



BILL: H.B.1342 – Relative to the Licensing of Electronic Literary Materials by Libraries

COMMITTEE: Municipal and County Government Committee

HEARING DATE: January 9, 2024

CONTACT: Regan Smith, Senior Vice President & General Counsel, News/Media Alliance, regan@newsmediaalliance.org

POSITION: Oppose

The News/Media Alliance (the “Alliance”) respectfully submits the following testimony in opposition to bill H.B.1342, which we believe is ill-informed, unnecessary, preempted, and unconstitutional.

The News/Media Alliance is a nonprofit organization headquartered in Washington, D.C., representing the newspaper, magazine, and digital media industries, and empowering members to succeed in today’s fast-moving media environment. The Alliance represents over 2,200 diverse publishers in the United States and internationally, ranging from the largest news and magazine publishers to small, hyperlocal newspapers, and from digital-only and digital-first outlets to print papers and magazines. In total, the Alliance’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, nearly 100 magazine media companies with over 500 individual magazine brands, and dozens of digital-only properties.

The bill is a blunt instrument to a non-existent problem. While we deeply share the legislature’s sincere interest in the wellbeing of our public library systems, there is no proof of an existing licensing market failure facilitated or initiated by publishers – books, news, magazines, or others. Libraries by and large have access to a wide range of written materials in a variety of formats, from physical books and magazines to electronic editions of newspapers and digital media publishers. There are various ways for state legislatures to strengthen our public libraries and ensure communities’ access to high-quality information and entertainment, but this bill is not the answer. Instead, it would encroach on publishers’ ability to freely license their works and to invest in new, original content, thereby risking the access to news and media content our communities rely on.

Most disconcertingly, H.B.1342 would undermine – and be in violation of – the federal copyright framework that is built on a careful balance between the interests of copyright owners and users. The Copyright Act protects creators’ investments into the production of



creative content, including by establishing clear exclusive rights that are reserved for copyright owners. These rights include the right “to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.”¹

Section 301 of the Copyright Act establishes a strong federal preemption with regards to any state bills that aim to limit or regulate the exclusive rights reserved for copyright owners, stating that “all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright... *are governed exclusively by this title*. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.”² By effectively regulating licensing terms for publishers – including book, newspaper and magazine publishers – when it comes to library licenses, H.B.1342 impinges on the exclusive rights created by the Copyright Act and is therefore preempted under it.

Similar bills in other states have failed for this same reason. In Maryland, a federal court found in 2022 that the state’s law “*likely conflicted with the Copyright Act because it forced publishers to forgo their exclusive rights to decide when, to whom, and on what terms to distribute their copyrighted works,*” later declaring “*the Maryland Act unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act.*”³ Meanwhile, in New York, Governor Kathy Hochul vetoed an analogous bill on the same grounds, stating that the federal Copyright Act reserves the right to decide to whom and on what terms to license copyrighted works solely to the author of that work.⁴ And last year, Virginia’s Senate Committee on General Laws and Technology decided unanimously to reject a similar proposal in a 15-0 vote.⁵

While H.B.1342 raise other questions and concerns – many of which have been highlighted by other stakeholders – the abovementioned constitutional deficiencies are especially concerning as they threaten the delicate balance of the federal copyright system and reduce publishers’ incentives to invest in the creation of new original works.

¹ 17 U.S.C. § 106(3).

² 17 U.S.C. § 301(b) (emphasis added).

³ *Ass’n of Am. Publishers, Inc. v. Frosh*, 586 F. Supp. 3d 379 (D. Md. 2022); *Ass’n of Am. Publishers, Inc. v. Frosh*, No. DLB-21-3133, 2022 U.S. Dist. LEXIS 105406 (D. Md. June 13, 2022).

⁴ Andrew Albanese, *Hochul Vetoes New York’s Library E-Book Bill*, Publishers Weekly (Dec. 30, 2021), available at <https://www.publishersweekly.com/pw/by-topic/digital/copyright/article/88205-hochul-vetoes-new-york-s-library-e-book-bill.html> (last accessed on Oct. 27, 2023).

⁵ Katy Hershberger, *Bill to Limit Library E-Book Lending Fails in VA Senate*, Publishers Marketplace (Feb. 3, 2023), available at <https://lunch.publishersmarketplace.com/2023/02/bill-to-limit-library-e-book-lending-fails-in-va-senate/> (last accessed on Oct. 27, 2023).





For the reasons noted above, the Alliance respectfully opposes H.B.1342 and strongly urges the Committee to reject it.

We appreciate the opportunity to present these views to the Committee.

Respectfully submitted,

A handwritten signature in black ink that reads "Regan Smith".

Regan Smith
Senior Vice President & General Counsel
News/Media Alliance

