

STM statement on Document Delivery

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Document delivery of individual journal articles is a supplemental tool used primarily by individuals and organizations to fill small information gaps in their STM content. It is only one of the many ways by which STM journal literature can be accessed and it can best be understood as a “top-up” tool or for occasional journal users. Currently, there are few copyright exceptions and limitations regarding document delivery in the digital environment, but it is possible that their introduction might be contemplated or that the application of other exceptions to digital document delivery is put forward. STM publishers have valuable input to such deliberations and wish to contribute to this debate. In the following paragraphs we set out five guiding principles we believe should be applied in any consideration of this matter.

1) The Berne Convention 3-step test must govern any discussion of copyright exceptions – including for library supply

As a rule, STM literature is available globally due to publisher programs at national, international, and regional levels (see Appendix A). Local instances of scarcity may exist, for example, in specialised locally-produced literature which has no ready market within or beyond its local territory. Catering for these instances through copyright exceptions might be useful but will require careful crafting and calibrating so as not to prejudice or undermine their co-existence with market solutions. Regardless of specific local circumstances, any future exceptions or limitations to copyright must be developed in the context of the Berne Convention’s 3-step test, which requires that the exception must be confined to certain special cases that do not interfere with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights-holder.¹

2) Cross-border document deliveries by libraries and other document suppliers should be governed by arrangements negotiated directly with publishers or their authorised representatives

Deliveries by libraries and other document suppliers across national borders raise questions about conflicts in governing laws. In our view, the suitability and relevancy of the laws of one country to given market conditions in another, and the ability of all actors to apply the laws correctly and to conform potentially to multiple or foreign sets of laws, are questionable at best. Reliance on exceptions often created to reflect unique local circumstances carries the same issues. Instead, to maximise legal clarity, safeguard consumers and libraries from legal disputes, and respect the legitimate rights of publishers; cross-border, international or multi-

territory document deliveries should be governed by voluntary licenses negotiated directly with publishers or representatives appointed by the publishers – e.g. Collective Management Organisations (CMOs) or commercial intermediaries.

3) Digital document delivery direct to end-users is best governed and coordinated by rights-holders

The new online digital environment allows internet users to immediately discover and access a vast and growing body of scientific literature across multiple publisher platforms in a variety of ways. Publishers fully embrace the new realities of this highly interconnected environment and continue to improve the means through which scientific literature can be found and used. As providers of the platforms and fora through which most of the world accesses high-quality scientific content, we believe that direct digital deliveries are best governed and coordinated directly by rights-holders, either individually or through intermediaries (including CMOs), on an “opt-in” basis.

4) Document deliveries to individuals for “private, non-commercial use” should be subject to appropriate due diligence

Document deliveries to individuals for commercial purposes may only be negotiated directly with publishers or their authorised representatives. Since it is not always clear whether an individual patron has a non-commercial purpose, the only way to ensure the legitimacy of individuals who make document requests under a “non-commercial, private-study” copyright exception is through appropriate due diligence measures such as random sampling. Good policy requires that the library undertake appropriate measures in this regard.

5) On-site print document delivery to non-commercial patrons is a good compromise

The Berne Convention 3-step test requires that any exceptions to copyright be confined to special cases that do not interfere with the normal exploitation of a work and do not unreasonably prejudice the legitimate interests of the rights-holder. We believe that providing on-site print single copies to walk-in library patrons for their private, non-commercial study represents a good balance between the desire to allow this special class of library patrons to enjoy the scientific literature and the requirement to not undermine the normal exploitation of copyright-protected works.

Five Principles Guaranteeing Market-Driven Wide Access

By following the five principles above, we believe that policy makers can ensure that document delivery will continue in its role as a flexible and useful access-enabling tool in a system of scholarly communication that has made more high-quality information available to more people in more ways than at any time in human history. For further information on the role

document delivery plays in today digital environment, see Appendix: *Document Delivery in Context – A Supplementary Access Tool*.

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Appendix

Document Delivery in Context – A Supplementary Access Tool

Journal publishers have been offering digital and online access to published content since the mid-1990's, and for most of that time have also been offering access to individual articles on a transactional basis for users who do not already have journal subscriptions. Journal publishers also work intensively with Collective Management Organizations (CMOs)ⁱⁱ and with commercial and non-commercial intermediaries to provide access to individual articles for consumers, students and researchers. In addition, publishers have worked collectively to ensure that researchers can navigate from article references to other articles through the Cross-Ref system, without even realizing that they are leaving one publisher platform and entering another.

The result of this licensing activity is that STM journal literature is significantly more available, and individual researchers and others with an interest in this material have significantly greater accessibility, than was previously the case in the print journal era.ⁱⁱⁱ Through publisher efforts, information about article content is also seamlessly available through abstract databases and agreements with search engines.

What STM Publishers are doing to address Access Gaps

Even in a world of increasing mobility, connectivity, remote access and “cloud computing,” certain gaps in access remain and STM publishers are addressing these gaps in many ways.

On a global scale, STM publishers offer “transactional” or “pay-per-view” access to content; alternative arrangements like “access rental models” that allow individuals to view content for up to 24-hours^{iv}; provide free or low fee journal access to the developing world through the Research4Life programs^v; and work with CMOs, national/regional libraries, and other organizations to provide access to special categories of users who might not have ready access to subscribed material or are visually impaired. Regionally, STM publishers have negotiated arrangements with libraries and intermediaries to permit library-mediated digital deliveries and access by students and non-commercial researchers. Nationally, STM publishers have negotiated country-wide licenses which provide access to any resident. Finally, publishers provide licence solutions that enable faculty, institutions and students to obtain rights holder authorisation to include STM content in customised course-packs (i.e. bundles of journal articles and book chapters or sections combined as reading material for particular courses). In total, STM publishers provide and support access to journal literature through an enormous variety of methods and offer innovative solutions that are user-focused and market-driven.

ⁱ Art. 9(2) Berne Convention, Art. 13 TRIPS, Art. 10 WIPO Copyright Treaty.

ⁱⁱ See IFRRO statement at http://www.ifrro.org/sites/default/files/document_delivery_0.pdf

ⁱⁱⁱ See section 3 of the STM Report (Ware, Mabe 2009) [http://www.stm-
assoc.org/2009_10_13_MWC_STM_Report.pdf](http://www.stm-
assoc.org/2009_10_13_MWC_STM_Report.pdf)

^{iv} See the list of thousands of journals from which articles are available for 24-hour period rentals at <http://www.deepdyve.com/browse/journals>

^v See the STM statement of best principles on VIP access at [http://www.stm-
assoc.org/2010_09_12_STM_Guidelines_access_for_people_with_print_disabilities.pdf](http://www.stm-
assoc.org/2010_09_12_STM_Guidelines_access_for_people_with_print_disabilities.pdf) and the Research For Life programme at <http://www.research4life.org/>