

NATIONAL LIBRARY OF SOUTH AFRICA

LIBRARY GUIDE 2025 - 2026 (2)

Copyright As It Applies to Interlibrary Loans

To all members of the Southern African Inter-Lending Scheme (SAIS)

Contents

1. Introduction.....	2
1.1. What is copyright?.....	2
1.2. How copyright works	2
2. Copyright Law in South Africa.....	2
2.1. Copyright as it applies to Interlibrary Loan	4
2.2. E- book.....	6
3. References	7

1. Introduction

The exchange of materials between libraries, whether through lending or borrowing, is essential for fulfilling the needs of library users. Numerous Interlibrary Loan (ILL) processes include the transmission, or sharing, of items like journal articles and photocopies. Members of the Interlibrary Loan Departments must be informed about the Copyright Laws and Regulations that are to be followed. This Library Guide is designed to offer guidance on Copyright as it relates to Inter-lending.

1.1. What is Copyright?

According to Webster, 2020, Copyright is the exclusive legal right to reproduce, publish, sell, or distribute matter and form of something (such as literary, musical, or artistic work). Copyright is a property right given to authors or creators of "original works", e.g. literary, artistic, musical works, sound recordings, cinematograph films and broadcasts or computer programmes, to control the copying or exploitation of their work. It gives the owner certain legal rights regarding their work, e.g. making adaptations to the work, making copies in any manner or form, publishing, broadcasting, or giving a public performance. Anyone else who does any of these things without the permission of the owner infringes copyright and may be sued by the owner for that infringement.

1.2. How Does Copyright Work?

Copyright occurs when a person is:

- a. Performing an action which may legally only be performed by the copyright holder.
- b. Depriving the copyright of income by making illegal or unauthorised copies of a work.
- c. Creating an illegal digital edition of a work.
- d. Illegally copying artistic works, e.g. images, on the Internet.

2. Copyright Law in South Africa

In South Africa, copyright is governed by the Copyright Act No. 98 of 1978 and its regulations. South Africa is a signatory to the *International Berne Convention* which obliges South Africa

to give recognition and protection to copyright works from signatory countries. South Africa is also a signatory to *World Intellectual Property Organization's (WIPO's) Copyright Treaty and Performances and Phonographs Treaty*.

Although Copyright Law differs between countries, the general principles are the same and require the permission of the copyright owner before work can be copied or reproduced regardless of format. The author of a work is the person who creates it, but not necessarily, the owner of the copyright. The Copyright Act (Act 98 of 1978) states that copyright is breached if a person who is not the owner of the copyright in any way reproduces literary or musical works without the owner's permission.

According to Section 21(b) of the South African Copyright Act, "a literary or artistic work that is made by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be the owner of the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical or to reproduction of the work for the purpose of its being published so published. (*South African Copyright Act No. 98 of 1978 (as amended)*).

In South Africa works are protected for the lifetime of the author and the copyright duration depends on the type of work that has been created. Generally, the term of copyright is 50 years, subject to the following:

a. Literary, Musical or Artistic Works

Copyright exists for the life of the author plus 50 years following death, calculated from the end of the year the author died in, or 50 years from the date of first publication, performance in public, offering for sale of records thereof or the broadcasting thereof, whichever is later.

b. Films and Photographs

Fifty years from the end of the year in which the work is made publicly available, or the end of the year in which the work is first published, whichever is longer, or fifty years from the end of the year in which the work is made.

c. Sound Recordings

Fifty years from the end of the year in which the recording is first published.

d. Broadcasts

Fifty years from the end of the year in which the broadcast first takes place.

e. Programme-carrying Signals

Fifty years from the end of the year in which the signals are emitted to a satellite.

f. Published Editions

Fifty years from the end of the year in which the edition is published.

It is, however, possible for the creator of the work to share copyright, e.g. joint authorship, or to contractually assign in writing the copyright or part thereof, to a publisher or other third party, as a whole, or for a limited purpose or period. It can also be transferred by testamentary disposition i.e. copyright passes to an heir by inheritance, as an asset in the author's estate.

2.1. Copyright as it Applies to Interlibrary Loans

Copyright regulations regarding Interlibrary Loans (ILL) typically permit libraries to create copies of copyrighted materials for their patrons under certain conditions, mainly for research and personal study, without needing to obtain explicit permission from the copyright owner. Thus, Copyright Law allows for limited use of copyright materials and this limited use is commonly referred to as fair dealing.

Fair dealing in South African Copyright Law is the legal right to copy a limited amount of copyright materials without obtaining permission or royalty payment. This concept is designed to balance the rights of creators with the public's need for access to information and creativity. Copying excerpts from books, periodicals, newspapers, and other works for purposes of criticism, comment, news reporting, teaching, scholarship, or research is generally considered to be fair dealing.

As defined in Section 12(1) of the South African Copyright Act 98 of 1978: "Copyright shall not be infringed by any fair dealing with literary or musical work -

- a. for the purposes of research or private study by, or the personal or private use of, the person using the work.
- b. for the purposes of criticism or review of that work or another work; or
- c. for the purpose of reporting current events -
 - i. in a newspaper, magazine, or similar periodical; or
 - ii. by means of broadcasting or in a cinematograph film.

Provided that, in the case of paragraphs (b) and (c) (i), the source shall be mentioned, as well as the name of the author if it appears on the work.”

The general accepted rule to copy a “limited” amount of a work for educational and research purposes can be described as:

- a. Up to 10% of the total.
- b. A chapter from a book (never the entire book).
- c. An article from a periodical e.g. newspaper, magazines, etc.

As described from the rule above, it will be assumed by the Lending Library that all relevant copyright documentation has already been obtained if the user needs to copy more than “fair dealing”. The borrowing library's librarian should thus ensure that his/her user has obtained copyright permission in writing.

Each Lending Library should be aware of, and work within, the Copyright Law. In addition, the Lending Library should ensure that any relevant copyright information is made available and communicated to the requesting libraries. Lending libraries that use OCLC WorldShare Inter-Library Loan can deliver documents through the site regardless of their geographic location. It supports compliance with Copyright guidelines with automatic deletion of files. Viewed files are deleted after five views and files that were not viewed, are deleted after 30 days.

The following is an example of a copyright warning that must accompany copies of an article:

[Name of Institution]

Copyright Warning

The Law on Copyright, 1978, regulates the production of photocopies or other reproductions of material subject to copyright.

According to the stipulations of the Law, libraries and archives are authorised to supply photocopies and other reproductions.

According to one of the stipulations of the Law, photocopies or reproductions, may however, not be used for any other purpose than that of private study, personal or private use.

Should a user request, or later make use of a photocopy or reproduction, for purposes not allowed by the Law, the user may be held liable for the infringement of copyright.

This Institution reserves the right to refuse any order for a copy, should the execution of the order, in the opinion of the Institution, leads to the violation of the Law.

2.2. E-books

The same copyright protection exists for the author of a work regardless of whether the work is in a database, CD-ROM, bulletin board, or on the Internet. Libraries providing access to databases, electronic files or e-books must ensure that they are adhering to the license agreements as set by the publishers.

In the past few years, the popularity of e-books has grown significantly. For those libraries that can acquire e-books, copyright, and the possibility to provide interlibrary loan copies, needs to be negotiated with e-book publishers.

The IFLA Principles on E-Books in Libraries, as endorsed by the IFLA Governing Board in February 2013, second revision in August 2013, provides guiding principles relating to

the e-lending of electronic books that can help libraries with negotiations.

One of these principles refers to the fact that e-book licensing/purchase options must respect copyright limitations and exceptions available to libraries and their users in national law, such as the right to:

- a. Copy a portion of the work; and
- b. Provide a temporary copy of the work to another library in response to a user request.

These negotiated license agreements then need to be adhered to by libraries who want to provide access to e-books via Interlibrary Loan.

3. References

Companies and Intellectual Property Commission, n.d. *Register Copyright*. Available from:

https://www.cipc.co.za/?page_id=4586. Accessed 14 July 2025

Copyright and Related Issues: When Does an Employer Own Copyright? Available from:

<https://libguides.wits.ac.za/c.php?g=145331&p=956632>. Accessed 13 July 2025

Copyright & Fair Use: ILL & Copyright. *ILL Copyright Guidelines*. Available at:

<https://libguides.uiwtx.edu/c.php?g=954561&p=6887413>. Accessed 13 July 2025

IFLA. (2013) *IFLA Principles on E-Books in Libraries*. Available from:

<https://www.ifla.org/ifla-principles-for-library-elending/>. Accessed 14 July 2025

Republic of South Africa. *Government Gazette*, 30 June 1978. Copyright Act 1978, Act no.98 of 1978 No. 6092. PP.17. Available at:

https://www.gov.za/sites/default/files/gcis_document/201504/act-98-1978.pdf.

Accessed 14 July 2025

Copyright As It Applies to Interlibrary Loan

Smit & Van Wyk, Inc. *Copyright Law in South Africa*. Available from:
<https://www.svw.co.za/copyright-law-in-south-africa/>. Accessed 13 July 2025

Webster, M., 2020. *Copyright Definition & Meaning*. Available at:
<https://www.merriam-webster.com/dictionary/copyright>. Accessed 13 July 2025

If you have any questions or require additional information, please contact the SAIS Administration Office on (012) 401 9729/40 or e-mail docdel@nlsa.ac.za.