

PARTNERSHIP FOR SHARED BOOK COLLECTIONS

ROSEMONT SHARED PRINT ALLIANCE

Controlled Digital Lending

BREAKOUT DISCUSSION

February 8, 2022

Core Principles of CDL

A White Paper on Controlled Digital Lending of Library Books

David R. Hansen & Kyle K. Courtney¹

TABLE OF CONTENTS

I.	THE 20TH CENTURY BOOK PROBLEM.....	4
II.	THE LEGAL FRAMEWORK: FIRST SALE AND FAIR USE.....	7
III.	CONTROLLED DIGITAL LENDING AS FAIR USE.....	9
IV.	TAKEAWAYS: SYSTEM DESIGN AND RISK MITIGATION.....	32
V.	CONCLUSION.....	42

This paper is about how libraries can legally lend digital copies of books. It explains the legal and policy rationales for the process—“controlled digital lending”—as well as a variety of risk factors and practical considerations that can guide libraries seeking to implement such lending. We write this paper in support of the *Position Statement on Controlled Digital Lending*² a document endorsed by many libraries, librarians, and legal experts. Our goal is to help libraries and their lawyers become more comfortable with the concept by more

¹ These institutional affiliations are for identification purposes only. David R. Hansen is Associate University Librarian for Research, Collections & Scholarly Communications at Duke University Libraries. Kyle K. Courtney is Copyright Advisor and Program Manager at Harvard Library's Office for Scholarly Communication.

We're grateful for comments and suggestions from a number of people including Lila Bailey, Anne Gilliland, Mary Minow, Rachael Samberg, Pamela Samuelson, Jason Schultz, Kevin Smith, and Michelle Wu. Thanks also to staff, participants, and attendees who helped hone our thoughts in sessions we held on this topic at the 2018 American Association of Law Libraries Annual Meeting, the 2018 Kraemer Copyright Conference, the Lillian Goldman Law Library at Yale University, the 2018 Copyright First Responders Pacific Northwest workshop, and the 2018 University Information Policy Officers Meeting hosted by The Ohio State University Libraries. We also offer our profound thanks to Lacey Chrabaszcz, OSC Copyright Fellow, for her careful editing and *Bluebook* expertise.

© 2018 David Hansen and Kyle Courtney. This paper is licensed for reuse under a Creative Commons Attribution 4.0 International License, <https://creativecommons.org/licenses/by/4.0/>.

² We are both contributors to that statement. We wrote this paper independently, with comments and input from selected *Statement* drafters, signatories, and other parties.

1

A library must own a legal copy of the physical book, by purchase or gift.

2

The library must maintain an “owned to loaned” ratio, simultaneously lending no more copies than it legally owns.

3

The library must use technical measures to ensure that the digital file cannot be copied or redistributed.

The Growth of CDL

- [CDL White Paper](#) published in 2018
- CDL efforts and engagement accelerated amid COVID
- Wide range of CDL solutions built to meet local needs
- National interest groups began engaging with CDL
 - [CDL Implementers Forum](#)
 - [CDL Co-op](#)
- Statements by national and international groups
 - [CDL Position Statement](#)
 - [IFLA Statement on CDL](#)

CDL extends existing resource sharing practices

Statement on Using Controlled Digital Lending as a Mechanism for Interlibrary Loan

Last Updated: October 2021

Co-authored by CDL Co-op:

Charlie Barlow, Executive Director, Boston Library Consortium

Kyle K. Courtney, Copyright Advisor and Program Manager, Harvard Library

Tom Cramer, Chief Technology Strategist, Associate University Librarian and Director of Digital Library Systems & Services, Stanford University Libraries

David Hansen, Associate University Librarian for Research, Collections & Scholarly Communications, Duke University Libraries

Jill Morris, Executive Director, Partnership for Academic Library Collaboration & Innovation

Jill Hurst-Wahl, Professor Emerita, Syracuse University, School of Information Studies

Genya O'Gara, Deputy Director, Virtual Library of Virginia

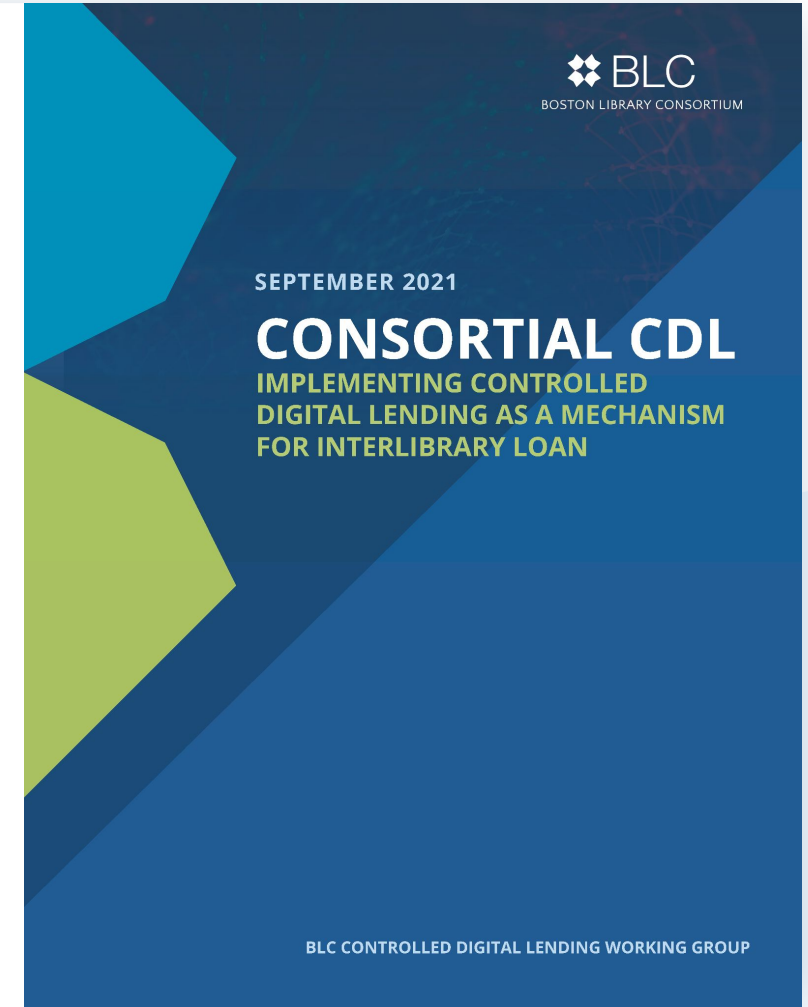
**These institutional affiliations are for identification purposes only.*

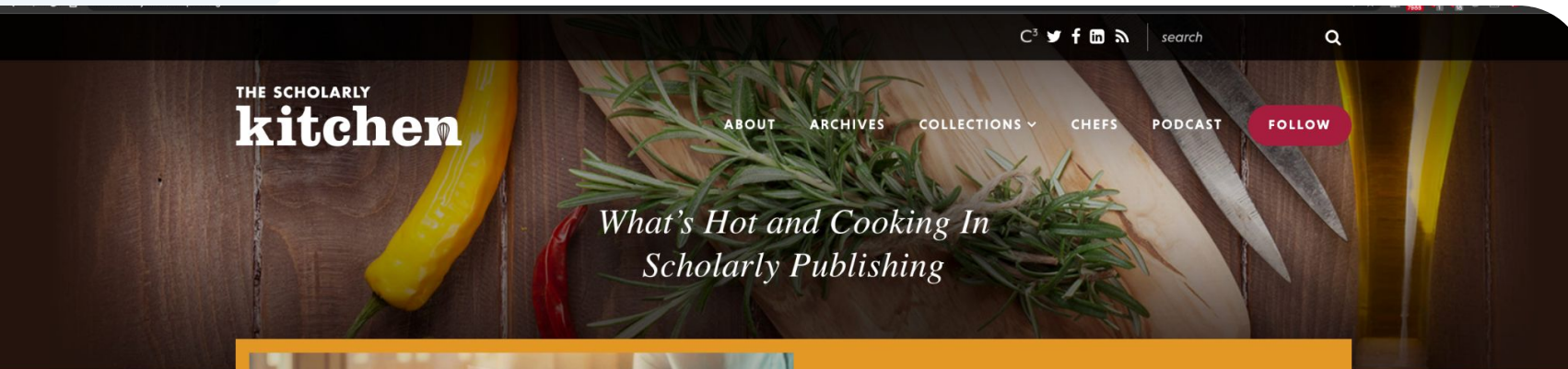
CDL Co-Op Statement, endorsed by 36 libraries, consortia, and allied organizations to date

- Interlibrary loan (ILL) is a foundational, Congressionally protected library practice.
- CDL is a modern method of lending that replicates a library's right to loan legally acquired physical materials.
- CDL for ILL builds upon existing infrastructure and best practices for temporarily lending materials.

The Consortial Path Forward

- 1 CDL is an extension of existing resource sharing practices
- 2 The commercial technology market is failing libraries' desire to implement CDL
- 3 The solution is a consortial approach so as to scale impact and investment





Guest Post – The Library Technology Market's Failure to Support Controlled Digital Lending

Nathan Mealey, Michael Rodriguez, and Charlie Barlow look at the state of Controlled Digital Lending.

By NATHAN MEALEY, MICHAEL RODRIGUEZ, CHARLIE BARLOW | OCT 25, 2021 | [LEAVE A COMMENT](#)

RECENT

The commercial technology market is failing CDL

Call to Action



Engage with your library and consortia about the value of CDL



Endorse the CDL Co-Op's [CDL for ILL statement](#)



Participate in [CDLI](#), [Consortial Approaches to CDL](#), and other forums



Unify vendor advocacy and contribute to ReShare CDL for ILL development



Discussion