

CAUL Consortium Member Briefing Document: Information for Vendors and Publishers

Subject: Resource Sharing Model Clause

Date: November 2020

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Intended for: Vendors and Publishers with CAUL agreements or submitted proposals

Background:

In response to requests by CAUL Consortium members to increase the number of publishers that allow resource sharing, CAUL Procurement, in conjunction with the Australian Libraries Copyright Committee (ALCC) and CAVAL, commenced a project to develop a model clause to supply to publishers. Several issues related to publishers and resource sharing have been identified including:

- Some publishers have clauses that disallow resource sharing
- Some publisher licenses are silent on resource sharing as no clause is included
- Some clauses are unsuitable for CAUL Consortium members (e.g. restrict to sharing within the country where the library is based only).
- In some cases, clauses provided by publishers refer to outdated practices and technologies.

Further background on processes undertaken by the project team are detailed later in this document.

Basis for resource sharing

Resource Sharing is permitted under sections [49](#), [50](#), and [51](#) of the 1968 Copyright Act. Please see [ALCC information](#) on Exceptions to Copyright for definitions on what is commonly known as Interlibrary Loan, Document Delivery and Resource Sharing and the Australian Copyright Councils [Exceptions to Copyright](#) information sheet.

Resource sharing is not used as a substitute for libraries subscribing to commercially available content. It is simply a means for libraries to support students and researchers in providing ad hoc content that the library would not normally be able to subscribe to or purchase. Documents supplied by Australian and New Zealand University Libraries, within current resource sharing frameworks account for just 0.05%¹ of all eContent used in Australia and New Zealand and therefore has minimal impact on commercial content providers.

Use of this Clause:

CAUL Procurement will be referring vendors to this clause in its negotiations with vendors for CAUL Agreements. CAUL will also continually identify and approach publishers to adopt the clause where no clause exists or to request that the clause is used where the current clause is unworkable.

¹ Based on figures provided by CAVAL

Additionally, all Australian and New Zealand members of the CAUL Consortium are welcome to make use of this clause in their negotiations with publishers and vendors for agreements outside the CAUL framework.

The Clause:

“Licensee may reproduce and communicate to another library, requested content by secure electronic transmission, to fulfil requests, a practice commonly called Interlibrary Loan and Document Delivery as permitted by the Australian Copyright Act 1968.”

Rationale for clause language:

| Language | Rationale: |
|---|--|
| Licensee may reproduce and communicate... | This phrase has been used to match the language of the Copyright Act. |
| ...to another library... | Specifies valid requests between two libraries not between individuals primarily for research and study. |
| ...Requested content by secure electronic transmission... | Secure electronic transmission is a technology neutral phrase to indicate that transmission is not open or public. It can include restricted access for example email, FTP, cloud storage services etc. |
| ...to fulfil requests... ...as permitted by the Australian Copyright Act 1968. | Specified amounts e.g. 10% have intentionally been omitted. As such requests should be within scope or the provisions of the Australian Copyright Act. Sections 49 , 50 , & 51 of the Australian Act allow requests for an article or part contained within in a publication or whole or part of other works included in a periodical. |

Future Directions:

CAUL Procurement will continually review and refine the model clause as necessary and all feedback from Consortium members and publishers is welcome.

Proposed Copyright access reforms currently under consideration will make provisions technology neutral (so can include podcasts, videos, and native digital material). It is expected that these changes will not have a significant impact on this clause but will change the nature of what can be included. The reforms to the copyright act are expected to occur later in 2021 or 2022.

About the Model Clause Project:

This has been a joint project between CAUL, the Australian Libraries Copyright Committee and CAVAL. The project team included a wide range of stakeholders, including librarians from CAUL member institutions. Included in the project team were the following:

| Name | Position | Organisation |
|------------------------|---|--|
| Elliott Bledsoe | Copyright Officer | Australian Libraries Copyright Committee |
| Angus Cook | Content Procurement Manager | CAUL |
| Louise Driscoll | Coordinator, Subscriptions (Collection & Access Services) | University of Western Australia |
| Sae Ra Germaine | Manager, Member Services and Digital Platforms | CAVAL |
| Thomas Girke | Senior Manager, Information Resources | CSIRO |
| Tanya Kizito | Manager, Collection Access | Victoria University Wellington |
| Belinda Nicolson-Guest | Snr. Librarian (Resources), and Content Coordinator Representative on the CAUL Content Procurement Committee. | Griffith University |
| Pauline Middleton | Manager, Document Delivery | Monash University |
| Ben Rice | Copyright Law and Policy Adviser | Australian Libraries Copyright Committee |
| Bronwen Thomas | Manager, Content & Discovery, and Content Coordinator Representative on the CAUL Content Procurement Committee. | University of Newcastle |
| Sue Thompson | Librarian, Interloans. | University of Canterbury |

Project Process:

To commence the project, a project initiation plan was approved by the CAUL Procurement Committee. Over a series of meetings from August 2020 to November 2020, members of the project reviewed many clauses in current use in commercial contracts and model licenses. From there, the project team discussed whether clauses were good or bad examples of the language CAUL was seeking to adopt. Informed by previous examples, with contributing advice from the Australian Libraries Copyright Committee and CAVAL, the team settled on a model clause that is seen as best suited to CAUL members.

The project team will discuss feedback received from both members and vendors to review the clause further in 2021.