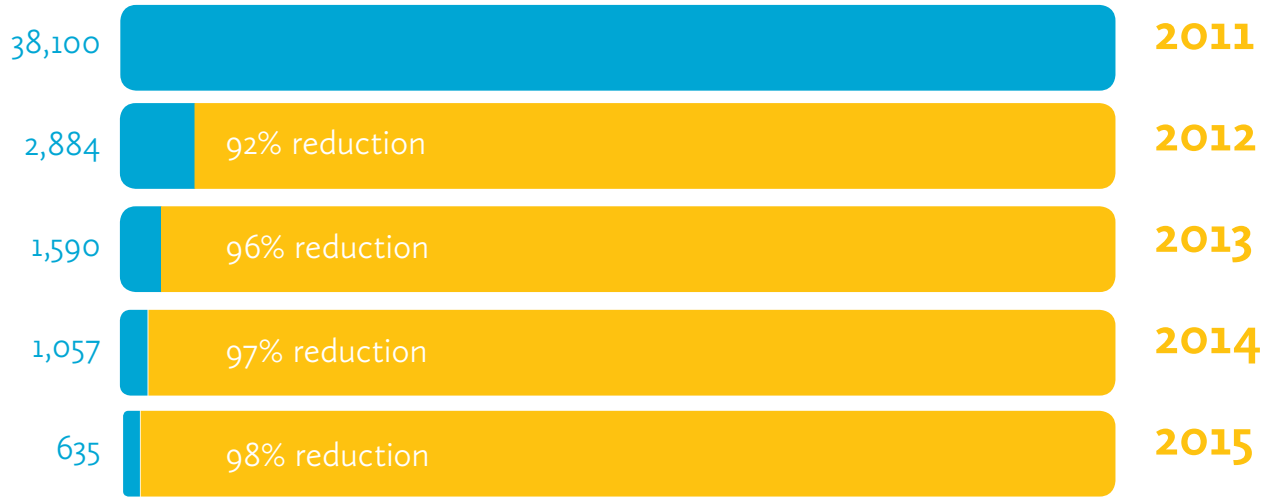
The impact on access to knowledge was dramatic...

NUMBER OF JOURNAL TITLES AVAILABLE



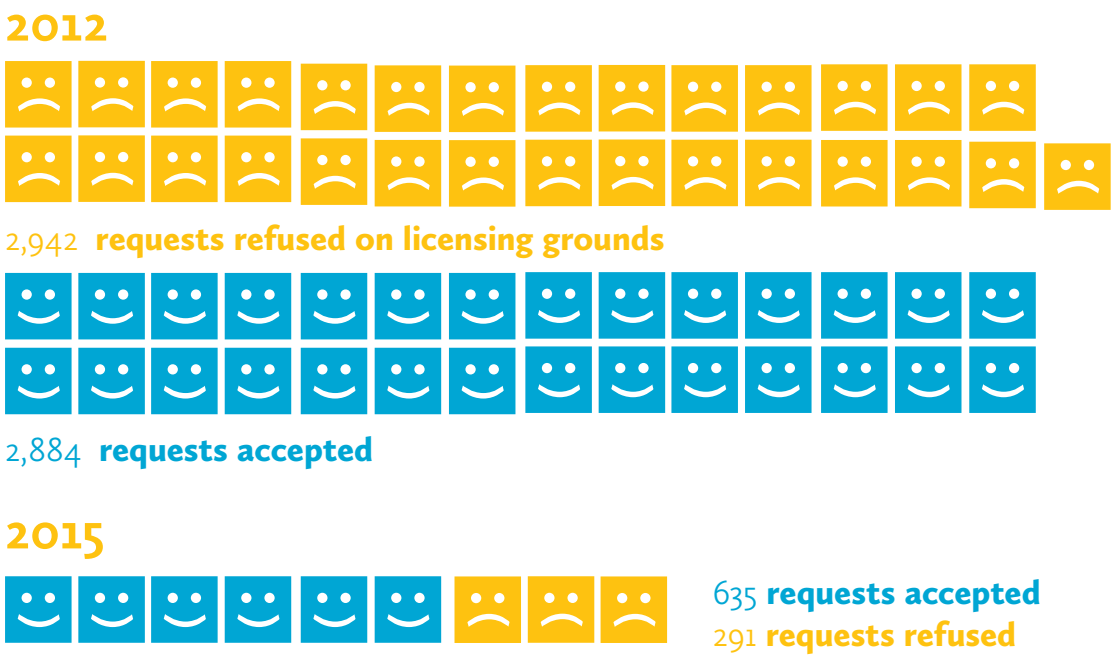
What happened to the more than 152,000 expected requests in 2012–15?

SATISFIED REQUESTS FOR ARTICLES



In 2011, under the copyright-based service, no requests for documents were refused on copyright grounds

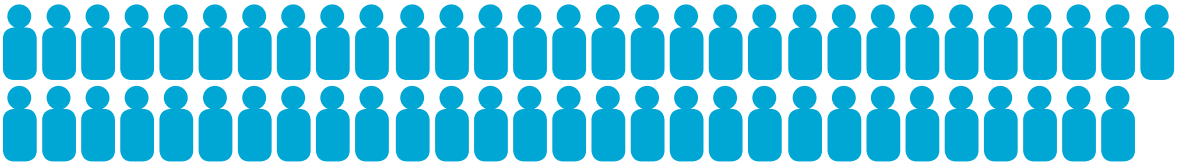
MORE REQUESTS REFUSED THAN ACCEPTED



With its rich, multilingual collections covering every subject, the British Library is used as a backup by libraries in many countries

COUNTRIES SERVED

2011 59 countries served



2014 33 countries 26 fewer countries served

2015 26 countries 33 fewer countries served

HOSPITAL REQUESTS

2011 1,775 **requests supplied** to 15 **countries**

2012 0 **requests supplied**

2013–15 100 **requests supplied** to 4 **countries**

Reduced titles, reduced service

> "International demand reduced significantly when the Library made the decision to cease the provision of 'Library Privilege' to overseas users towards the end of 2011. This was to protect the Library from claims of copyright infringement with a view to exploring a publisher-approved licensing scheme for non-commercial overseas use.
>
> The International Non-Commercial Document supply service model has not proven a viable alternative because of the complexity of requirements that are making the service unattractive."
>
> **British Library Document Supply: an information service fit for the future, Andrew Appleyard**[9]

The data provided by the British Library under the FOI request shows that the number of **journal titles** available under the non-commercial licensed service (INCD) immediately fell by 93% from 330,700 titles in 2011 to just 23,600 in 2012, and remained at this level into 2015.

The figures also show that many titles 'disappeared' from the new system altogether. In 2012, 28,300 titles were no longer available at all, either at commercial or non-commercial rates. By 2015 the figure had risen to 94,044 titles, indicating that a growing number of publishers were unable or unwilling to allow their use at all under this distribution channel.

A major contributing factor in the reduction of journal titles available to non-commercial users was that the vast majority of journals were only available at higher commercial rates. Anecdotal evidence suggests that a single article at commercial rates can cost up to $80, too expensive for most academic and research library budgets.

> "We did try the new British Library service a couple of times when nobody else on earth had what we needed. But because of the enormous increase in prices, we dare not even look at the website anymore."
>
> **Library of the Lithuanian University of Educational Sciences**

How did the dramatic drop in the number of available journal titles affect the number of **satisfied requests** – i.e. requested articles that were successfully supplied? By an immediate equally dramatic drop, according to the figures obtained. In the first year of the new service (2012), the number of satisfied requests fell by 92% from 38,100 to just 2,884.

In case the new low was indicative of the fact that the service needs time to become established, we also requested the number of satisfied requests in subsequent years.

9. *Interlending and Document Supply* 43/1 (2015) 9–13

In 2013, the numbers fell again (by 45% on the previous year), and in 2014 they reduced by a further one third to a total of just 1,057 requests by the end of the year.

Based on the number of satisfied requests in 2011, more than 152,000 requests for information could normally have been expected to have been fulfilled.

While the British Library still has the documents, they are no longer allowed to provide access to them. In fact, in 2012 more requests for information were refused due to licensing restrictions (2,942), than were satisfied under the new INCD service (2,884).

> "In 2012, a patron at Columbia University requested two pages from an early twentieth century literary journal found only at the British Library. Although the Library had the journal, it was not allowed to send the pages. The patron couldn't comprehend the refusal."
>
> **Peter Bae, Circulation Services Director, Princeton University Library (formerly Head of Delivery Services, Columbia University)**

With its rich, multi-lingual collections covering every subject, the British Library is used as a backup by **libraries in many countries**. In 2011 the Library provided information to libraries in 59 countries (almost one third of WIPO Member States) under the Overseas Library Privilege Service. By 2014 the number of countries served had fallen to 33, and by the end of 2015 to 26 countries.

In addition, the British Library had to introduce new monitoring and compliance obligations on libraries using the service. As well as ensuring the non-commercial purpose of the use, end users had to sign a declaration to receive each article and were required to verify their status each year by signing an annual statement that must be kept for audit by the British Library for up to six years. There was also be a cap of nine items from each volume of a journal or serial to each authorized library in any calendar year.[10]

> "A library serving academic and research users in south-eastern Europe had been using the British Library's overseas document supply service since the 1980s. Until 2012, the service was used frequently because it was fast, reliable and affordable.
>
> Now the licensed service is being abandoned because it has become too strict and expensive to use. Some items are not available, or are only available at commercial rates that are unaffordable. For example, the price per article of some requested items increased from c. $20 to $80."
>
> **Response by Electronic Information for Libraries (EIFL) to the European Commission Public Consultation on the review of the EU copyright rules, March 2014**

10. http://newsbreaks.infotoday.com/NewsBreaks/The-British-Library-to-Change-Licensing-for-Noncommercial-NonUK-Document-Delivery-77786.asp

Hospital requests plummet

One sector that is heavily reliant on access to specialist knowledge is the health-care sector. Staff working in public hospitals, postgraduate medical centres and other health services require access to the best resources to support frontline patient care, clinical and corporate governance, research, education and professional development. When the resources are not available locally, the institution's library searches abroad.

In 2011 records show that the British Library supplied hospitals in 15 countries – from Australia to Switzerland – with information in response to 1,775 requests. Hospitals in Ireland made the greatest number of requests (1,021), followed by Australia (177) and Sweden (170).

From 2012 to 2015, hospital requests plummeted. In 2012, no hospitals were supplied under the INCD service. Over the three years between 2013 and 2015, exactly 100 requests were supplied to four countries.

The fact that the countries supplied, with the exception of Brazil, are developed countries reinforces the notion that the prime reason for using international document supply services is the local unavailability of specialist material. Which makes the huge reduction in the service to hospitals all the more regrettable.

> "What happened at the British Library is a great shame. The copyright fees became prohibitively expensive overnight. For example in 2013 we requested a five-page article from a 2004 issue of *Practice Nursing*. It would have cost £45 (€55/$61) – that's £9 (€11/$12) per page! The library couldn't afford to pay for the article, and neither could the user."
>
> **Librarian in a public hospital in Ireland**

INCD service terminated

On 2 June 2016, the British Library announced that the International Non-Commercial Document Supply (INCD) service would be withdrawn from 1 July 2016. The significant decline in requests from overseas non-commercial organizations since 2012, as evidenced above, meant that the INCD service was no longer sustainable.

Of course requests did not suddenly dry up because the demand for information was no longer there (after all the British Library had been providing an overseas document delivery service for 50 years).

As the data shows, demand fell off primarily because the number of journals available under the licensed service decreased dramatically. New licensing rules meant that in some cases the BL could no longer provide access to the requested material. In others, the articles were available but were no longer affordable.

In addition, the licensed service imposed increased compliance on libraries and their users and added administration, such as an annual cap on the number of articles requested.

Librarians had warned that the added burdens would discourage use of the new service.

The high price of knowledge

As the British Library is often used as a 'library of last resort' when the item cannot be located anywhere else, how are librarians in university and research libraries managing to fill the gap? If the library can't provide the requested information, what other sources are available?

Publishers' own document delivery initiatives such as pay-per-view are without doubt important to the institutions and the people who use them – for example, those who want instant access, have the ability to purchase content online, and who can afford the prices.

However for most individuals, pricing of international journal articles is a major barrier to reading e.g. a cost of $20–$40 per article is not uncommon. We know that the high costs of textbooks are a threat to student success in countries such as Brazil and the USA.[11] It is simply not feasible for students to shoulder the additional burden of purchasing all the journal articles they need over three to five years of study. This is one reason why they turn to libraries – which collectively spend billions of dollars each year on content.

Lack of affordability is not just an inconvenience. For example following the Ebola outbreak in 2014, public health workers in Liberia were stunned to find that articles written by European researchers and published in a number of journals indicated that Liberia should be included in the Ebola virus endemic zone. What triggered their dismay was not the fact itself, but that the warning had been given as far back as 1982.

> "Part of the problem is that none of these articles were co-written by a Liberian scientist. The investigators collected their samples, returned home and published the startling results in European medical journals. Few Liberians were then trained in laboratory or epidemiological methods. Even today, downloading one of the papers would cost a physician here $45, about half a week's salary."
>
> **Yes, We Were Warned About Ebola**[12]

11. http://www.sparc.arl.org/blog/survey-says-textbook-costs-threat-student-success; Access to Knowledge in Brazil www.law.yale.ed u/documents/pdf/ISP/A2KBrazil_bkmk.pdf
12. http://www.nytimes.com/2015/04/08/opinion/yes-we-were-warned-about-ebola.html?_r=3

Finding alternative sources takes time and expertise

A publisher or collecting society can license only content that they own or for which they manage the rights. These document delivery services cannot therefore provide the range of material routinely requested by researchers, including journal articles of all subjects and vintage, book chapters, conference proceedings and reports, including works that may be orphaned.

The fact is that in the case of the British Library, there are no alternative collections (of the breadth and scope of the British Library) that can easily fill the gap.

Finding alternative sources for material that is not readily available takes time and expertise. Libraries that employ specialist inter-library document-supply librarians might have a chance of tracking down hard-to-find items using their expert knowledge, networking skills and online resources. At less well resourced institutions, and at the majority of libraries that do not have access to specialist staff, faculty, researchers and students are at a loss.

When the item cannot be found, it denies or delays research. When the collection of a major library, such as the British Library, is put beyond the reach of libraries in other countries, the global library information infrastructure has been damaged.

Instead of contributing to the development of a seamless, interoperable system, the licence-based service has resulted in the termination of the service. At a time when government policies are promoting the need for international and interdisciplinary collaboration,[13] it is a regrettable and retrograde step.

> "Research shows that much of the best research in Europe takes place as a result of international, cross-border collaborations. Our information infrastructure must be globally oriented, and underpinned by a legal framework that supports seamless access to information and enables its exploitation for innovation."
>
> **Statement by LIBER, Ligue des Bibliothèques Européenes de Recherche, at WIPO SCCR/27**

A policy failure?

> "In the US, 95% of information requests can be satisfied locally. For the other 5% that must be got internationally, the value of the material to US scholars is very high. That one piece of information from Zimbabwe or Uzbekistan can be hugely significant for the researcher. In fact, information flows are increasingly bi-directional, for example, our patrons are requesting more and more articles published in China and Japan in the hard sciences, for instance."
>
> **Peter Bae, Circulation Services Director, Princeton University Library**

13. For example, a policy goal of the European Research Area strives for optimal circulation, access and transfer of scientific knowledge http://ec.europa.eu/research/era/optimal-circulation_en.htm. The Research Data Alliance in 102 countries is putting in place building blocks necessary for common data infrastructures https://rd-alliance.org/

The replacement of the British Library's Overseas Library Privilege Service with the publisher-approved International Non-Commercial Document Supply service provided an opportunity to compare a copyright-based service with a licence-based solution.

The results of the comparison are unequivocal: the facts speak for themselves.

Regulation by licence quickly reduced this particular service to a skeleton service that became unsustainable within four and a half years..

When information for science and scholarship is difficult to obtain due to copyright or licensing restrictions, what are the consequences?

For students and faculty around the world, it makes their research more difficult. It sends out the message that copyright is a barrier to research and learning. When it seems to a student that the only way to get the information needed for bona fide research purposes is to circumvent the law, it is a bad outcome for copyright.

For libraries, it reduces their effectiveness in supporting science and scholarship. It undermines the library's role in explaining the importance of copyright to their users. Libraries take their role seriously, and can support publishers in providing legal access to their content – when libraries themselves are allowed.

From the policy perspective, it reduces efforts to build respect for the law in society. If people cannot get reasonable access to content they need for education, leisure and lifelong learning, they will seek alternative ways to find it, and has the effect of driving people towards unauthorized sources, such as Sci Hub, the world's largest unauthorized site for academic articles.[14] If social media tools such as the Twitter hashtag 'icanhazpdf'[15] come to be regarded as an act of civil disobedience in opposition to the copyright system, it represents a policy failure.[16]

A copyright exception to support international document delivery

Quality research requires access to a broad range of research materials. We know that world-class research requires an information infrastructure that supports easy access to international research results. And we also know that lack of access means missed opportunities and delayed discoveries.

International document delivery is a vital supplement in meeting the particular information needs of individual researchers, students and scholars. The demise of the British Library service, described in 2011 by International Association of STM Publishers as 'an established and respected document supply service' shows that licensing is not the solution.

14. For example, http://www.sciencemag.org/news/2016/04/whos-downloading-pirated-papers-everyone.
15. Bypassing Interlibrary Loan Via Twitter: An Exploration of #icanhazpdf Requests. Carolyn Caffrey Gardner and Gabriel J. Gardner
16. Kroll, David. "#icanhazpdf: Civil Disobedience?" Terra Sigillata, 22 December 2011. http://cenblog.org/terra-sigil-lata/2011/12/22/icanhazpdf-civil-disobedience

According to the WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives,[17] just 11% of countries have an exception for document supply in their national law, and almost no countries have addressed the issue of cross-border transfer of content.

While the data obtained from the British Library FOI request are telling, it is important to remember that behind every number is a person who needs information in pursuit of their research or study. Who has located a reference to a journal article they would like to read, and who has asked their librarian to obtain it for them – at a reasonable cost and in a timely manner. And where the librarian in many cases must reply, "I'm sorry. Your request is not licensed to fill."

This is why a copyright exception to support international inter-library document delivery is needed. Now.

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Read the FOI requests:
http://www.eifl.net/sites/default/files/resources/201505/150430_response_1519.pdf
http://www.eifl.net/sites/default/files/resources/201605/160322_response_1620.pdf

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17. http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=306216