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CHAPTER 10: Circulation
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Division for Libraries and Community Learning position on Interlibrary Loan Fees:
(Supporting Attorney General opinions and statutory provisions are included in this memo.)

The charging of fees to individuals for access to the information services provided by a public library including Interlibrary Loan violates the legislative policy and specific statutory provisions of the Wisconsin Statutes. This is true whether a public library is a member of a public library system or not. However, if the public library is a member of a public library system, it is also violating a requirement for participation in the system.

A public library that is a member of a public library system must provide its users access to the Interlibrary Loan service of the public library system, and it must fill Interlibrary Loan requests from other system member libraries within the system area. However, it is not required to forward an Interlibrary Loan request from a library user to any library or library organization that charges a fee for this service. If it does so, it cannot pass the fee on to the library user.

A public library system may not charge a member library or a library user for handling or filling an Interlibrary Loan request within the system service area, or for referring the Interlibrary Loan request to a library outside the system area.

It would be legal, but not desirable, for a public library system to pass on an Interlibrary Loan charge from a library or library organization outside of the system service area to a member library. However, that charge could not be passed on to the library user, and the public library would not be under any obligation to pay the charge.

Public library systems and member public libraries are not required to fill or facilitate the filling of Interlibrary Loan requests received from other library systems or libraries outside of the system area. This is done on a voluntary, reciprocal basis, or through agreements between systems and libraries. However, without the cooperation involved in this program of reciprocal lending, customer from all library system areas would be denied access to the information resources that they need.

Although the State Superintendent is required to contract with library resource providers in and outside of the state for specialized library materials and information not available at the reference and loan library, the extent of those contracts is determined by the amount of funding which is made available by the legislature for this purpose.

Public libraries and public library systems are required to certify each year to the Division for Libraries and Community Learning that public library service is free to inhabitants of the municipality and the system. A public library which charges fees for information services including Interlibrary Loan cannot make this certification. Failure to do so could result in penalties to the public library and the public library system.

Supporting Attorney General Opinions

In an opinion issued in 1984 (OAG 26-84) the Wisconsin Attorney General adopted the following guideline which was utilized by the California Attorney General in a 1978 opinion for determining which services provided by a library were required to be free under s. 43.52 (2), Wis. Stats:

If the transaction involves the satisfaction, with library resources, of a customers' request for information (whether for educational, recreational, or entertainment purposes), such transaction is a "library service". Other transactions, not involving the furnishing of information, though carried out by a library, would not be a "library service" . . . Perhaps the essential distinction that is operative here, is between those services which are reflective of a library's inherent information providing function and those ancillary services which are not unique to libraries and which can be just as effectively provided in non-library settings. Examples of such non-library services might include the furnishing of meeting rooms, allowing the use of typewriters and copying machines, rental of audiovisual equipments, etc.

In the same opinion, the Wisconsin Attorney General went on to indicate specifically that a library could not charge for borrowing 16mm films and for holding materials on reserve. It could, however, charge for the use of framed pictures, projectors, screens, and audio cassette players. The opinion also indicated that a library could charge for the rental of best sellers as long as it also made available a "reasonable number" of copies of the same item that circulated without charge.

In a 1989 opinion (OAG 30-89), the Wisconsin Attorney General indicated that a library could not charge fees for renting videocassettes or for online searching of remote commercial bibliographic and information databases. The opinion indicated that a library could charge a fee for videocassettes that are in addition to a "reasonable number" of permanent collection cassettes.

In a 1990 opinion (OAG 5-90), the Wisconsin Attorney General issued the opinion that a public library system may not charge fees for services that are inconsistent with the provisions of section 43.52 (2), Wis. Stats.

Statutory provisions

Section 43.001 (1) (a), Wis. Stats., states:

The legislature recognizes: The importance of free access to knowledge, information, and diversity of ideas by all residents of this state.

Section 43.52 (2), Wis. Stat., states in part:

Every public library shall be free for the use of the inhabitants of the municipality by which it is established and maintained, subject to such reasonable regulations as the library board prescribes in order to render its use most beneficial to the greatest number.

Section 43.52 (2) also applies to joint libraries created under s. 43.53 and county libraries created under s. 43.57.

Public libraries which participate in public library systems are required to offer free service to all members of the public library system, and to participate in Interlibrary Loan under s. 43.15 (4) (c) 4, Wis. Stats.

Section 43.24 (2) (a) requires library systems to ensure Interlibrary Loan of materials among all participating public libraries.

Section 43.24 (2) (b) requires library systems to ensure the referral or routing of reference and Interlibrary Loan requests from libraries within the system to libraries within and outside the system.

Section 43.18 (2m) states:

With the approval of the division, a public library system may expel, or reduce aids or services to, a municipality or county that fails to meet the requirements under s. 43.15 (2) and (4).

Section 43.24 (3) states in part:

The division may reduce state aid payments when any system or any participant thereof fails to meet the requirements of sub (2).

INTERLIBRARY LOAN POLICIES AND GENERAL PROCEDURES

The following guidelines should be used when deciding which materials may be requested through ILL. These guidelines are from the document: **Wisconsin Interlibrary Loan Guidelines 2005** issued by the Wisconsin Department of Public Instruction. They may be seen in their entirety at:

http://www.dpi.wi.gov/rll/ill_gd_pref.html

MCPL Limitations to requesting materials

Requesting libraries will train customers to use their local or shared online catalog to effectively determine if an Interlibrary Loan request is appropriate. If the customer finds the item in the local or shared catalog, the customer should see library staff for assistance in determining if an Interlibrary Loan request should be placed.

Items **not** available through interlibrary loan:

- materials which are owned, but in use at the requesting library,
- materials which are owned, but in use within the requesting library's shared automated system or consortium,
- materials which are on order at the requesting library,
- materials which are on order within the requesting library's shared automation system or consortium,
- titles that have not yet been published but have prepublication information in verification sources,
- computer or video games in any format
- periodicals (entire issues)
- materials published in the current or previous calendar year,
- materials published more than 75 years ago,
- feature films and TV series in any format,
- items which are owned at institutions that charge a lending fee
- items which are owned outside of our regional borrowing consortium (WI, MN, ND, SD)
- print items valued at under \$10,
- materials that are deemed in excess of "fair use" as defined in the United States Copyright Law, section 108, and
- the same title may not be requested more than once for a customer within any 3 month period of time.

Interlibrary Loan requests in these situations are made only if special conditions or considerations apply. Borrowing multiple copies of titles for group use (e.g.: book clubs) is an exception to the general guidelines of not borrowing what the Library owns.

CUSTOMER ACCOUNTS ARE BLOCKED FROM MATERIAL CHECKOUTS IF:

- Customer has \$10.00 in fines and/or lost/damaged materials.

CUSTOMER ACCOUNTS ARE BLOCKED FROM ELECTRONIC RESOURCES IF:

- Customer owes \$25.00 or more.

DATE DUE

1. **Date due on the label is the date to be observed.**
2. **Date due in the item is the date due back at the lending library.**
3. If an ILL received has a due date of less than a week, the date shown on the ILL band will include extra time given so that the customer may use the item for at least one week. Branch/Customer Services staff should not change the due dates on ILL items without first contacting ILL Staff.

PHOTOCOPY CHARGES

1. Customers will not be charged for photocopies.

RENEWALS OF MCPL MATERIALS AT OTHER LIBRARIES

After checking V-CAT, ILL staff may renew MCPL materials **ONCE** for a 2-week period if the item:

1. Is not on **HOLD** for another customer.

RENEWAL OF ITEMS FROM OTHER LIBRARIES FOR A MCPL CUSTOMER

1. If item is stamped **NO RENEWAL**, no renewal will be given.
2. Items may be renewed **ONCE** for a 2-week period after ILL Staff has received permission from the lending library.
3. Requests for renewals should be referred to ILL Staff in Support Services
4. If a renewal is requested on an evening or weekend, Customer Services Staff may give the customer one two-week renewal for the item. Customer Services Staff must inform the customer that the item is subject to recall if the lending library denies the renewal request or provides a shorter renewal period than given to customer. In such cases, the customer will be notified promptly by library staff of the recall. Customer Services Staff must provide the following information to ILL Staff on the next open day so that they may process the renewal request promptly: customer name, title of item, ILL request number, and new due date given for the item.
5. Upon request for renewal, the ILL Staff will submit an online renewal request to the lending library.
6. If a renewal is given, Customer Services Staff will change due date in customer's borrower record, record and initial renewal on the ILL band.

FINES FOR LATE/LOST/DAMAGED ILLS – MCPL CUSTOMERS

Failure to return Interlibrary Loan items **on time** will result in:

1. Late Fines of \$1.00 per item, per day, up to a maximum of \$50.00 per item.
2. Charge of \$1.00 per item returned without barcode **and/or** paperwork.

CHARGES FOR LOST/DAMAGED ILLS—MCPL CUSTOMERS

1. Charges to the customer for lost/damaged ILL items will be as billed to MCPL by the lending library.
2. Charges are determined by the lending library; payments by a customer for lost/damaged items before a bill is received by MCPL from the lending library are to be discouraged. The minimum charge for lost/damaged ILL items paid for before a bill arrives is \$50.
3. If the bill arrives after payment has been made and is lower than the \$50, no refund will be issued to the customer. If the bill arrives after payment has been made and is higher than the \$50 already paid, the customer will be charged the remaining portion of the bill.
4. Charges will not be refunded for Interlibrary Loans that have been lost and paid for and then found.

FEES FOR CENSUS AND GENEALOGY REQUESTS

The position of the Division for Libraries and Community Learning states: “It (the library), is not required to forward an Interlibrary Loan request from a library user to any library or library organization which charges a fee for this service.”

MULTIPLE REQUESTS FROM A CUSTOMER

Customers may request up to 5 Interlibrary Loan items per person, **per month, for a total of 60 items per year**. ILL Staff may suspend ILL privileges for ILL abuse-examples: failure to pick up multiple ILL items, multiple lost ILL items, or requesting over 5 ILL items per month on a regular basis.