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Will it Lend? Digital Frontiers in Resource Sharing

Charlie Barlow

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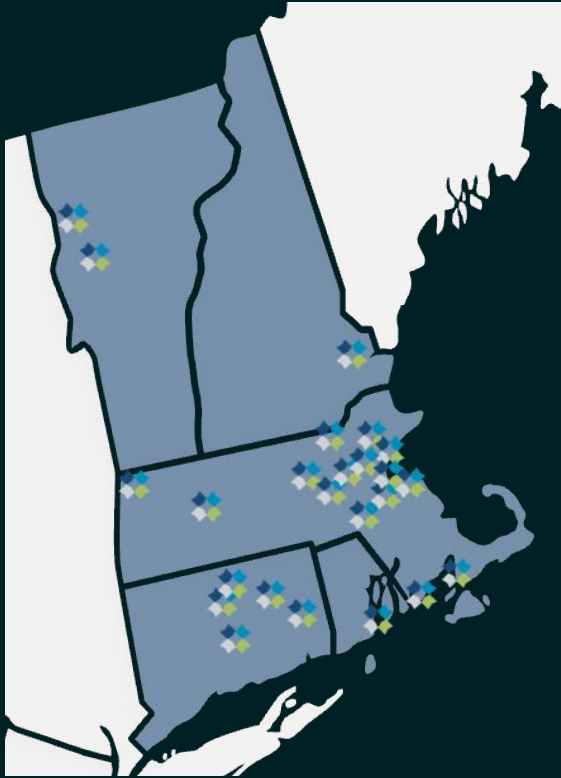
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WILL IT LEND?

Digital Frontiers in Resource Sharing

Charlie Barlow
Boston Library Consortium



About BLC

The Boston Library Consortium empowers a coalition of libraries in the northeastern United States to share knowledge, infrastructure, and resources at scale.



**Will it
LEAD?**



“After seeing the Internet Archive's legal response to publishers' lawsuit over controlled digital lending, I got to thinking - always a dangerous deed - might the Boston Library Consortium consider signing the Position Statement on Controlled Digital Lending?”

—Collections Strategist at BLC member institution
July 2020

CORE PRINCIPLES

A White Paper on Controlled Digital Lending of Library Books

David R. Hansen & Kyle K. Courtney¹

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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 *librarians* expertise.

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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.

- The library must own a **legal copy** of the physical book, by purchase or gift
- The library must maintain an **“owned-to-loaned” ratio**, simultaneously lending no more copies than it legally owns
- The library must use **technical measures** to ensure that the digital file cannot be copied or redistributed

CDL FOR ILL

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

Last Updated: October 2021

Co-authored by CDL Co-ops

Charlie Barlow, Executive Director, Boston Library Consortium

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

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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.*

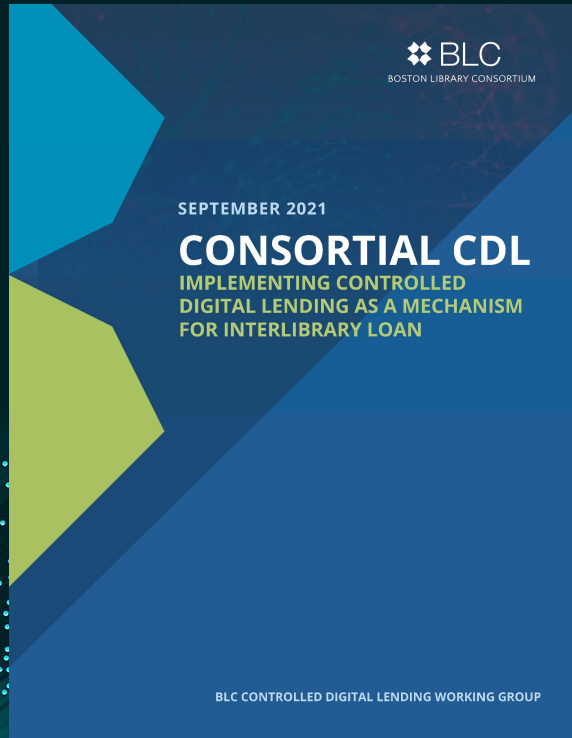
- Interlibrary loan (ILL) is a **foundational Congressionally protected** library practice
- CDL is a modern method of lending that **replicates a library's right to loan** legally acquired physical materials
- CDL builds upon **existing infrastructure and best practices** for temporarily lending library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

THE LIBRARY TECHNOLOGY MARKET'S FAILURE TO SUPPORT CDL



“Library-led technology platforms will help ensure that libraries’ needs, and by extension their patrons’ needs, lie at the heart of library technology development.”

THE CONSORTIAL PATH FORWARD



Consortial CDL: Implementing Controlled Digital Lending as a Mechanism for Interlibrary Loan (BLC, 2021)

- CDL is an **extension of existing resource sharing practices**
- The **technology market is failing** to meet libraries' desire to implement CDL
- The solution is a **consortial approach** to scale impact and investment

WHY RESHARE?



BLC joined Project ReShare and committed \$100,000 toward initial CDL development efforts in December 2021

- Library-led development and governance
- Open source software
- Supports consortial resource sharing
- Based on interoperability standards
- Highly scalable solution

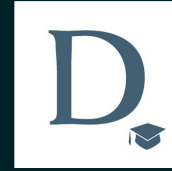


CDL: TAKING RETURNABLES DIGITAL

Extending and enhancing established functionalities and infrastructure for physical returnables to support Controlled Digital Lending

- **BLC** and **MCLS** contributed initial funds for software development
- **PALCI** and **PALNI** supported additional development of the Hyku for Consortia platform, in collaboration with **SoftServ**, to provide a shared repository to facilitate CDL loans between consortium members
- The **Davis Educational Foundation** supported BLC's development partner program to refine software functionalities and build integrations with **Hyku for Consortia** in collaboration with **Index Data**
- BLC anticipated go-live in August 2024 for an initial group of early adopters

DEVELOPMENT TIMELINE



DAVIS
EDUCATIONAL
FOUNDATION

**Summer /
Fall 2022**

MVP Software
Development

**Summer /
Fall 2023**

Kick-off Early
Adopter
Program

Roadmap
Design

**Winter /
Spring 2023**

Development
Partner
Program

**Winter /
Spring 2024**



HACHETTE v. INTERNET ARCHIVE



- **June 2020:** Hachette, HarperCollins, Wiley and Penguin Random House sued the Internet Archive, claiming its CDL program infringed on their copyrights
- **March 2023:** District Court ruling against the Internet Archive
- **September 2023:** Internet Archive appealed the decision
- **June 2024:** Oral arguments

A decision is expected later in 2024 or 2025.

LIBRARY AMICUS BRIEF

Case 23-1260, Document 107, 12/22/2023, 3600109, Page1 of 55

23-1260-cv

United States Court of Appeals
for the
Second Circuit

HACHETTE BOOK GROUP, INC., HARPERCOLLINS PUBLISHERS L.L.C.,
JOHN WILEY & SONS, INC., PENGUIN RANDOM HOUSE LLC,

Plaintiffs-Appellees.

– v. –

INTERNET ARCHIVE,

Defendant-Appellant.

DOES 1-5, inclusive,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF OF *AMICI CURIAE* NINE LIBRARY
ORGANIZATIONS AND 218 LIBRARIANS
IN SUPPORT OF DEFENDANT-APPELLANT**

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CP COUNSEL PRESS (800) 4-APPEAL • (202) 540-1000

- CDL and its history are based in copyright law and CDL respects the rights of copyright holders by facilitating the lending of legally acquired books
- CDL is a well-established practice in the library community
- The licensed digital lending market prevents libraries from fulfilling our mission of preservation and providing equitable access to information
- The district court mischaracterized non-profit library activities as commercial uses, resulting in an improper fair use analysis

CONSORTING WITH AMBIGUITY



BOSTON LIBRARY CONSORTIUM

BLC temporarily reconfigured our Development Partner Program following the injunction against the Internet Archive in spring 2023

- Injunction requires Internet Archive not to lend materials that the publishers have communicated are commercially available as e-books
- Internet Archive entered into a separate agreement with AAP that prevents further legal action if similar procedures are followed for their member publishers
- Development partners focused on testing, system integrations, and production of documentation to guide implementations to allow for additional legal analysis

BLC LIMITATIONS

In consultation with the libraries at BLC's member institutions and legal counsel, BLC established a set of baseline criteria to participate in the consortial CDL program

- BLC members may only lend materials using ReShare CDL that are owned in print that are not available as e-books in the commercial marketplace
- BLC will establish a process for verifying commercial e-book availability prior to fulfilling a loan through CDL
- BLC will establish a mechanism for rights holders to request that individual library materials be removed from BLC's consortial CDL program

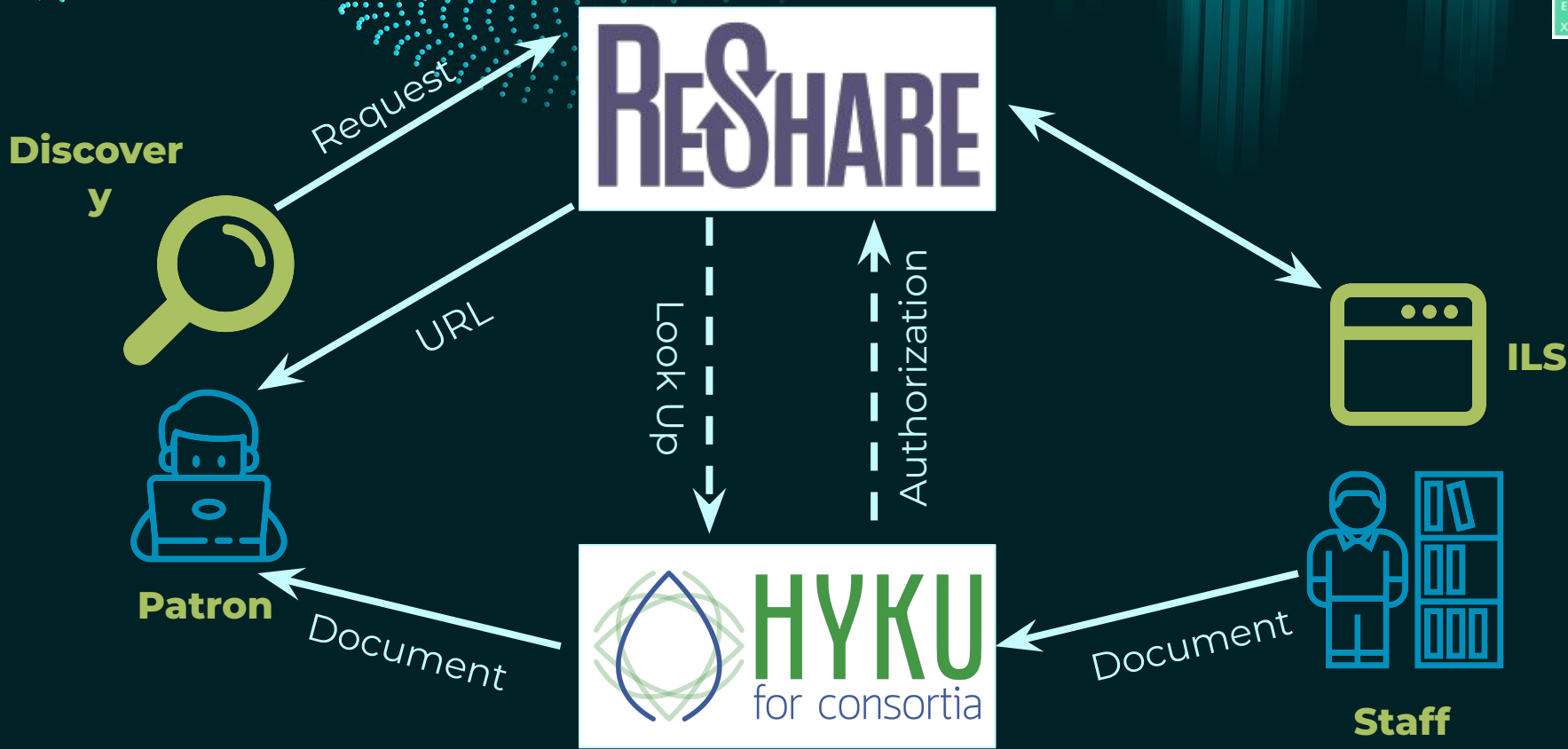


WE DID IT!

Release 1.13

PR-1499 Ability to support
controlled digital lending (CDL)
requests

PR-1490 Add pickupURL as a



Search & filter

All fields

Search

Reset all

 Needs attention Unread messages Hide completed

^ State

^ Requester

^ Location

^ Shelving Location

^ Batch

v Date created

v Date needed

Supply

12 records found

Actions

Updated	State	Type	Requester	Item barcode	Location	Shelving Location	Title
9/27/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/27/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/27/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/26/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/26/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/26/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/26/2023	Awaiting pull slip printing	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
11:18 AM	Searching	loan	ISIL:US-MAWCMUM	39090010782049	Tisch Library	Tisch Book Stacks	Wisdom
9/19/2023	Loaned digitally	loan	ISIL:US-MAWCMUM	39090014828814	Tisch Library	Tisch Book Stacks	Secrets Zeno to
9/26/2023	Loaned digitally	loan	ISIL:US-MAWCMUM	39090002611180	Tisch Library	Tisch Book Stacks	Into the
9/19/2023	Searching	loan	ISIL:US-MAWCMUM	39090018122180	Tisch Library	Tisch Book Stacks	Applying /
9/13/2023	Loaned digitally	loan	ISIL:US-MAWCMUM	39090016573442	Tisch Library	Tisch Book Stacks	Wisdom

End of list

Add New CDL

Descriptions

Files

Relationships

Title required

A name to aid in identifying a work.

[+ Add another](#)**Creator** required

The person or group responsible for the work. Usually this is the author of the content. Personal names should be entered with the last name first, e.g. "Smith, John."

[+ Add another](#)**Keyword** required

Words or phrases you select to describe what the work is about. These are used to search for content.

[+ Add another](#)**Rights Statement** required

Save Work

Requirements

- Describe your work
- Check deposit agreement

Visibility

- Public**
Make available to all.
- Institution**
Restrict access to Institution.
- Embargo**
Set date for future release.
- Lease**
Set date for future reduced access.
- Private**
Keep to myself with option to share.

I have read and agree to the **Deposit Agreement**



Request WQMUMASS-9

Wisdom of Solomon · UMASSCHAN → TUFTS

Actions

0

0

Flow

Details

WQMUMASS-9: Wisdom of Solomon

[View in shared index](#)

Request information

Item sequestered

Updated: 9/28/2023 [\(view audit trail\)](#)

Requester

UMass Chan Medical School

Supplier

Tufts University

Item barcode

Multi-volume request

Due date

-

Volumes needed

-

Actions

Enter URL to fill digital loan

Fill loan

More options

Undo last action performed

Volumes

All Fields

Find

Advanced

Your Account / Digital Loans

Your Account

★ Saved Items

📖 Digital Loans 2

👤 Profile

🚪 Log Out

Your Lists

★ Saved Items

+ Create a List

Your Digital Loans



NO IMAGE
AVAILABLE

Alice's adventures in Wonderland /

by: Carroll, Lewis, 1832-1898

Book

Retrieve Digital Loan

Due Date: 29 Jun 2024 3:59:00 am

Request Status: Loaned digitally



NO IMAGE
AVAILABLE

A brief history of the Universalist church for young people,

by: Fisher, Lewis Beals, 1859-

Book

Retrieve Digital Loan

Due Date: 2 Jul 2024 3:59:00 am

Request Status: Loaned digitally



CHAPTER I.

DOWN THE RABBIT-HOLE.

ALICE was beginning to get very tired of sitting by her sister on the bank, and of having nothing to do: once or twice she had peeped into the book her sister was reading, but it had no pictures or conversations in it, "and what is

B

2

DOWN THE

the use of a book," thought Alice, "without pictures or conversations?"

So she was considering in her own mind, (as well as she could, for the hot day made her feel very sleepy and stupid,) whether the pleasure of making a daisy-chain would be worth the trouble of getting up and picking the daisies, when suddenly a White Rabbit with pink eyes ran close by her.

There was nothing so *very* remarkable in that; nor did Alice think it so *very* much out of the way to hear the Rabbit say to itself, "Oh dear! Oh dear! I shall be too late!" (when she thought it over afterwards, it occurred to her that she ought to have wondered at this, but at the time it all seemed quite natural;) but when the Rabbit actually *took a watch out of its waistcoat-pocket*, and looked at it, and then hurried on, Alice started to her feet, for it flashed across her mind that she had never before seen a rabbit with either a waistcoat-pocket, or a watch to take out of it, and,

DIGITIZATION HUB

- The first time a physical item is requested as a digital loan, a library will ship material to a central location
- Thereafter, the physical material will be sequestered and the digital object will be loaned to the patron under controlled conditions from the shared repository

Why centralize?

- **It's equitable.** Libraries don't need to have robust in-house digitization infrastructure
- Aligns to **existing workflows** and lowers barriers to participation
- Opportunity to **assess and evaluate** long-term needs based on CDL borrowing volume

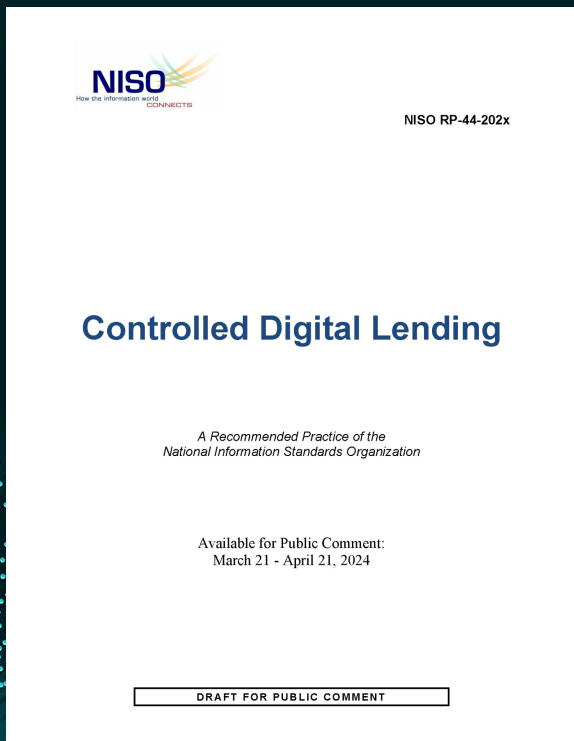
INTEROPERABILITY AS A CORE VALUE

How can we deliver a high-quality experience for patrons when multiple libraries and systems are in play?

- Resource sharing is built on interoperability
- Interoperability standards ensure solutions meet the needs of all libraries
- Interoperability gives libraries choice
- Enables libraries to leverage existing workflows and practices
- Supports a vendor-agnostic future

The only “winner” is ‘choice’

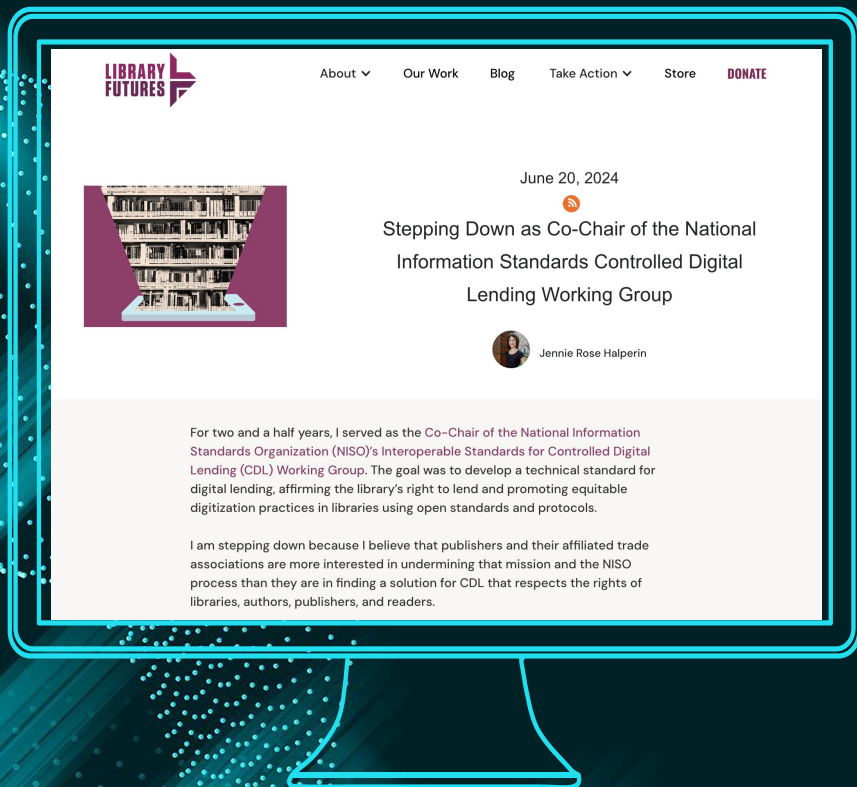
NISO RECOMMENDED PRACTICE



Interoperable System of Controlled Digital Lending (IS-CDL)

- Consensus framework to support CDL of library materials
- Funded with support from the Andrew W. Mellon Foundation
- Draft released for public comment in spring 2024
- Calls from trade associations and large publishers to withdraw the recommended practice

A CO-CHAIR STEPPED DOWN



“These groups waited until the end of the process to declare that the entire concept of digital lending is unacceptable to them. This is not the behavior of parties with a good faith interest in finding a collaborative solution.”

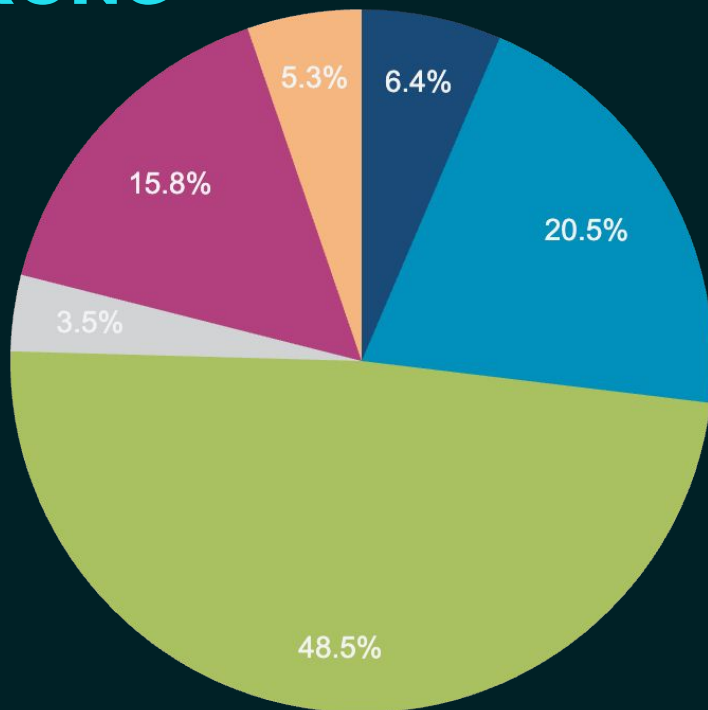
SCALING CDL ADOPTION



Controlled Digital Lending for Libraries and Library Consortia (LG-254935-OLS-23)

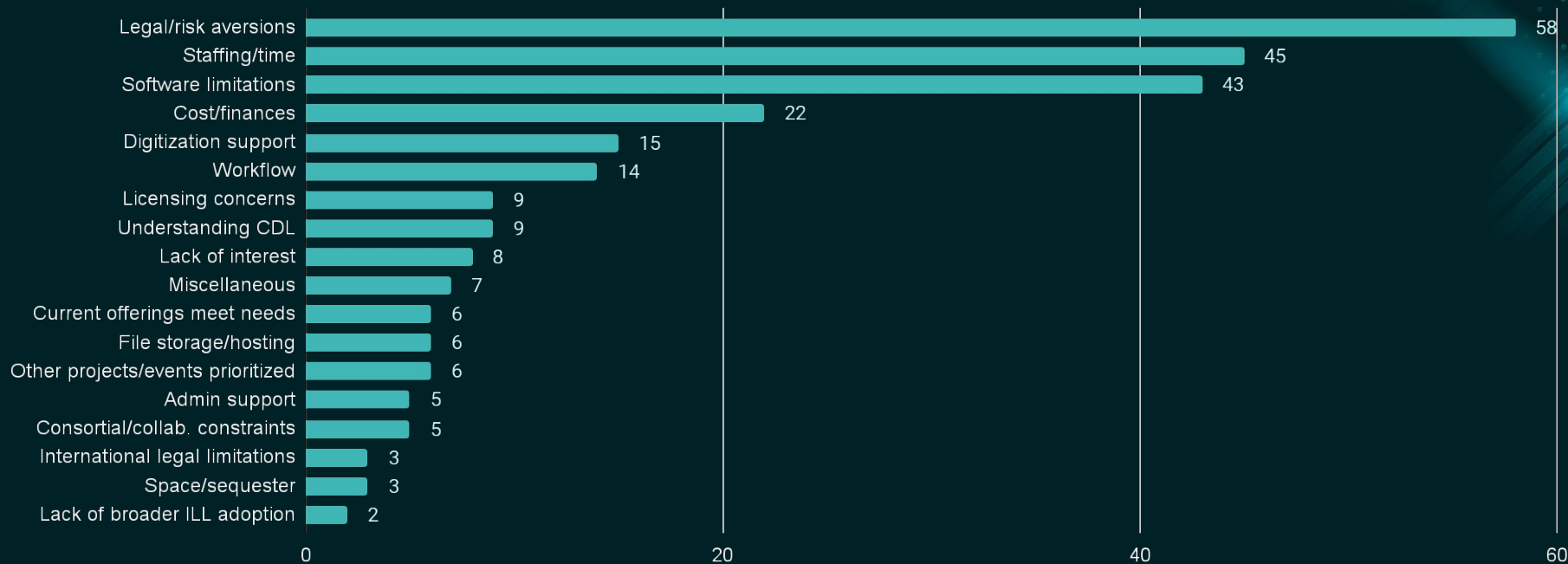
- 2-Year \$249,221 implementation grant
- Development of **Consortial CDL Toolkit** to guide future implementations
- BLC will host a **CDL Summit** in 2025 to chart future directions for CDL's role in resource sharing among libraries and consortia

INTEREST AND IMPLEMENTATION OF CDL FOR ILL AMONG LIBRARIES AND CONSORTIA IS STRONG

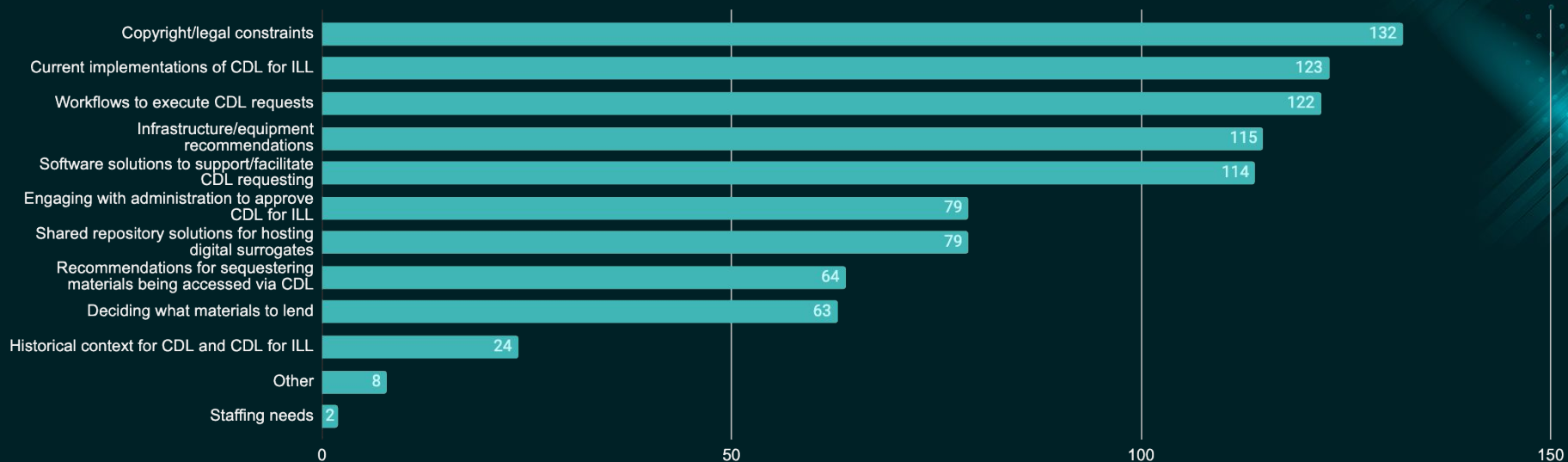


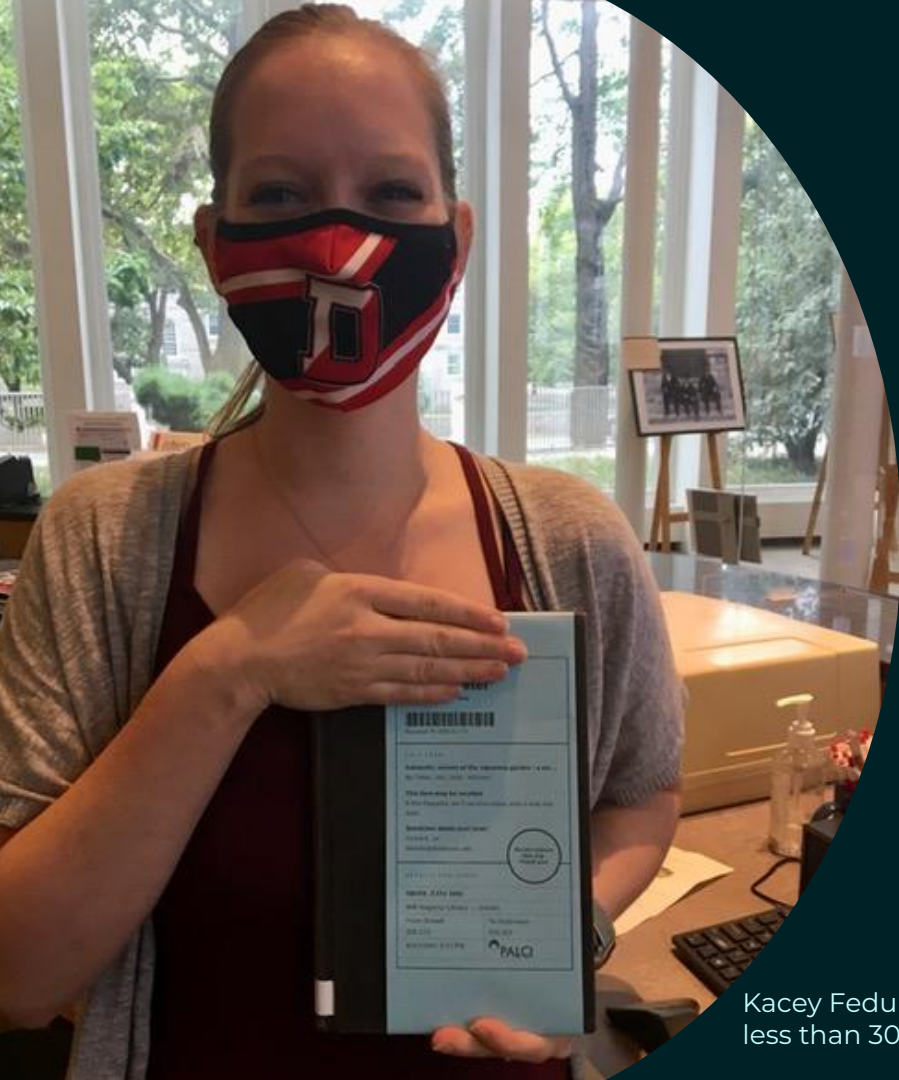
- We have discussed implementing CDL for ILL, but are not interested
- We are not aware of or haven't discussed CDL for ILL as a future project
- We are interested in implementing CDL for ILL, but not at this moment
- We are actively in the process of exploring the implementation of CDL for ILL
- We are actively in the process of implementing CDL for ILL
- We have implemented CDL for ILL at my institution/consortium

WHAT'S HOLDING LIBRARIES BACK?



CONSORTIAL CDL TOOLKIT DIRECTIONS





RESHARE

MISSION

Project ReShare sets the standard for how libraries collaborate, partner, share resources, and connect patrons to the information they require by developing user-centered, standards-based, community-driven, and community-owned library technologies and tools.

Kacey Feduke of Dickinson College receives the first book for a patron less than 30 hours after going live with ReShare in 2021



30+

Member Consortia, Libraries, and
Organizations

170+

Implementations across five
consortia

1.1

million+

Requests processed

SOFTWARE DEVELOPMENT AND IMPLEMENTATION

15

Software
releases

5

Consortial
implementations

3+

Planned
implementations

11

ILS supported

INDEX DATA: COMMUNITY MEMBER AND SERVICE PROVIDER



Index Data has made software with library partners for 30 years

They were the original architects and developers of the FOLIO LSP and used that experience to help launch Project ReShare

They provide architectural direction, development, and software maintenance but also participate in governance

They provide a complete end-to-end SaaS and support service in collaboration with consortia

They aim to provide a shared technical capability for the library community, to make libraries and consortia more capable of driving choice and innovation

RESHARE TODAY

ReShare is a modular platform for interoperable, unmediated resource sharing among libraries using diverse ILSs, with three main components:

- Shared index ([Reservoir](#))
- Shared discovery ([VuFind](#), *optional*)
- Multi-tenant, cloud-based requesting/fulfillment apps based on APIs enabling staff processing and workflow controls and integrations

Integration points: AI/PMH feeds for easy loading, VuFind, Z39.50, NCIP, and ILLiad add-ons





2023-24 HIGHLIGHTS

We have focused the year on long-term sustainability and empowering our members to chart the future of Project ReShare

- Reaffirmation of and commitment to community-owned roadmap
- BLC selected as fiscal sponsor in September 2023
- New membership models introduced in November 2023 to foster transparency and equity
- Introduction of point allocations for product enhancements to guide future development priorities
- New working committees established to strengthen collective capacity



A new and comprehensive suite of ReShare tools for digital lending functionality

- “Community First”
- Standards-based
- Interoperable and Open
- Extends and expands ReShare Returnables
- Empowers libraries of all types and sizes to lend and borrow digital materials
- Modular to meet diverse needs of consortia and libraries

COMMUNITY PRIORITIES

ReShare Digital Possible Directions

You have 20 votes. Assign at least ONE vote. If you don't want to vote, select abstain.
Choices are listed in random order.

Candidates

Digital Lending of Licensed Digital Materials

Digital Lending of Special Collections/Dissertation/Thesis

Ebook lending - tokenized URLs for lending ebooks

Controlled Digital Lending

Non-Returnable - Article Delivery

In March 2024, members were invited to prioritize ReShare Digital development directions

RESHARE DIGITAL DEVELOPMENT PRIORITIES



INITIAL DEVELOPMENT PHASES

Phase 1: ReShare Digital Jumpstart (4-6 months)

Community coordination, e-book lending requirements gathering, planning support and project management, and initial prototyping for e-book lending.

Phase 2: E-Book Lending Prototype and Pilot (4-6 months)

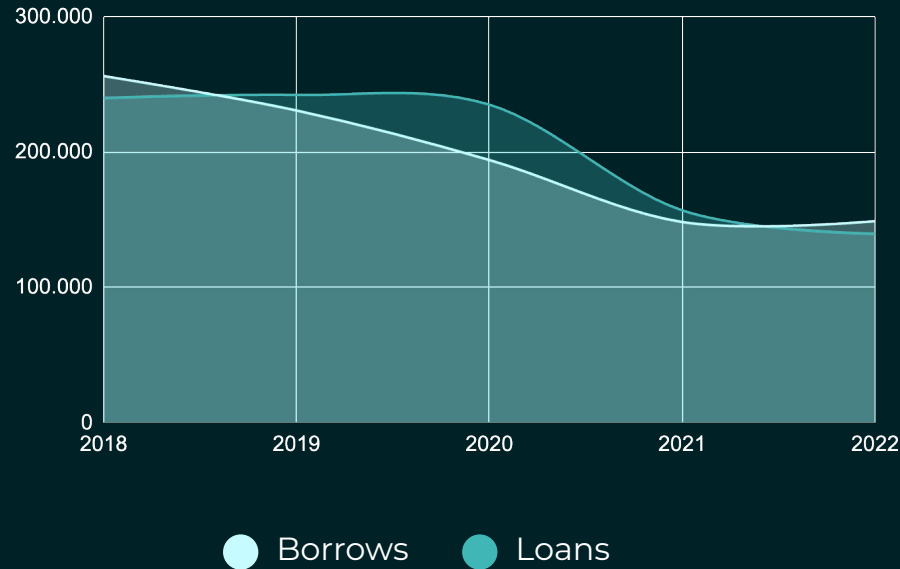
Advance ReShare's e-book lending efforts and complete the build out of a proof of concept, and a pilot that will introduce the ability to easily lend licensed eBooks (either whole e-books if licenses allow, or in-part) for groups of libraries.

Phase 3: Chapter Delivery and Initial ReShare Digital Launch (6-9 months)

Launch the initial ReShare Digital suite, including tools for e-book lending and document delivery of book chapters, alongside ReShare's returnable lending functionality.

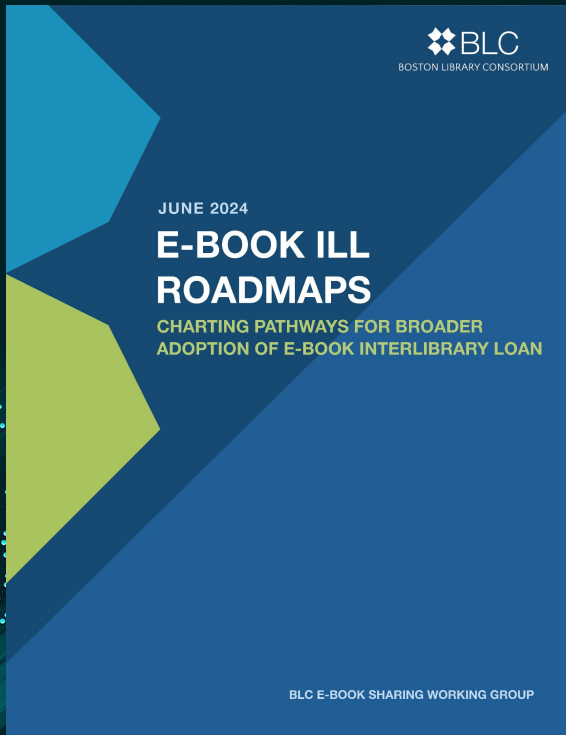
From there, we'll turn our attention to the other development priorities, including article delivery.

Interlibrary loan transactions have declined more than 40% over the previous five years



Source: IPEDS

CHARTING PATHWAYS FOR BROADER E-BOOK ILL ADOPTION



E-Book ILL Roadmaps (BLC, 2024)

- A comparison of varying approaches to e-book ILL, including the distinction between the practice and controlled digital lending (CDL)
- An overview of e-book ILL in the broader resource sharing landscape
- Borrowing and lending roadmaps, which outline step-by-step considerations for implementing the practice at your library
- An overview of the work to be undertaken for e-book ILL to be a more sustainable and adoptable practice

LIBRARY OWNERSHIP

PRINCIPLES ON LIBRARY OWNERSHIP OF DIGITAL BOOKS

INTRODUCTION

These Principles on Library Ownership of Digital Books, including e-books and e-audiobooks, were developed in order to establish a foundation of trust between publishers and libraries, so that publishers may sell, rather than merely license, permanent copies of digital books to libraries, and libraries are empowered to build and maintain permanent digital collections.

Publishers and authors need to know that libraries and their platform partners will safeguard in-copyright works, and libraries need a clear understanding of those safeguards and how to implement them. To that end, these Principles articulate an understanding of how U.S. Copyright Law applies to permanent library ownership of digital books.



Principles on Library Ownership of Digital Books (Library Futures, 2024)

- Libraries must be able to purchase and own digital books
- Libraries must preserve digital books
- Libraries must provide access to digital books
- Libraries must protect reader privacy

(CDL) LEGAL FRAMEWORK

Exhaustion allows the owner to sell, lend, or give away their copy of a legally acquired work. This is how libraries can lend library materials.

17 U.S.C. § 109 - First Sale

17 U.S.C. § 107 - Fair Use

1. Purpose and character of use
2. Nature of the copyrighted work
3. Amount and substantiality of the portion used
4. The market effect



The courts have explicitly held that Section 108 does not foreclose application of fair use to library uses

A note on 17 U.S.C. § 108

ILL Code for the US

5.8 Ship material by the fastest method reasonably available to the location specified by the requesting library

5.11 Deliver copies electronically wherever possible

DIGITAL FIRST SALE

Applications to Digital Books

- Interlibrary Loan
- (Controlled) Digital Lending
- Preservation and Access
- Transfer of Ownership

Considerations

- Digital Rights Management (DRM)
- Legal and Policy
- Market Impacts

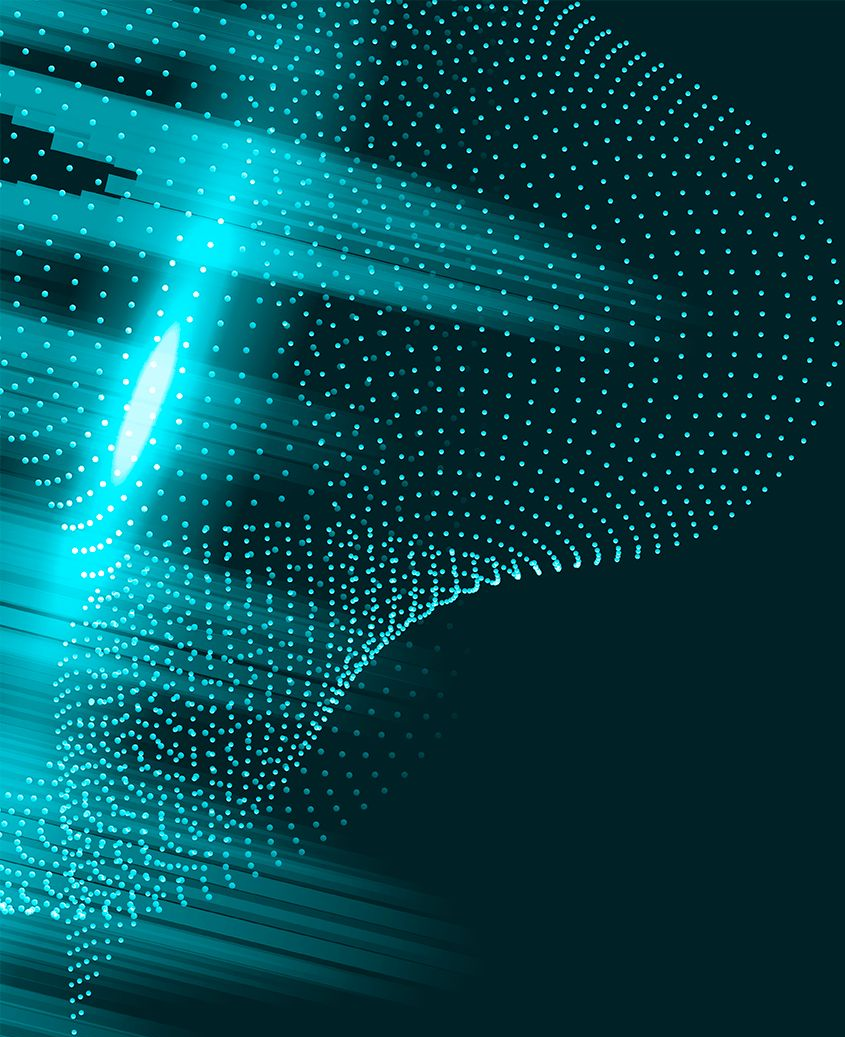
Benefits

- Enhanced Library Services
- Cultural Preservation
- Cost Savings?



Will it
LEND?

The graphic features the text "Will it LEND?" in a bold, yellow, sans-serif font with a white outline. The word "LEND?" is significantly larger than "Will it". To the left of the text is a red spiral icon. The background is dark blue with a glowing, particle-like trail of light blue dots on the right side.



Will It LEAD?

Questions

?

Charlie Barlow
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