



BILL: HF 3698 - Certain Terms in Libraries' Electronic Book and Digital Audiobook License Agreements or Contracts Prohibited

COMMITTEE: House Commerce Finance and Policy Committee

HEARING DATE: April 7, 2026

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

POSITION: Oppose

The News/Media Alliance (“N/MA”) respectfully submits the following testimony in opposition to bill HF 3698, which we believe is unnecessary and raises constitutional concerns. We therefore call on the Committee to reject the bill.

N/MA is a nonprofit organization representing over 2,200 diverse newspaper, magazine, and digital media publishers in the United States, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news for centuries. Covering all subject matter and political viewpoints, the Alliance’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, over 500 individual magazine brands, and dozens of digital-only properties.

HF 3698 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, and many media publishers also offer readers direct access to their valuable written material in ways that do not require a paid subscription. 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, HF 3698 would undermine 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 By prohibiting libraries from entering into or renewing contracts containing certain provisions, publishers may be forced to either accept terms they would not otherwise accept or to decline to license to libraries in the first place – reducing the public’s access to high-quality content.

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 indirectly regulating licensing terms for publishers – including book, newspaper and magazine publishers – when it comes to library licenses, HF 3698 effectively impinges on the exclusive rights created by the Copyright Act and may therefore be preempted under it.

Bills regulating library license agreements in other states have failed for similar reasons. 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 In New York, Governor Kathy Hochul vetoed an analogous bill on the same grounds.⁴ Further, in 2023, Virginia’s Senate Committee on General Laws and Technology decided unanimously to reject a similar proposal in a 15-0 vote.⁵ And in 2024, the Municipal and County Government Committee of the New Hampshire House of Representatives voted in favor of a motion of Inexpedient to Legislate with regards to a similar bill introduced in the state.⁶

While HF 3698 also raises other questions and concerns, the abovementioned issues 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, while also threatening the public’s continued access to publisher content through public libraries.

For the reasons noted above, N/MA respectfully opposes HF 3698 and strongly urges the Committee to reject it. We appreciate the opportunity to present these views to the Committee.

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 Feb. 20, 2024).

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 Feb. 20, 2024).

⁶ New Hampshire H.B. 1342, https://gencourt.state.nh.us/bill_Status/billinfo.aspx?id=1234&inflect=2.