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ILL illuminating lessons learned?

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ILL as a model for digital acquisitions

As the head of acquisitions at a large research library, part of my role is to set the department's strategic direction in light of its mission to acquire and make accessible the material necessary to support the University’s research mission. A dominant question at this time is the role that the department will play in the development and population of Stanford’s Digital Repository (SDR).

I enter this consideration with a department whose mission is broadened beyond acquiring materials with the addition of traditional cataloging functions such as cataloging and database maintenance. The lines between acquisitions and cataloging have blurred due to workflow reengineering, yet insight into cataloging has improved the work of acquisitions. Increased awareness of series improves our pre-order searching, creating MARC holdings for multi-volume sets has helped us work with the MARC holdings generated by check-in, and the standards of cataloging have whetted our appetite for acquisitions standards.

As acquisitions has learned from cataloging, the nature and context of interlibrary loan points out several areas for consideration in the future of acquisition of digital resources. My consideration of ILL lessons for acquisitions are based on the literature of ILL, rather than on any one library's practice. My discussion does not include the acquisition of commercial digital works that are available under pre-existing license, but instead focuses on materials made available under copyright, and often only in print.

Lesson 1—The “copy” in copyright

Acquisitions functions are rarely concerned with copyright since the majority of our purchases are of physical objects and governed by the doctrine of first sale. While we purchase these physical objects for their copyright-protected content, “transfer” of the physical copy does not include transfer of the copyright to the work. Copyright appears as an issue only occasionally when we request microfilm reproductions or when we search to determine if a book is available on the market before creating a replacement copy for our collection.

As we acquire materials for the digital repository, copyright will be a concern in almost every case since inclusion in the repository implies reproduction, a right of the copyright holder. It is simpler to list the cases where copyright will not be an issue — works in the public domain by default, such as government documents; work which is not copyrightable (perhaps because it is purely factual); and work for which rights are clearly expired, perhaps through Creative Commons. For all other works to be added to the SDR, library staff must determine if a given work is still under copyright and then take steps to ensure copyright compliance, as well as the often daunting task of locating the work itself.

In cases where a physical object is lent, ILL relies on the first sale doctrine in the same way acquisitions does, as the physical object is loaned. Because ILL is often accomplished through making a copy which is forwarded to the borrower, it is based on a more nuanced view of copyright than acquisitions has been in the past. Copying a work for a patron is expressly permitted under Section 108(d) of Title 17. The broad outlines of the US Code have been supplemented by more specific guidelines of the National Commission on New Technological Uses of Copyrighted Works (CONTU). These guidelines include suggested limits on borrowing from a single journal and record keeping practice to ensure these limits are not broken, and point to the two remaining lessons of ILL for digital acquisitions.

Lesson 2—In certain circumstances, it is actually better to ask permission than forgiveness

Once the CONTU “suggestion of five” is reached, a library has some options it can select from to ensure it remains in the CONTU “safe zone.” These are: purchasing a physical version of the title; finding another version of the work that is not under copyright, obtaining it through a document delivery service that pays royalties to the copyright holder; or seeking permission directly from the copyright holder or via the Copyright Clearance Center.

Placing copyrighted works into a digital repository immediately triggers some of the same issues as making multiple copies from a single journal. Copying a work for the digital repository may be a low risk if the library can show that the copy was