

Farewell, CONTU: Embracing New Models for Copyright Clearance in Interlibrary Loan

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Overview



Copyright Act vs. CONTU Guidelines



Analyzing ILL Data



Administration & Legal Approval



New Guidelines & Implementation



Quarterly Review

U.S. Copyright Law & Interlibrary Loan

- Section 108 (17 U.S.C. §108)
 - Parts (d-e) allow ILL and document delivery
 - Defines the extent and limitations of reuse, duplication, and distribution
- Limits on Copying- 17 U.S.C. §108 (g)
 - Borrowing library does not do so “in such aggregate quantities as to substitute for a subscription to or purchase of such work.”



CONTU in Context

- Commission On New Technological Uses (1976)
- Provides recommendations to congress for interpreting 1976 revisions to the Copyright Act
- CONTU has never been revised

GENERAL REVISION OF THE COPYRIGHT LAW,
TITLE 17 OF THE UNITED STATES CODE

SEPTEMBER 29, 1976.—Ordered to be printed

MR. KASTENMEIER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 22]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 22) for the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—GENERAL REVISION OF COPYRIGHT LAW

- “It is recognized that [the guidelines’] purpose is to provide guidance in the most commonly encountered interlibrary photocopying situations, that they are not intended to be limiting or determinative in themselves or with respect to other situations, and that they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment.”

H.R. Rep. No. 94-1773 at 71-72 (1976).



CONTU Guidelines in ILL

- Rule of Five
 - Up to five articles published within the last five years may be copied from a single periodical
- Copyright statements
- Default in ILL software workflows

Moving Beyond CONTU

- OCLC RSC19: Miller, B., & Rudd, A. (2019, March 19-21). *An Alternative to CONTU: Developing and Implementing Your Own ILL Copyright Compliance Policy* [Conference Presentation]. OCLC Resource Sharing Conference 2019, Jacksonville, FL, United States.
<https://www.oclc.org/en/events/2019/alternativeCONTUwebinar.html>
- ARL Whitepaper: Oakley, M., Quilter, L., & Benson, S. *Modern Interlibrary Loan Practices: Moving beyond the CONTU Guidelines* [White paper]. Washington, DC: Association of Research Libraries, August 31, 2020. <https://doi.org/10.29242/report.contu2020>



EBSCO Journal & e-Package Services

Five Year Journal Price Increase History (2016 – 2020)

This report shows price fluctuations over the last five years for typical library lists invoiced in U.S. dollars. Data for each library type is based on a merged list of titles ordered by representative libraries purchasing in U.S. dollars.

Library Type	% of Total Titles	% of Total Expenditure	2016	2017		2018		2019		2020		%
			Avg. Title Price	Avg. Title Price	% Increase	Avg. Title Price	% Increase	Avg. Title Price	% Increase	Avg. Title Price	% Increase	Increase 16-20
ARL												
US Titles	37.3%	32.0%	\$1,107.55	\$1,167.22	5.39%	\$1,237.66	6.03%	\$1,309.03	5.77%	\$1,376.08	5.12%	24.25%
Non-US Titles	62.7%	68.0%	\$1,407.65	\$1,483.78	5.41%	\$1,562.14	5.28%	\$1,656.63	6.05%	\$1,737.27	4.87%	23.42%
Total Titles	100.0%	100.0%	\$1,295.69	\$1,365.68	5.40%	\$1,441.09	5.52%	\$1,526.95	5.96%	\$1,602.52	4.95%	23.68%
College & University												
US Titles	36.8%	33.0%	\$1,192.45	\$1,255.86	5.32%	\$1,337.31	6.49%	\$1,412.67	5.64%	\$1,485.03	5.12%	24.54%
Non-US Titles	63.2%	67.0%	\$1,423.22	\$1,499.42	5.35%	\$1,583.90	5.63%	\$1,676.23	5.83%	\$1,755.83	4.75%	23.37%
Total Titles	100.0%	100.0%	\$1,338.31	\$1,409.80	5.34%	\$1,493.16	5.91%	\$1,579.25	5.77%	\$1,656.19	4.87%	23.75%
Academic Medical												
US Titles	29.7%	31.0%	\$1,620.11	\$1,709.51	5.52%	\$1,815.96	6.23%	\$1,923.96	5.95%	\$2,023.21	5.16%	24.88%
Non-US Titles	70.3%	69.0%	\$1,534.42	\$1,619.96	5.57%	\$1,705.81	5.30%	\$1,813.02	6.28%	\$1,903.88	5.01%	24.08%
Total Titles	100.0%	100.0%	\$1,559.86	\$1,646.54	5.56%	\$1,738.50	5.59%	\$1,845.95	6.18%	\$1,939.30	5.06%	24.33%
Corporate												
US Titles	48.7%	31.5%	\$684.79	\$722.77	5.55%	\$766.96	6.11%	\$810.22	5.64%	\$850.90	5.02%	24.26%
Non-US Titles	51.3%	68.5%	\$1,404.02	\$1,474.75	5.04%	\$1,558.14	5.65%	\$1,667.06	6.99%	\$1,754.47	5.24%	24.96%
Total Titles	100.0%	100.0%	\$1,054.07	\$1,108.86	5.20%	\$1,173.17	5.80%	\$1,250.15	6.56%	\$1,314.82	5.17%	24.74%
Public Library												
US Titles	94.9%	85.0%	\$73.64	\$75.93	3.11%	\$78.61	3.53%	\$81.85	4.12%	\$85.91	4.96%	16.66%
Non-US Titles	5.1%	15.0%	\$235.28	\$242.04	2.87%	\$255.58	5.59%	\$267.75	4.76%	\$280.71	4.84%	19.31%
Total Titles	100.0%	100.0%	\$81.90	\$84.42	3.08%	\$87.65	3.83%	\$91.35	4.22%	\$95.86	4.94%	17.05%
Law School												
US Titles	33.2%	30.7%	\$1,447.27	\$1,524.66	5.35%	\$1,620.58	6.29%	\$1,713.58	5.74%	\$1,797.54	4.90%	24.20%
Non-US Titles	66.8%	69.3%	\$1,641.96	\$1,729.59	5.34%	\$1,819.07	5.17%	\$1,928.82	6.03%	\$2,016.40	4.54%	22.80%
Total Titles	100.0%	100.0%	\$1,577.32	\$1,661.54	5.34%	\$1,753.16	5.51%	\$1,857.35	5.94%	\$1,943.73	4.65%	23.23%

Getting started- data analysis

- Question: Are we paying copyright for requests which do not meet “aggregate quantities as to substitute for a subscription?”
- 2019 borrowing data analysis

	A	B	C	D	E
1	Journal Title	Journal Year	Reprints price	CCC Price	Subscription price
2	Brain Injury	2016	\$57.00	\$64.00	\$ 6,148.00
3	Brain Injury	2019	\$57.00	\$64.00	\$ 6,148.00
4	Brain Injury	2016	\$57.00	\$64.00	\$ 6,148.00
5	Brain Injury	2017	\$57.00	\$64.00	\$ 6,148.00
6	Brain Injury	2017	\$57.00	\$64.00	\$ 6,148.00
7	Brain injury	2018	\$57.00	\$64.00	\$ 6,148.00

Proposal: Stop the practice of using CONTU Guidelines in Resource Sharing

Executive Summary:

This proposal is to discontinue the practice of requesting permission and paying copyright fees for journal articles where we exceed the CONTU Guidelines' "rule of five." The CONTU Guidelines do not carry the weight of law; rather, these guidelines were intended to help librarians interpret the Copyright Act as it applies to resource sharing, but the rigid application of the Guidelines is not practical in 2021. GSU Libraries should discontinue our compliance with CONTU Guidelines and focus on our compliance with the Copyright Act itself.

- Background of Copyright Act & CONTU Guidelines
- Justification for developing our own process for compliance with the Copyright Act

Farewell CONTU: a new plan

- Rule of 20
 - CCC/copyright price = value
- Quarterly review of borrowing requests
- All years, no 5 year limit

	A	B	C	D	E
1	Journal Title	Journal Year	Reprints price	CCC Price	Subscription price
2	Brain Injury	2016	\$57.00	\$64.00	\$ 6,148.00
3	Brain Injury	2019	\$57.00	\$64.00	\$ 6,148.00
4	Brain Injury	2016	\$57.00	\$64.00	\$ 6,148.00
5	Brain Injury	2017	\$57.00	\$64.00	\$ 6,148.00
6	Brain Injury	2017	\$57.00	\$64.00	\$ 6,148.00
7	Brain injury	2018	\$57.00	\$64.00	\$ 6,148.00

Mean	50
Median	33
Minimum	4
Maximum	236

ILLiad workflows- CCG to CCL

- Specify CCL in all outgoing copy requests
 - Customization manager
 - System>OCLC > Workformmapping: for every OCLCFieldName that contains copyrightCompliance, change the ConstantDataAction to IgnoreIfValue

Customization - ILLiad Customization Manager (libsav)

Home

Search All Tables and Keys

Show Change History Maintenance

Search

Favorites

New Record Copy Record Reset Filter

Table Options

Save Delete Cancel

Editing Options

Setup Wizards Setup

Customization Z39.50 Notification Templates Server Addons DSP Business Rules

WorkFormMapping

NVTGC	WorkFormType	OCLCFieldName	ILLiadFields	ConstantDataAction
GSU	Article	article	<#PhotoArticleTitle>	
GSU	Article	articleAuthor	<#PhotoArticleAuthor>	
GSU	Article	copyrightCompliance	<#Copyright>	IgnoreIfValue
GSU	Article	doi	<#DOI>	
GSU	Article	issueDate	<#PhotoJournalMonth> <#PhotoJournalYear>	
GSU	Article	issueNumber	<#PhotoJournalIssue>	
GSU	Article	pages	<#PhotoJournalInclusivePages>	
GSU	Article	patron	<#LastName>, <#FirstName>	
GSU	Article	pmid	<#PMID>	
GSU	Article	verified	<TN: <#TransactionNumber>> <#Odyssey/GSU>	
GSU	Article	volume	<#PhotoJournalVolume>	
GSU	Blank Article	articleAuthor	<#PhotoArticleAuthor>	
GSU	Blank Article	author	<#PhotoArticleAuthor>	
GSU	Blank Article	copyrightCompliance	<#Copyright>	IgnoreIfValue
GSU	Blank Article	issuedate	<#PhotoJournalYear>	
GSU	Blank Article	issuenumber	<#PhotoJournalIssue>	
GSU	Blank Article	pages	<#PhotoJournalInclusivePages>	
GSU	Blank Article	title	<#PhotoJournalTitle>	
GSU	Blank Article	verified	<TN: <#TransactionNumber>> <#Odyssey/GSU>	
GSU	Blank Article	volume	<#PhotoJournalVolume>	
GSU	Blank Loan	author	<#LoanAuthor>	
GSU	Blank Loan	title	<#LoanTitle>	
GSU	Blank Loan	verified	<TN: <#TransactionNumber>>	
GSU	Loan	doi	<#DOI>	
GSU	Loan	patron	<#LastName>, <#FirstName>	
GSU	Loan	pmid	<#PMID>	
GSU	Loan	verified	<TN: <#TransactionNumber>>	
GSU	OCLC Article	articleAuthor	<#PhotoArticleAuthor>	
GSU	OCLC Article	author	<#PhotoArticleAuthor>	
GSU	OCLC Article	copyrightCompliance	<#Copyright>	IgnoreIfValue
GSU	OCLC Article	doi	<#DOI>	
GSU	OCLC Article	issuedate	<#PhotoJournalYear>	
GSU	OCLC Article	issuenumber	<#PhotoJournalIssue>	
GSU	OCLC Article	pages	<#PhotoJournalInclusivePages>	
GSU	OCLC Article	title	<#PhotoJournalTitle>	
GSU	OCLC Article	verified	<TN: <#TransactionNumber>>	
GSU	OCLC Article	volume	<#PhotoJournalVolume>	

ILLiad workflows- CCG to CCL

- Worldshare
 - OCLC Service Configuration, Configure Borrower Constant Data (under Borrower Data), select CCL in the Copyright Compliance section

The screenshot displays the WorldShare ILL configuration interface. On the left is a sidebar menu with options: Interlibrary Loan Options, Borrower Data (highlighted), Lender Data, Custom Holdings Groups, Custom Holdings Paths, Automated Request Manager, Article Exchange Settings, Purchase Options, Patron Request Workflows, Print Settings, Advanced Workflows, Patron Settings, Contacts, Notifications, and External System Settings. The main content area is titled 'WorldShare ILL' and contains several sections. The 'Copyright Compliance' section is active, showing three radio button options: 'CCG: Conforms to CONTU Guidelines', 'CCL: Conforms to U.S. Copyright Law' (which is selected and highlighted with a red rectangle), and 'None'. Above this, there are three dropdown menus for 'Electronic Delivery Service choice 1', '2', and '3', all set to '-Select an Electronic Delivery option-'. Below the radio buttons, there is a text field for 'Affiliations' containing 'ARCHE/Univ. Sys. of GA/Gold/Soline/Asert/WRLC', a text area for 'Billing Notes' with the text 'Please include ILL# on invoice. (Fein #58-6002050)', and another text area for 'Borrowing Notes' with the text 'GA Courier ATL-GSU'. At the top of the main area, there is a note about selecting preferred Electronic Delivery methods and a disclaimer about OCLC trademarks. A 'Maximum Cost' field is set to '70.00' and the 'Currency' is set to 'USD'.

ILLiad workflows- Rule of 20

- Change default copyright query
 - Create copyright.txt file using default query from ILLiad documentation:
<https://support.atlas-sys.com/hc/en-us/articles/360011807774-The-Default-Copyright-Query>

```
SELECT DISTINCT PhotoJournalTitle FROM Transactions
WHERE TransactionStatus != 'Cancelled by ILL Staff'
AND TransactionStatus != 'Cancelled by Customer'
AND TransactionStatus != 'Awaiting Copyright Clearance'
AND ISNULL(CopyrightAlreadyPaid, 'No') != 'Yes'
AND DATEPART(year, CreationDate) = DATEPART(year, GETDATE())
AND PhotoJournalYear > CONVERT(varchar(4), (DATEPART(year, GETDATE()) - 5))
AND ProcessType = 'Borrowing'
GROUP BY PhotoJournalTitle
HAVING COUNT(PhotoJournalTitle) > 4
ORDER BY PhotoJournalTitle
```

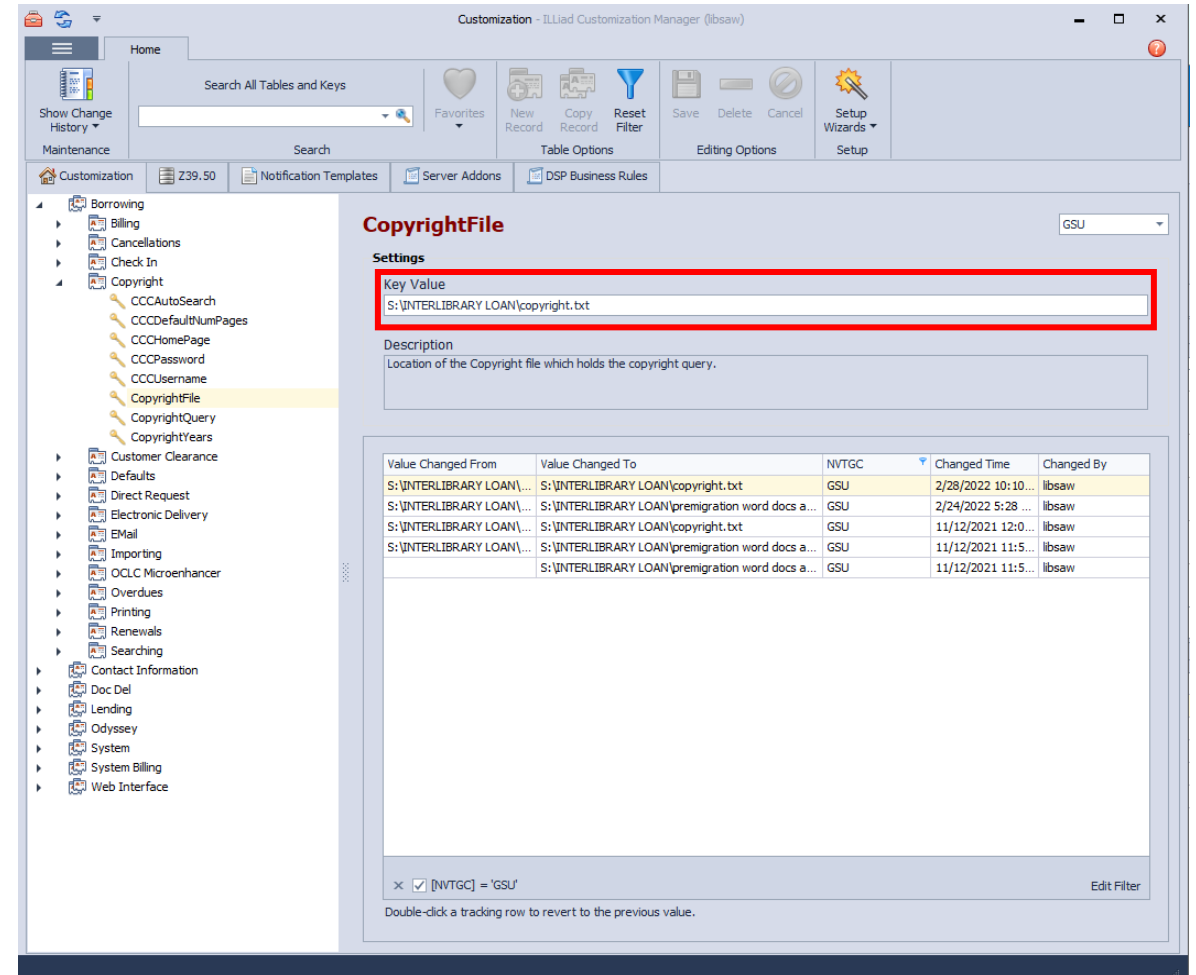
ILLiad workflows- Rule of 20

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AND TransactionStatus != 'Cancelled by Customer'
AND TransactionStatus != 'Awaiting Copyright Clearance'
AND ISNULL(CopyrightAlreadyPaid, 'No') != 'Yes'
AND DATEPART(year, CreationDate) = DATEPART(year, GETDATE())
AND PhotoJournalYear > CONVERT(varchar(4), (DATEPART(year, GETDATE()) - 200))
AND ProcessType = 'Borrowing'
GROUP BY PhotoJournalTitle
HAVING COUNT(PhotoJournalTitle) > 19
ORDER BY PhotoJournalTitle
```

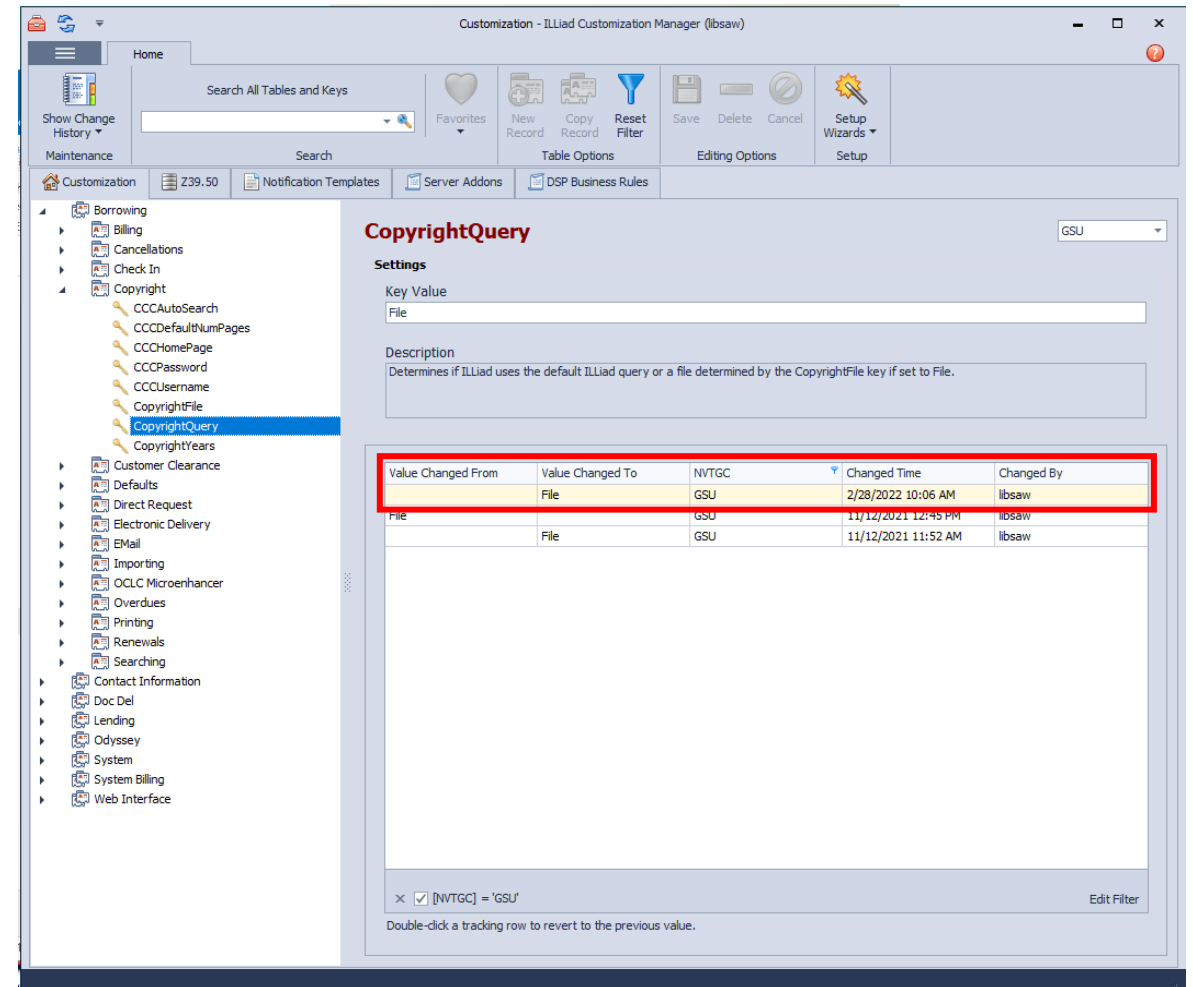
ILLiad workflows- Rule of 20

- Apply new copyright.txt file to ILLiad processes
- Customization Manager
 - Under Borrowing > Copyright, go to the CopyrightFile key and enter the location of the query you created in the Key Value field (ours is S:\INTERLIBRARY LOAN\copyright.txt).



ILLiad workflows- Rule of 20

- Apply new copyright.txt file in ILLiad
- Customization Manager
 - Also under Borrowing > Copyright, go to the CopyrightQuery key and change the value to File. This tells ILLiad to use the query you created instead of the default query.



Quarterly Review



- Reviewed list of journal titles in borrowing through 3/31/22
- Determined subscription and copyright cost for anything borrowed over the Rule of 5
- Begin paying copyright or continue to new Rule of 20 based on previous criteria

A	B	C	D	E	F	G
Journal Title	Journal Year	Copyright Already Paid	Subscription Cost	Publisher	Coyright cost	Notes
Journal of Hand Surgery	2014	No	\$ 1,065.00	Elsevier	\$24.45- Reprints, \$41.50- CCC	keep going to 20
Journal of Hand Surgery	2013	No				
Journal of hand surgery	2012	No				
Journal of hand surgery	2011	No				
Journal of hand surgery	2010	No				
Journal of Hand Surgery	2010	No				
Journal of hand surgery	2002	No				
Journal of Hand Surgery	1998	No				
Journal of hand surgery	1991	No				

A	B	C	D	E	F	G
Journal Title	Journal Year	Copyright Already Paid	Subscription Cost	Publisher	Coyright cost	Notes
international journal of transitional justice	2020	No	\$ 472.00	Oxford	\$35- reprints, \$51.50- CCC	Begin paying copyright
international journal of transitional justice	2020	No				
international journal of transitional justice	2017	No				
international journal of transitional justice	2014	No				
international journal of transitional justice	2014	No				
international journal of transitional justice	2011	No				
international journal of transitional justice	2008	No				
international journal of transitional justice	2008	No				
international journal of transitional justice	2008	No				
international journal of transitional justice	2007	No				
international journal of transitional justice	2011	No				

Looking ahead



Cost savings



Record keeping



License
negotiation



Ongoing review

Questions/Comments?

Thank you for attending!

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