



EBOOK STUDY GROUP

www.ebookstudygroup.org

Kyle K. Courtney, Esq.

Juliya Ziskina, Esq.

TO: Sen. Mary Kunesh and Rep. David Gottfried

RE: Minnesota SF3685 and HF3698

DATE: March 18, 2026

Dear Senators, Representatives, and Colleagues:

I write to provide supporting information for SF3685 and HF3698 “Electronic Book and Digital Audiobook Licenses.” These companion bills are a measured contract-law and public-procurement response to persistent eBook and digital audiobook licensing problems facing Minnesota libraries and their patrons.

My name is Kyle K. Courtney. I am a copyright attorney and librarian, and I am the founder and Board Chair of the eBook Study Group, a national nonprofit organization dedicated to ensuring equitable public access to information through fair and sustainable library eBook licensing. In my professional role, I also serve as Director of Copyright and Information Policy at Harvard Library. I submit this letter solely in my capacity as Board Chair of the eBook Study Group.

The eBook Study Group drafted the national model legislative framework upon which Minnesota’s bill is based. Minnesota’s approach is firmly situated within a growing national effort to modernize library policy through established principles of *consumer protection*, *contract law*, and *public procurement*, so libraries can continue to function effectively in a digital environment.

This Is Not a Copyright Bill, and It Is Not Preempted

At the outset, it is essential to be clear about what this bill is not. *SF3685/HF3698 is not a copyright bill.* It does not amend the Copyright Act. It does not alter any federal exclusive rights. It does not define infringement, create state-law infringement remedies, or establish any new rights in expressive works equivalent to copyright.

Instead, the bill addresses contract terms in a narrow setting: license agreements or contracts that Minnesota libraries enter into or renew to obtain access to electronic literary material (electronic books and digital audiobooks). SF3685/HF3698 set baseline limits on certain provisions that would “preclude, limit, or restrict” libraries from performing customary operational or lending functions.

Copyright Act § 301 (Preemption): Why the “copyright bill” claim is incorrect

Opponents have suggested that SF3685/HF3698 is preempted by federal copyright law. That assertion misstates the governing standard. Preemption under 17 U.S.C. § 301 generally turns on whether a state law creates *rights equivalent to the exclusive rights* protected by the Copyright Act. SF3685/HF3698 does not.

The bill does not grant libraries or patrons any new right to reproduce, distribute, publicly perform, or publicly display a work in the way copyright law regulates. It does not create a state-law cause of action analogous to copyright infringement. It does not regulate ownership, authorship, originality, or the scope of exclusive rights. Instead, it regulates contractual restrictions that apply only when publishers or aggregators have chosen to license eBooks and audiobooks to Minnesota libraries.

Put simply: **SF3685/HF3698 do not create copyright-like rights**. It sets procurement and contract standards for Minnesota public institutions.

SF3685/HF3698 also does not compel publishers to license any title to Minnesota libraries. Publishers remain free to decide what to offer, when to offer it, and whether to offer it at all. The bill’s structure reinforces that it regulates terms in contracts only after a private party chooses to contract with a Minnesota library.

This distinction is one of the dispositive differences between Minnesota’s approach and the Maryland law enjoined in Ass'n of Am. Publishers, Inc. v. Frosh, 586 F. Supp. 3d 379 (D. Md. 2022), which required publishers to offer licenses. SF3685/HF3698 does not mandate distribution; it sets limits on certain provisions in contracts.

Commerce Clause / extraterritoriality claims: a public-contracting measure

Some opponents have also suggested dormant Commerce Clause concerns. But the bill regulates the conditions under which Minnesota public institutions may enter into contracts using Minnesota public funds. In my work helping to pass a similar eBooks law in Connecticut, the officials captured this point clearly when similar legislation was considered there:

“The bills regulate how Connecticut government spends public money in the public interest, not how private publishers do business across state lines.” In the same testimony, Solicitor General Perry added, “So, in my analysis, neither the Copyright Act nor the Commerce Clause has anything to say here.”

- Joshua Perry, Solicitor General, State of Connecticut (March 11, 2024 testimony)

That reasoning applies with equal force to Minnesota. This is a measure about public contracting and public services, not an attempt by Minnesota to regulate out-of-state commerce generally.

What SF3685/HF3698 Does: Contract Standards for Customary Library Functions

H.F. 3698 proposes new Minn. Stat. § 134.52 governing “Electronic Book and Digital Audiobook Licenses.” Under the proposed bill, libraries are prohibited from signing or renewing digital contracts that strip away their traditional lending and operational rights. Essentially, the law voids any publisher agreement that blocks interlibrary loans, limits bulk purchasing, restricts preservation copies, or forces libraries to compromise patron privacy and legal transparency.

To put it simply: if a contract prevents a library from acting like a library in the digital age, it becomes legally unenforceable.

Minnesota’s Trigger Mechanism: Strategic Effect and Notice

H.F. 3698 includes a cautious delayed-effect mechanism. The statute applies only to contracts entered into or renewed on and after 60 days following a determination by the Secretary of State, as certified by the State Librarian, that substantially similar laws have been enacted in one or more other states and that those states have an aggregate population of at least 7,000,000 based on the most recent U.S. decennial census. The bill provides for quarterly certification starting July 1 until the threshold is met, followed by coordinated notice to libraries, state agencies, schools, local governments, and public posting of the determination and effective date.

This trigger mechanism reduces the risk that Minnesota acts in isolation and provides time and clarity for implementation. We have worked with triggers in other national bills, and the trigger clause is part of Connecticut’s eBooks law.

The Reality for Minnesota Libraries: Digital Access Should Not Mean Perpetual Re-Renting

Minnesota libraries, like libraries nationwide, generally do not “own” most eBooks and digital audiobooks they offer to the public. Instead, they frequently obtain access under restrictive licenses that expire after a set time or a limited number of loans, forcing repeated payments simply to maintain access. These practices strain public budgets, reduce collection diversity, and increase wait times for patrons who depend on digital access. Additionally, they lower the return on investment for state dollars spent on eBooks.

Addressing Claims About Authors and Revenue

Opponents sometimes claim that bills like SF3685/HF3698 would harm authors or reduce author income. That claim misunderstands how author compensation works in the eBook marketplace. *Libraries do not pay authors directly for eBooks or audiobooks, and libraries do not set royalty rates.* Author royalties and other compensation are determined by *private publisher–author contracts*, and publishers retain control over how authors are paid from publisher

revenues, including revenues derived from library licensing. Libraries are not parties to those contracts and are not positioned to restructure or replace them.

What Minnesota libraries do, and will continue to do, is license materials through publishers and their vendors using publicly appropriated collections budgets. Those dollars continue to flow through the commercial marketplace. Nothing in SF3685/HF3698 diverts funds away from publishers or rightsholders or creates an alternative payment pipeline.

Libraries also materially *promote authors' work* through discovery and community engagement. Libraries recommend and market books, host author readings and talks, organize book clubs, and provide other author-focused programming that expands readership and visibility. SF3685/HF3698 strengthens that ecosystem by ensuring public funds are not consumed by repeated churn-based re-licensing of the same small set of titles and can instead support broader collections; meaning more authors, more discovery, and more reading overall.

Conclusion

SF3685/HF3698 is a **contract-law and public-procurement measure**. It is not a copyright bill, it is not preempted by the Copyright Act, and it does not compel publishers to distribute or license works. It establishes baseline limits on specific restrictive terms in library eBook and audiobook license agreements so Minnesota libraries can continue to serve the public effectively in a digital environment.

Thank you for your consideration. I am available for any follow-up questions or discussion.

Respectfully submitted,

Kyle K. Courtney, Esq.

Founder and Board Chair, eBook Study Group

<https://www.ebookstudygroup.org/>