



Controlled Digital Lending : a changing concept of document lending in libraries in the digital age

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Abstract

Controlled digital leading (CDL) is a type of library service that seeks to promote the efficient use of library resources and assets in a digital environment. It is an extension of traditional cataloguing and digital preservation practices, but it is designed to manage and protect digital content in a way that is more efficient and cost-effective. CDL is becoming increasingly popular among libraries as it enables them to manage and access digital content more effectively and efficiently. CDL is a comprehensive and integrated system that allows libraries to manage and access digital content securely and reliably. It also enables libraries to keep up with changing technology and provide users with access to digital content in a way that is both secure and reliable. CDL also allows libraries to keep up with the ever-evolving digital world and provides users with access to digital content in a way that is both secure and reliable. The paper is an effort to make aware library professionals of the concept of serving users.

Keywords: Controlled Digital Lending, Copyright law, Electronic lending, Fair use, IFLA statement of CDL, Lending services

1. Introduction

Circulation or lending services are considered a prime function of a library. With the development of technology, the lending system has changed from time to time. Various lending systems like Browne System, Ledge System, Book-Slip System, Cheque Book Methods, Three Card Mechanism, and Computer system have been adopted in due course of time. Any standard library management software is used by the library to perform several standard functions of a library. Now the circulation and lending services are provided in an automated environment. In the abeyance of implementation of technology and copyright laws around the world, experts in the field of law and technology are continuously working

for better bartering of information sources. In this line, a new concept of controlled digital lending has been introduced for the effective circulation of library documents. However, as libraries continue to explore digital lending services, CDL could become an increasingly attractive option for providing library users with access to digital content based on certain principles discussed in the paper. The paper discusses generic lending services in action for decades and is an effort to visualise the importance and need of controlled digital lending for greater circulation of library documents.

2. Genesis and development of lending services in libraries

A lending library is one where patrons can borrow books and other materials.



Endowed libraries, institutional libraries (which are the most varied), public libraries, and subscription libraries are the four main categories. It can also refer to a library or other organisation that, typically through interlibrary loan, provides resources to another library on request. The beauty of library operations extends beyond the mere provision of essential informational items to the community. It also encompasses the capability to ensure their accessibility to patrons whenever needed - an aspect that constitutes the concept of circulation. Anunobi and Moneke (2008) emphasised the crucial need to maximise resource utilisation, both within and beyond the library environment. They further contend that a suitable lending arrangement is indispensable for enabling the effective use of materials outside the library.

According to Kasum, Verma, and Jadam (2013), the implementation of an ICT-based inter-library lending system in libraries that uses electronic networks to deliver copies of journal articles and other documents in digital formats, primarily portable document formats (PDF), to library users' desktops has resolved many clientele's informational issues. Book lending takes place in the circulation section of the library. Charging and discharging are carried out using many methods. A library adopts a method deemed suitable for its charging and discharging function. In some libraries, methods are combined while some small libraries devise their own methods. Some of the contemporary methods used are the Browne system, Newark System, ledger system, and computer system, among others.

3. Objectives

The research paper evolves multidimensional measures to issue collections available in the library with the implementation and use of ICT technologies

in the library. The study emphasises on the basis of the following objectives.

- i) To identify means to enhance circulation of collection of a library procured in physical format
- ii) To make aware of the digital lending concept for circulating physical collection of the library in support of ICT based applications
- iii) To acquaint with the copyright laws permitting fair use of the collection available in the library for academic purposes to the library professionals
- iv) To connect library professionals of India with the controlled digital lending measures taken around the globe.

4. Lending services during the digital age

Since consumers and staff engage directly with the circulation area, prompt and effective services are needed. The circulation desk performs important functions like issues, returns, reservations, re-issue, overdue statements, and statistical presentations about the circulation of library collection. Automation of circulation processes is advantageous for libraries. Barcode facilities significantly increase the circulation transactions' speed, effectiveness, and correctness. The user database and the book database are the two master files that the circulation module relies on to function. The library staff can keep track of a document's status and the user's information.

Sending due-date reminders for overdue books is made simpler by this service. Another responsibility in the circulation area is to figure out late fees for books returned beyond the due date. To save users' time, circulation control systems are rapidly being



combined with other features like online public access mechanisms, interlibrary loans, online reminders, reservation of documents status of documents issued, etc. Modern technology uses radio frequency identification (RFID) to automate circulation and prevent book theft.

5. Lending services at the National Law University Delhi

National Law University Delhi has implemented automation through Libsys Software. Being a library with a collection of more than 45000 print books and around 16000 electronic books.

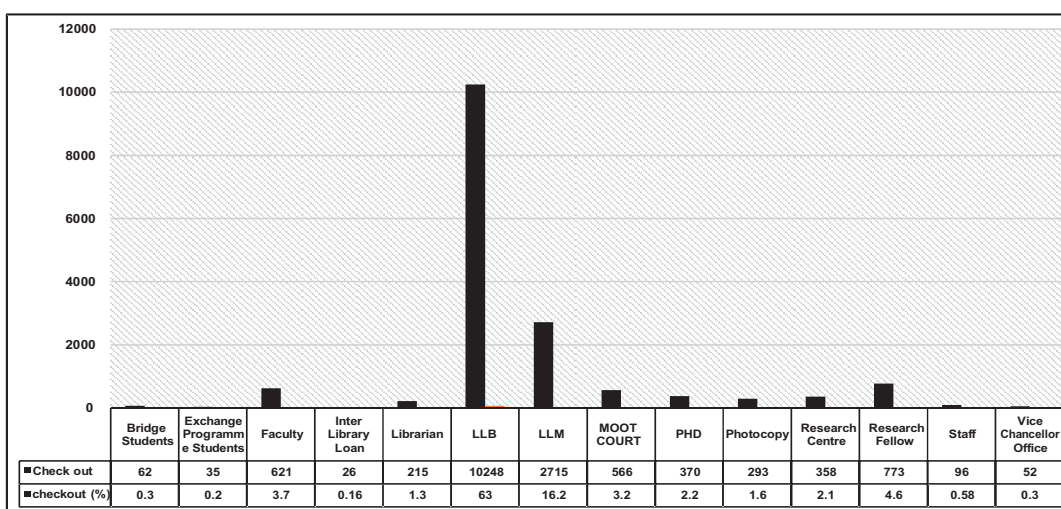


Figure 1: Circulation statistics of print books in the last three years (2020-2022)

Figure 1 visualises that a total of 16430 print books were checked out during the last three years at the Library of the National Law University Delhi. Most of the undergraduate

students (63 percent) pursuing BALLB were the highest stakeholders in issuing books from the library.

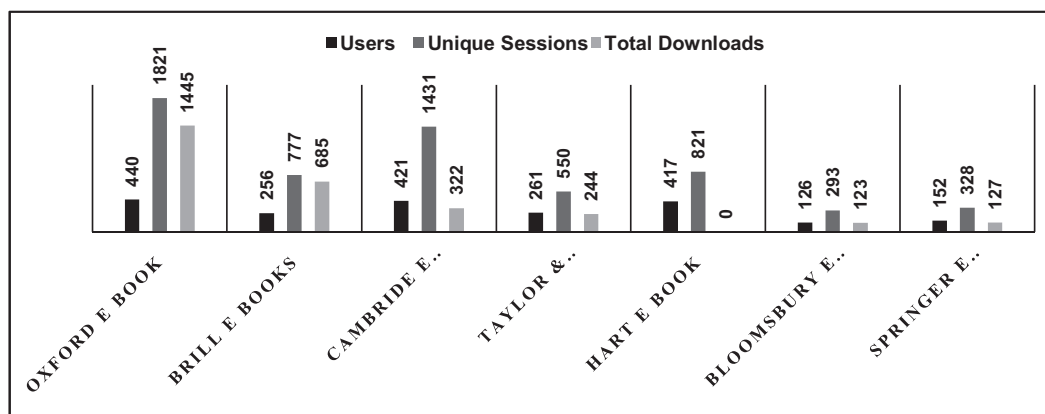


Figure 2: Ebooks accessible by the patron in the previous three years (2020-2022)



Figure 2 illustrates that out of sixteen thousand books accessible through the subscription at the Library of National Law University, more than 2000 users accessed more than 6000 ebooks with more than 2900 ebooks. The above statistics envisage that print books have been circulated more frequently as compared to the usage of electronic ebooks. Here is why controlled digital lending is more useful for the efficient circulation of books available in the library.

6. Controlled digital lending

Courtney and Hansen (2019) elaborate that controlled digital lending is a process of lending books in digital format in place of a physical state. They explain that the concept allows issuing the same number of copies of a book that the library has purchased in a legalised manner or the same number of books that have been received as donations. They, in another straight sense, elucidate that even in the case of digitisation of a book, the library is permitted to issue the same number of copies in a collective sense (print+digital; or print; or digital) based on the principle owned to loan.

6.1 *Position statement of controlled digital lending by libraries in America*

Engelberg Center on Innovation Law and Policy under its project, "Library Future" visualises the "Position Statement of controlled digital lending by libraries in America". According to the statement, the Libraries in America have come up with a position statement of controlled digital lending statement. The purpose of the "Position Statement on Controlled Digital Lending by Libraries" ("Statement") is to provide a mechanism for how the libraries must perform in hybrid mode for better serving to clientele. The statement engages the library to circulate documents in a way where the optimum use of digital technology

may be accepted because of serving clientele under copyright laws while obeying the personal interest of publishers and authors.

The statement stresses the engagement of an attorney for referring legal aspects for developing a plan as per the need of the library to serve the local population. The statement accepts that libraries have the task of serving the public more fundamentally and for their benefit. For this purpose, libraries may start CDL based on their collection for effective loaning of the documents but within the preview of the copyright laws. CDL, while properly adopted, libraries may circulate the books in the same manner as they have in their collections either in digital or print. CDL would enhance the use of books to its legitimate users if it were allowed to circulate by digitising its copy. In essence, CDL is required to keep a ratio of "owned to loaned". Any format that allows only one user to use a copy at a time for a short time is regulated in its circulation. Additionally, CDL systems often incorporate the proper technical safeguards to stop users from keeping a copy permanently or disseminating more copies.

6.2 *"IFLA statement on controlled digital lending (CDL)"*

The International Federation of Library Association and Institutions (IFLA) released a statement on controlled digital lending on 16th June 2021. The IFLA statement states that the past few years have brought significant attention to Controlled Digital Lending (CDL), particularly due to the COVID-19 pandemic. Although the term is relatively new, regulated lending has been implemented in various contexts, including document delivery. Within the limitations of current copyright regulations, restricted lending has enabled libraries to fulfil their objective of promoting research, education, and cultural participation. However, licensed



ebooks have posed a threat to the traditional functionalities of libraries, which are still applicable to print books but not to licensed ebooks, as libraries are no longer authorised to choose which ebooks to purchase.

In some cases, publishers even prohibit libraries from obtaining their titles. In this regard, CDL is a replacement for the licensing paradigm, which aims to re-establish the balance. The historical obligations and freedoms of libraries serving public interests have been considerably undermined by licensed ebooks, but CDL offers a way to restore the equilibrium. CDL permits libraries to lend digital copies in its collections strictly based on an "owned to loan ratio" complying with copyright laws. CDL applies to renting digital copies of works that are protected by copyright. Unlike market-based licensing alternatives, CDL recognises the significance of restrictions, exclusions, and "user rights" in copyright law. According to Hansen and Courtney (2020), the fair use principle justifies CDL in the United States of America. The authors accept that as the first copy is procured by libraries, the libraries pretend to exercise their right to authority over the document to circulate, whether in print or in digital, in the case of an electronic state, provided that the circulation/issue of books must not be more than the physical copies procured by the library of a title.

In select European Union nations, the groundwork for CDL may have already been laid. In such cases, libraries need only ascertain whether the *VOB v. Stitching Leenrecht* ruling applies to their particular national circumstances. The International Federation of Library Associations (IFLA) advocates for measures to revise any incongruous regulations so that libraries may digitize and lend ebooks on an owned-to-loaned basis, thereby further realising their potential to promote learning, research, and

access to culture in the digital age.

7. Legal support for controlled digital lending

The relationship between CDL and copyright law may be a topic of discussion when libraries consider implementing the programme. The principle of exhaustion and the fair use doctrine are the two key areas of copyright law that underpin CDL, much like with conventional physical lending.

7.1 First sale and the common law exhaustion principle

The common law exhaustion notion, often known as the "first sale" theory and codified in part under Section 109 of the US Copyright Act, has been a staple of traditional library lending for hundreds of years. These rules state that once a copy of a work is legitimately transferred, the rights holder's capacity to impose limitations on its use and distribution is "exhausted." Exhaustion enables the owner of a specific copy of a work to do so without the rights holder's consent or payment by selling, lending, or giving away that copy. Among other significant advantages, exhaustion makes sure that once copyright holders set the first price and distribution of their works and restrict their sale, secondary markets and outlets, including libraries, can increase the affordability, preservation, and accessibility of the works. Thus, it is far more likely that library CDL techniques that take into account the principle of depletion will be covered by its safeguards.

7.2 Fair use

To safeguard and sustain socially advantageous secondary uses of copyrighted works, fair use has likewise been a cornerstone of American copyright law for more than a century. It serves as a First Amendment "safety valve" to guard against the infringement of free speech by copyright



holders and is a crucial component of copyright legislation. It is explicitly stated in Section 107 of the U.S. Copyright Act and Section 52 of The Indian Copyright Act, of 1957 that fair use is not a violation of copyright and provides several examples of canonical fair use, including "criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research." Fair use may also apply to other socially desirable goals like expanding public access to work. Fair use laws are considerably more likely to apply to library CDL strategies that are created with social good in mind.

8. Fair use of controlled digital lending

The doctrines of fair use and exhaustion both exhibit a favourable disposition towards the concept of CDL when properly implemented. In light of the absence of a directly analogous case, this Statement presents a comprehensive elucidation of how the principles of fair use and copyright exhaustion can effectively coalesce to facilitate the application of CDL practices.

8.1 Purpose and character of fair use

While library lending has several purposes, it is always motivated by goals that benefit society and give equal use priority. Both physical lending and CDL facilitate the realisation of these objectives, but CDL significantly amplifies them by enabling unbiased access and informational autonomy for those residing in rural areas, senior citizens, and physically disabled individuals, as well as for others who may face obstacles in visiting their local library. During natural disasters, extreme weather situations, and health emergencies, residents' access to the resources that local libraries have procured for their use may represent their sole practical alternative. Furthermore, CDL, which

promotes fair usage, fulfils the promise of the exhaustion theory by empowering libraries to share the copies they already own in a new format. The availability of books for personal, non-commercial use at public, university, and school libraries is strongly in favor of fair use.

An additional consideration is whether the usage is transformative or if the secondary utilisation deviates in some way from the primary usage. Although a determination of transformation is not mandatory when supplementary socially beneficial factors are present, it greatly supports fair usage. This assertion is not predicated on CDL's potential to transform. On the whole, the philanthropic and ethical objectives of CDL are aligned with fair use.

8.2 Nature of the copyrighted work

This standard is more likely to apply to published works because the original expression of the artist has already been utilised once. This factor will typically be in favour of fair use, or at the very least won't be against it, as CDL will almost always be used to publish books. Courts often allow more uses when the underlying work is more informative or factual. In some cases of fair use, the nature of the underlying work (such as whether it is true or fictional) will alter the judgment. Even though it is rarely significant, decisions made by libraries on the types of books they lend through CDL might deepen the understanding of this feature. Therefore, the case for fair use may be stronger whenever the source work is academic, educational, or nonfiction. When the underlying work is no longer in print, commercially inactive, or an "orphan work" whose owner cannot be found or contacted, the case for fair use may be significantly stronger. Other factors that have an impact on the nature of the work might also be essential.



8.3 Amount and substantiality of the portion used

For many reasons, utilising a whole work is permitted, according to several courts, as long as the quantity utilised is reasonable in light of the intended use. A user is usually given limited access to CDL's whole work to accomplish charitable or socially good objectives. The user is not permitted to access the book once the brief loan term is finished unless she checks it out once again. Other users must wait in queue if there is only one physical copy of the resource available in the library. Giving temporary access to a whole digital work is permissible for CDL reasons, and lending out entire physical copies of books for a limited time is legal and normal for physical libraries.

8.4 The market effect

The commercial impact of secondary use is examined under the fourth fair use standard. The possible loss of sales brought on by lending as a substitute is the potential negative effect on CDL. A successful CDL system will continue to maintain an "owned to loaned" ratio that is equivalent to physical lending, therefore even if such an impact does arise, it is unlikely to be weighed against fair use. Any market impacts from such measures are not anticipated to influence the fair use analysis since libraries are permitted to distribute copies of the items they hold. The long-held idea that not all market damages are cognisable copyright injuries is acknowledged by fair use jurisprudence. A terrible book review is an excellent illustration of how the market is affected; while lost sales may result, this does not "qualify" as harm according to the fourth criterion. Furthermore, since CDL requires that all copies be obtained lawfully, each CDL copy will have been paid for at the time of the initial acquisition.

9. Implacability of controlled digital lending

The concept of CDL supports circulating the books purchased among users in the same way as in the case of the physical copy of a book. Libraries are supposed to control the circulation of digital copies of the book till the print copy is finished to read and return to the self. The implication of controlled digital lending widely depends on the availability of digital copies of the books available in the library in physical form. On the other side, the majority of publishers are reluctant to provide digital copies or to allow scans of the physical books fearing piracy and misuse of their copyrighted contents as they have limited control over the digital collection. The unsupportive consideration of publishers may result in problems for the libraries to procure digital copies of the books.

With the infusion of information technology, the majority of the publishers are now coming up with digital copies of the book or we can say ebook modules for selling electronic copies of the book. Publishers around the world are now considering that apart from the physical copy, they may generate additional revenue by selling digital copies of the books. Global publishers like Oxford University Press, Springer, Cambridge University Press, Taylor and Francis, Edward Elgar, Sage, and many other publishers have now introduced their ebook editions in various access modules. Ultimately, the implementation of controlled digital lending is under the consideration and consent of the publishers who have print as well as digital copies of the book. At the outset, if global publishers understand the potentiality of the libraries and the importance of the availability of digital copies of their publications, the concept of controlled digital lending may become widespread.



10. Barriers to implementation of digitally controlled lending in India

Controlled Digital Lending has its limitations in developing countries viz. lack of digital literacy among the target population; security and privacy concerns; regulatory and compliance issues; high cost of implementation; technical glitches and system failures; difficulty in monitoring and tracking the loans; lack of access to reliable internet connection; user interface difficulties; lack of awareness of digitally controlled lending; and complexity of the digital system. There are a few barriers to the implementation of digitally controlled lending in India as discussed below.

10.1 Poor internet connectivity

Poor Internet connectivity is one of the major barriers to the implementation of digital-controlled lending in India. It is estimated that about 40% of the population does not have access to the internet, and that number is even higher in rural areas.

10.2 Low level of digital literacy

Another barrier to digital-controlled lending in India is the low level of digital literacy.

10.3 Lack of trust in digital-controlled lending services

Trust is an important factor when it comes to digital-controlled lending. Many people in India may not trust digital-controlled lending services due to the lack of transparency, security, and reliability.

10.4 High cost of digital-controlled lending services

Digital-controlled lending services can be expensive due to the cost of setting up the technology and maintaining the infrastructure. This can be a barrier for some

potential borrowers who may not be able to afford the high costs associated with digital-controlled lending.

11. Future of controlled digital lending in India

Being a promising new model of lending books in libraries, CDL permits libraries to maintain digital copies of the books available in physical format for circulation in the same way as physical books in terms of the number of copies to be circulated. However, as the concept is new and the Indian Copyright Act, of 1957 has no such direct provisions that allow a library to digitise physical books to use them for controlled digital lending. Up to some extent, it may be read with section 52 of the Copyright Act 1957 under fair dealing principles, but the nature of the use of the book is for circulation of books up to the extent of the copies of a book legally owned. To date, the concept of controlled digital lending in libraries in India is not been rightly implemented. NLS Bangalore, which is a law school, has initiated digitising its collection for the implementation of a controlled digital lending concept in its University. The future of controlled digital lending services in India looks bright as India is always ahead in adopting technological advancement in almost all spheres of development activities around the world. Policymakers may consider the inclusion of the provision of digitally controlled lending in the copyright laws in future amendments.

12. Conclusion

Hansen and Courtney (2021) provide a comprehensive guide for libraries on the legal lending of digital copies of books, known as "controlled digital lending" (CDL). The practical implications of CDL are that libraries can circulate digitised titles in a controlled manner, instead of physical copies.



Controlled digital lending allows libraries to lend only the number of copies they have lawfully acquired, typically through purchase or donation. Technical measures are employed by controlled digital lending systems to prevent users from retaining permanent copies or distributing additional copies. The authors assert that controlled digital lending expands access possibilities for readers with disabilities, physical access limitations, research efficiency needs, or other requirements for digitally-accessible content. Libraries need to exercise control over both digital and physical copies to ensure that restrictions are strictly followed. CDL has no more negative impact on the market than the lending of physical books already permitted by libraries.

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