



Canadian Federation of Library Associations  
Fédération canadienne des associations de bibliothèques

## **CFLA Controlled Digital Lending Position Statement – September 14, 2022**

Controlled digital lending (CDL) is a vital and necessary approach to help meet user demand for digital access to print collections held in Canada’s libraries.

CDL makes it possible for libraries to continue to fulfill their vital function in society by enabling the lending of copyright-protected books to benefit the learning, research, and intellectual enrichment of readers. It allows limited and controlled digital borrowing of books that libraries own. CDL as a concept is independent of any individual platform that libraries may select for implementation. The principal argument for controlled digital lending is that it permits libraries to do online what they have always done with physical collections: lend books.

Canadian libraries have an opportunity to exercise their rights under fair dealing by sharing their print collections through CDL. Before implementing CDL, libraries should inform themselves of the necessary controls, and consider whether controlled digital lending is the best possible way to provide digital access to works in their print collection.

While there is potential for broader applications of CDL, the purpose of this position statement is to inform libraries about CDL as an approach to providing digital access to print books.

### **What is Controlled Digital Lending?**

CDL enables a library to circulate a digitized book that is in copyright, in place of a physical one, in a controlled manner. To be properly implemented, a CDL system must exercise control in the process, and that control must meet certain requirements:

- apply CDL only to works the library owns in print;
- limit the total number of copies in any format in circulation at any time to the number of physical copies the library owns (maintain an “owned to loaned” ratio);
- lend each digital version only to a single user at a time, just as a physical copy would be loaned;
- limit the time period for each loan to one that is analogous to physical lending; and
- use digital rights management to prevent wholesale copying and redistribution.

### **Why is Controlled Digital Lending Necessary?**

Library patrons require digital access. Thus, a whole world of information that depends on print books published from the mid-20th century to the present is not available to those patrons. Whether the need for a digital version of a work is due to an inability to travel to the library or a



preference for digital formats, library users expect to be able to meet their information needs with digital works.

The continued shift to restrictive digital licensing and away from library ownership, and the duration that works remain in copyright after the author's lifetime, have hampered libraries' efforts to fulfill their role of providing digital access to knowledge, thought, culture, and information. The lack of negotiating power and persistence of short-term licences mean that libraries will not be able to fulfill their role as repositories for historical works in the digital environment without CDL. In addition, with the twenty year extension of copyright terms in Canada, the now more onerous effort required to find rights holders for orphan works and manage title by title rights for digitization projects will render these projects untenable without CDL.

### **Fair Dealing Can Support Controlled Digital Lending**

CDL offers a practical, effective, and legal means for libraries in Canada to continue to meet their mandate of providing access to knowledge, thought, culture, and information by enabling libraries to provide digitized access to their print collections. Fundamental Canadian copyright law principles empower libraries to fulfill their missions. In particular, a supportive fair dealing analysis and the subsequent use of CDL by libraries can ensure digital access, particularly to older works that are not commercially available in Canada.

Libraries undertaking CDL should analyze whether their use of CDL will align with fair dealing, including:

- Notifying the user that the purpose of their use must be consistent with one of the purposes listed under s.29 of the *Copyright Act*.
- That physical and digital safeguards are applied so that libraries only loan the same number of digital and physical copies as they have physical copies in their collection.
- That limits on use are applied, which may include limits on loan length and the ability to copy, re-use or disseminate the work.
- That alternatives for access to the works have been considered and the library has decided that CDL is the most practical, economical, and reasonable option.
- That the works were published works intended for wide dissemination and that they are not currently appropriately available to the user in a digital format through the Canadian commercial market or through open online digital collections.

### **Potential Use Cases for Controlled Digital Lending**

Libraries in Canada and the United States are discussing uses of CDL for access to works as part of a range of core library services, including:



- Interlibrary loan
- Access to works in storage
- Improved access to special collections
- Preserving last print/retention copies for a consortium or collective collection (Shared Last Copy / Shared Print Program)

Libraries also recognize that there are situations where CDL may be problematic, such as for works widely available on the Canadian market under reasonable terms.

### **System Design and Risk Mitigation**

CDL has not been considered by a court of law in Canada and libraries should clearly define the risk assessment criteria they will use to decide whether an individual work should be included in a CDL service. This would include suitable commercial availability, and whether the rights holder is easily identifiable or can be found with a reasonable effort.

In addition, libraries may wish to consider:

- Providing a clear mechanism for communicating with rights holders who want to request removal of their content from public access;
- Requiring that the user acknowledge a fair dealing purpose prior to borrowing from the collection; and
- Consulting with legal counsel with expertise in intellectual property.

### **Alternatives to Controlled Digital Lending**

Libraries that are attempting to address the lack of availability or affordability of digital copies of works may be best served by direct communication with the rights holder. Opening a dialogue could result in the rights holder investing in a digital work that is more appropriate for library users, with greater accessibility features, and with less risk for the library. CDL projects require considerable investment in system and policy design, equipment, and digitization effort, and are not the only option for providing quality digital access to some works. CDL as an approach to providing digital access to books is intended to fill a gap where publishers and rights holders are not providing digital access to these works on reasonable terms. Its control mechanisms should not be applied to any works that have been copyright cleared for the intended use, have been provided with a Creative Commons licence, or have entered the public domain.

### **Additional Resources**



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For libraries considering CDL, CFLA recommends reviewing the following:

- [Controlled Digital Lending of Library Books in Canada](#): provides an overview of the legal and policy rationales in Canada, including fair dealing, technological neutrality and exhaustion, and discussion of risk factors and practical considerations.
- [American position statement, whitepaper, and ILL statement on CDL](#): offers libraries an opportunity to better understand the legal framework underpinning CDL in the US, and builds a community of expertise around the practice of CDL.
- [Association of Research Libraries](#): lays out US considerations that may support research libraries in crafting their use case and preparing for a fair-use analysis.
- [CDL Implementers Group](#): forum for implementers, including libraries, consortia, technology partners and resource sharing leaders, to coordinate efforts, establish best practices, and provide a community of practice.
- [IFLA position statement](#): provides background on what CDL is, and an economic and legal case for libraries and their users globally to be able to benefit from the approach.