

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/22/2023

Time: 03:00 PM

Location: CR 229 & Videoconference

Committee: Senate Education

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: HB 1412, HD1 RELATING TO LIBRARIES.

Purpose of Bill: Prohibits any contract or license agreement between a publisher and library in the State from precluding, limiting, or otherwise restricting the library from performing customary operational and lending functions; restricting the library from disclosing any terms of its license agreements to other libraries; and requiring, coercing, or enabling a library to violate rules regarding confidentiality of a patron's library records. Deems contracts that contain prohibited provisions an unfair or deceptive act or practice and void and unenforceable. Effective 6/30/3000. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) supports HB 1412, HD1.

The digital resource landscape is rapidly changing and new licensing models are being developed and offered by publishers. The Department would like to ensure that school libraries continue to have the ability to enter into licensing agreements with aggregators and publishers provided the pricing and access are considered reasonable.

Thank you for the opportunity to provide testimony in support of this measure.



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Education
Wednesday, March 22, 2023 at 3:00 p.m.

By

Clem Guthro

University Librarian

And

Michael Bruno, Provost

University of Hawai'i at Mānoa

HB 1412 HD1 – A BILL FOR AN ACT RELATED TO LIBRARIES

Chair Kidani, Vice Chair Kim, and Members of the Committee:

The University of Hawai'i on behalf of the University of Hawai'i Library Council offers comments and proposed amendments to HB 1412 HD1. The University of Hawai'i Library Council, representing the eleven libraries within the University System.

HB 1412 HD1 prohibits any contract or license agreement between a publisher and library in the State from precluding, limiting, or otherwise restricting the library from performing customary operational and lending functions; restricting the library from disclosing any terms of its license agreements to other libraries; and requiring, coercing, or enabling a library to violate rules regarding confidentiality of a patron's library records. The University of Hawai'i understands the intent of this measure and its direct impact to operations and interests of the Hawai'i Public Library System.

The University of Hawai'i believes that same intent and impact differs substantially from our libraries that are dedicated to supporting the teaching and research missions of the University of Hawai'i. HB 1412 HD1 proposes to restrict purchases and licensing of digital library materials by mandating certain terms of agreement that will greatly hinder our ability to serve our students and faculty. Such restrictions may endanger University accreditation and negatively impact our students' educational experiences and competitive edge in the job market. Similarly, University faculty and researchers will be hampered by a lack of access to key resources.

As such, the University of Hawai'i offers these recommendations for the committee's considerations:

- 1) That academic, research, and special libraries be stricken from the definition of library for the purposes of this bill, and

- 2) That the inclusion of Archive in the definition of library be amended to specifically exclude archive libraries and collections maintained by the University of Hawai'i System Libraries.

Thank you for the opportunity to testify on this measure.



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March 21, 2023

HOUSE COMMITTEE ON EDUCATION

Sen. Michelle N. Kidani, Chair, Sen. Donna Mercado Kim, Vice Chair

HEARING DATE: Wednesday, March 22, 2023
TIME: 3:00 p.m.
PLACE: Conference Room 229

Re: TESTIMONY ON BEHALF OF ASSOCIATION OF
AMERICAN PUBLISHERS, INC. OPPOSING
HOUSE BILL NO. 1412 HD1

Dear Chair Kidani, Vice Chair Mercado Kim and Committee Members:

We write on behalf of our client, Association of American Publishers, Inc. (“AAP”)¹, in opposition to House Bill No. 1412, HD1 (“HB 1412”). We are concerned that this bill has significant flaws and will likely result in substantial legal challenges in the courts. As discussed more fully below, it is highly likely that the proposed bill would be preempted by existing federal law, including the United States Copyright Act, codified at 17 U.S.C. §§ 101 et seq. (hereinafter, the “Copyright Act”). Specifically, HB 1412 would effectively preclude authors and their publishers from making the determination as to what contract terms apply, and in which markets and channels they direct their works, despite the fact that such control is guaranteed by the Copyright Act. Similar legislation to HB 1412 has been introduced in other states and has been found to be preempted by federal law, including the Copyright Act. For these reasons, we would strongly urge that the Committee not pass this bill as it will result in substantial litigation and is likely to be deemed by the courts to be of no effect.

¹ AAP is a trade association that represents its members on matters of law and public policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions and that enables publishers to effectively enforce their intellectual property rights. Among AAP’s most critical priorities is ensuring the viability of the United States’ more than 200-year-old framework of federal copyright law that encourages publishers to invest in and distribute a great variety of books to the public.

A. The United States Constitution and Federal Copyright Law Have Supremacy on Issues of Copyright.

The United States Constitution authorizes the U.S. Congress to prescribe to authors the exclusive rights to their writings for limited times, for the ultimate benefit of the public. Acting pursuant to this constitutional directive, Congress has enacted a comprehensive federal system of exclusive rights, remedies, exceptions, and limitations, embodied in the Copyright Act. The Copyright Act not only encourages authors to create a vast variety of literary works, it also incentivizes authors to disseminate these works to the public by transferring or licensing their exclusive rights to publishers for the promise of financial rewards. Publishers in the United States disseminate some of the most acclaimed fiction, nonfiction, children’s books, education materials, and scholarly works in the world. Publishers invest considerable resources and make incalculable marketplace-based decisions to promote and sustain their literary catalogs, relying on the uniform and unambiguous authority of the Copyright Act.

The Copyright Clause of the U.S. Constitution provides that “Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”² Pursuant to that grant of authority, the United States Congress enacted the Copyright Act in 1976. The Copyright Act grants copyright owners certain exclusive rights. In particular, the Copyright Act provides that “the owner of copyright . . . has the exclusive rights to do and to authorize” others to reproduce and distribute works, prepare derivative works, and publicly display works, among other rights, subject to the Act’s carefully prescribed limitations.³ Pursuant to the Copyright Act, copyright owners have the authority to exercise these exclusive rights and to authorize others to do so. Importantly, copyright owners have the prerogative to refrain from exercising their rights or authorizing others to do so—for example, by declining to distribute their works.⁴

“It is a familiar and well-established principle that the Supremacy Clause [of the United States Constitution] invalidates state laws that interfere with, or are contrary to, federal law.”⁵

The Supremacy Clause provides that the “Constitution, and the laws of the United States which shall be made in pursuance thereof . . . , shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2. The key issue in reviewing whether a state

² U.S. Const. art. I, § 8, cl. 8.

³ 17 U.S.C. § 106.

⁴ See, e.g., *Stewart v. Abend*, 495 U.S. 207, 229 (1990) (“[T]his Court has held that a copyright owner has the capacity arbitrarily to refuse to license one who seeks to exploit the work.”).

⁵ *Hillsborough Cty., Fla. v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 712 (1985) (citation and internal quotation marks omitted).

law is preempted is whether the operation of state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”⁶

B. HB 1412 Violates Federal Law by Taking Away Control From Copyright Holders.

HB 1412 would limit the ability of copyright holders to limit the terms of any license in any agreement with any Library in the State. Specifically, HB 1412 would not allow a license agreement to limit the scope of any license, including: the number of loans, the duration of loans or the price of such licenses. Specifically, the relevant language in HB 1412 includes a number of instances where the law would restrict the ability of copyright holders to control the scope of their licenses, including:

§ -2 Contracts between publishers and libraries. (a) No contract or license agreement entered into between any publisher and any library in the State shall:

(1) Preclude, limit, or restrict the library from performing customary operational functions, including:

...

(D) A library's right to loan electronic literary materials via interlibrary loan systems;

(2) Preclude, limit, or restrict the library from performing customary lending functions, including any provision that:

(A) Precludes, limits, or restricts the library from loaning electronic literary materials to borrowers;

(B) Restricts the library's right to determine loan periods for licensed electronic literary materials;

(C) Requires the library to acquire a license for any electronic literary material at a price greater than that charged to the public for the same item;

(D) Restricts the number of licenses for electronic literary materials that the library may acquire after the same item is made available to the public;

⁶ *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 479, 94 S.Ct. 1879, 1885, 40 L.Ed.2d 315 (1974) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)).

(E) Requires the library to pay a cost per circulation fee to loan electronic literary materials, unless substantially lower in aggregate than the cost of purchasing the item outright;

(F) Restricts the total number of times a library may loan any licensed electronic literary materials over the course of any license agreement, or restricts the duration of any license agreement, unless the publisher offers a license agreement to libraries for perpetual public use without such restrictions, at a price that is considered reasonable and equitable as agreed to by both parties; and

(G) Restricts or limits the library's ability to virtually recite text and display artwork of any materials to library patrons such that the materials would not have the same educational utility as when recited or displayed at a library;

(3) Restrict the library from disclosing any terms of its license agreements to other libraries; and

(4) Require, coerce, or enable the library to violate the law protecting the confidentiality of a patron's library records as specified in section 8-200.5-3, Hawaii Administrative Rules.

HB 1412 (emphasis added).

Such restrictions on the scope and duration of a copyright holder's ability to license would be directly contrary to the U.S. Constitution and the Copyright Act's provisions allowing the copyright holders such an exclusive prerogative. For this reason, HB 1412 would likely be in violation of federal law and preempted by the U.S. Constitution.

C. Other States Have Considered Similar Legislation, Which Has Been Deemed in Violation of Federal Law.

It is instructive to look at other jurisdictions where their legislatures have sought to pass similar legislation to HB 1412. While other States have sought to pass similar legislation, only two state legislatures have done so.

Perhaps most informative is the experience of the State of Maryland.⁷ In May 2021, the Maryland state legislature passed the Maryland Act for the stated "purpose of requiring a publisher

⁷ The other state legislature to have passed similar legislation is New York. However, the legislation originally known as Bill 5837-B was subsequently vetoed by the governor on December 29, 2021 on the grounds that the bill's provisions "are preempted by federal copyright law."

who offers to license an electronic literary product to the public to also offer to license the electronic literary product to public libraries in the State on reasonable terms that would enable public libraries to provide library users with access to the electronic literary product.”⁸ Like HB 1412, the Maryland Act sought to limit the ability of copyright holders to control dissemination of their works in favor of allowing libraries to have such control. Further, like HB 1412, it required copyright holders to offer licenses at “reasonable” rates.

As part of a lawsuit brought in the Federal Court in the District of Maryland, the court enjoined the enactment of the Maryland legislation, finding that the Maryland legislation was likely preempted by Federal Law, stating that “It is clear the Maryland Act likely stands as an obstacle to the accomplishment of the purposes and objectives of the Copyright Act. The Maryland Act commands that, if a publisher offers to license an electronic literary product to the public at large, the publisher “shall offer to license” the same product to libraries “on reasonable terms that would enable public libraries to provide library users with access to the electronic literary product.”⁹ The court noted that the exclusive right to distribute also encompasses the right not to distribute. The Maryland Law necessarily infringed on that right as it proscribed terms and limited the control of copyright holders to control such distribution. The court concluded that the law “interferes with copyright owners’ exclusive right to distribute by dictating whether, when, and to whom they must distribute their copyrighted works.”¹⁰ Further, the court found that substantial irreparable harm would result from the application of the Maryland Law. Accordingly, the court issued a preliminary injunction. Subsequently, the court issued a declaratory judgment and concluded that “the Maryland Act conflicts with and is preempted by the Copyright Act. The Act stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”¹¹

D. The State Could Face Significant Litigation.

For the foregoing reasons, we are extremely concerned that passage of HB 1412 would result in significant litigation for the State. Further, the result of that litigation would almost certainly be to find that the law was in violation of federal law and of no effect.

It is axiomatic that the Hawai‘i State Legislature has a duty to pass laws that are consistent with and effectuate the protections of the Hawai‘i State Constitution.¹² Passage of this bill, which

⁸ 2021 Md. Laws Ch. 411 (H.B. 518).

⁹ *Ass'n of Am. Publishers, Inc. v. Frosh*, 586 F.Supp.3d 379, 389 (D. Md. 2022).

¹⁰ *Id.* at 393.

¹¹ *Ass'n of Am. Publishers, Inc. v. Frosh*, 607 F.Supp.3d 614, 618 (D. Md. 2022).

¹² “[E]very enactment of the Legislature is presumptively constitutional.” *Schwab v. Ariyoshi*, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977) (citing *State v. Kahalewai*, 56 Haw. 481, 541 P.2d 1020 (1975)); *cf. League of Women Voters of Honolulu v. State*, 150 Hawaii 182, 194, 499 P.3d 382, 394 (2021) (“[I]f the Legislature could alter the meaning of

HOUSE COMMITTEE ON EDUCATION

Sen. Michelle N. Kidani, Chair, Sen. Donna Mercado Kim, Vice Chair

March 21, 2023

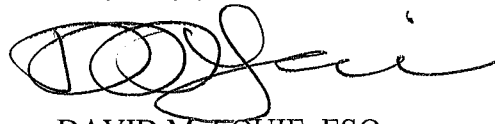
Page 6

is substantively similar to other laws that courts have found to be preempted and in violation of the Copyright Act would not be consistent with the Legislature's obligations to make sound decisions consistent with constitutional principles.

E. Conclusion

For the reasons set forth herein, we have significant concerns about the proposed terms of HB 1412 and would strongly recommend that the Committee hold this bill.

Very truly yours,

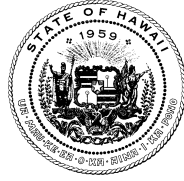
A handwritten signature in black ink, appearing to read "David M. Louie". The signature is fluid and cursive, with the first name "David" being particularly prominent.

DAVID M. LOUIE, ESQ.

for

KOBAYASHI SUGITA & GODA, LLP

the Hawai'i Constitution through its own rules of procedure, theoretically, there would be no need to go through the formality of amending the Hawai'i Constitution. *See Mason's Manual [of Legislative Procedure (2010 ed.)] § 12, ¶ 1* ('A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do by indirection what it cannot directly do.')).



STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
'OIHANA HALE WAIHONA PUKE AUPUNI O KA MOKU'ĀINA O HAWAII'
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813

SENATE COMMITTEE ON EDUCATION

Wednesday, March 22, 2023

3:00 p.m.

Conference Room 229

**By Stacey A. Aldrich
State Librarian**

H.B. 1412 HD1 RELATING TO LIBRARIES

To: Sen. Michelle N. Kidani, Chair
Sen. Donna Mercado Kim, Vice Chair
Members of the Senate Committee on Education

The Hawaii State Public Library System (HSPLS) **supports H.B. 1412 HD1**, which prohibits any contractor license agreement between a publisher and library in the State from precluding, limiting, or otherwise restricting customary operational and lending functions, and respectfully offers **proposed amendments**.

Digital books are a vital part of library collections in the 21st Century. In FY2022, the Hawaii State Public Library System circulated 1,181,418 digital books (i.e., ebooks and digital audiobooks).

This bill addresses longstanding challenges libraries have faced in accessing and pricing digital books. The models created by the publishers have been prohibitive and not sustainable for public libraries. For example, publishers put embargoes on the release date of high demand titles, so the public cannot access digital copies from the public library on the same date.

In addition, publishers charge libraries higher fees for digital books, even though digital editions are more affordable to produce. Furthermore, libraries don't own these digital books, they merely lease them, almost always at a cost that is four to five times the purchase price of the digital book purchased by the public. HSPLS pays between \$50-\$80 for a single digital book title, which has limits on how many times the title may be borrowed. For example, if HSPLS obtains a

copy of an ebook for \$65, once the check-out limit is met, we must pay another \$65 to continue to provide access to that title. If a single title is popular and patrons are waiting to read it, HSPLS may need to renew a title several times. Renewing access three times at \$65 is \$195 for just one title. Continuing to pay over and over for access is not a sustainable model for our libraries. In the future, we may be able to license only a small selection of mainstream works, limiting the opportunities for our readers.

Paying so much for access to popular titles also impacts the library's ability to build a diverse collection statewide, as the library has less funding for titles by other authors. Ultimately, this limits the ability to create diverse collections and restricts opportunities for personal and community growth.

We respectfully request an **amendment** to preserve existing contracts while we work with the publishers to transition to new agreements. This legislation will be one of the first in the nation, and as such, we will need flexibility in transitioning. To achieve this, we strongly recommend replacing the existing language in Section 3 with the following:

SECTION 3. Severability

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 4. Existing Contracts

Nothing in this subsection affects existing contracts that are currently in force providing libraries with electronic literary products from vendors and aggregators.

SECTION 5. Effective Date

This act shall take effect upon its enactment into law unless otherwise specified. The provisions of this act apply to transactions entered into and events occurring after such date.

We also recognize that academic, research, and special libraries may have other interests to balance their collections and would understand if the legislation is limited to HSPLS libraries and school libraries.

As the only statewide public library system that is also geographically located on six islands, we have unique challenges in providing equal access to all of our communities. This legislation is important for helping to balance good stewardship of public funds and the ability to provide equitable access to digital books for the people of Hawaii.

Thank you for the opportunity to provide testimony on this measure.



The Association of American Publishers (AAP) is the national trade association for book, journal, and education publishers in the United States, including large, small, and specialized publishing houses from across the country.

We respectfully submit this testimony in opposition to HB 1412. The bill is preempted by federal Copyright Law, would harm the livelihoods of authors, is a threat to both Hawaii's economy and national interests, and ignores a record-breaking number of "digital check-outs" from public libraries.

These "digital check outs" are made possible because publishers have long offered discounted access to public libraries, for them to make digital formats available to their patrons under controlled terms, as a supplement to physical books, which by far remain the most popular formats. Publishers have without question served public libraries and their communities very well in the digital age—to the point that today more patrons than ever before can access for free, at the push of a button, a plethora of award winning and best-selling literary works that they might otherwise have purchased from booksellers.

As there is no problem in the library market—but considerable concern about competitive businesses—AAP joins hundreds of thousands of creators in opposing HB 1412.

HB 1412 is clearly preempted by federal law and therefore unconstitutional.

The United States Copyright Act governs the distribution of literary works in all formats, including the transmission of eBook formats to library patrons pursuant to copyright licenses from publishers. The state of Hawaii may not enforce legislation that duplicates or frustrates the objectives of the Copyright Act.

As such, HB 1412 is clearly preempted and therefore unconstitutional. If enacted, the bill would subject Hawaii and its taxpayers to all of the liability, legal fees, and expenses that would attach, and which affected parties in the creative industries would have no choice but to pursue.

The Copyright Act is directly authorized by the "Copyright Clause" of the U.S. Constitution; it dates back to 1790 and has been carefully updated by the U.S. Congress in its discretion as needed, after comprehensive consideration. A lengthy but uniform federal law, the Copyright Act is the legal foundation of the publishing industry and all other creative industries. Moreover, the Copyright Act attaches to numerous copyright treaties and free trade agreements that the United States has led, adopted, and implemented, and which it is charged with fully enforcing.

The aim of Hawaii's legislation is not theoretical. Inexplicably, it would expose copyright owners to serious penalties and liabilities that it has no right to impose. To put a fine point on the unconstitutional conflict, HB 1412 seeks to punish copyright owners for exercising the very rights and remedies that federal law so clearly affords them!

We are aware that legislation like HB 1412 has been pushed to policymakers in other states, under outrageously false legal and business assertions. Thankfully, these bills have been rejected. In late 2021, Governor Hochul vetoed a similar New York bill stating that "because the provisions of this bill are preempted by federal copyright law, I cannot support this bill."

In 2022, a federal district court in Maryland found a similar bill “unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act” and because it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” [Ass’n of American Publishers v. Frosh, 2022].

And, most recently, in 2023 in Virginia, a virtually identical bill was unanimously rejected in committee by the state legislature due to a plethora of legal and business concerns.

HB 1412 would harm the livelihoods of authors.

The Copyright Act is the basis of invaluable creativity and innovation in the marketplace, for which we owe American authors our gratitude and respect. The basic bargain of the Copyright Act is economic. It serves the public by encouraging authorship and publication, including through modern delivery models.

If enacted, HB 1412 would directly devalue the intellectual property of authors and therefore their right to seek market compensation. Under a scheme that would reduce the copyright interests of authors to an artificially capped system of government rates, authors could not sustain their crafts, to the great detriment of readers everywhere. Such a precedent would be frontally at odds with the Constitutional mandate of copyright law. In short, the kind of regime that HB 1412 envisions would threaten the entire creative economy that is so critical to the state of Hawaii and the Nation.

HB 1412 would threaten Hawaii’s economy and national interests.

HB 1412 would undermine private sector investments that make literary works of all formats and genres possible, including poetry, novels, children’s books, biographies and many other forms of entertainment and information that drive the creative economy.

In addition to these immediate impacts, HB 1412 would limit the downstream economic contributions of the publishing ecosystem which results in jobs and revenue for truckers, warehouses, manufacturers, and many other industries. In 2021, the copyright industry was responsible for an estimated [\\$2.9 trillion dollars](#), or 12.52% of the U.S. economy. Simply put, HB 1412 would destabilize a significant sector of the U.S. economy – and U.S. employment – that rely on incentives and protections of federal law.

It is for this reason that **the groups who stand in opposition to HB 1412 represent hundreds of thousands of creators** including the Association of American Publishers, the Authors Guild, American Booksellers Association, Copyright Alliance, Independent Book Publishers Association, News Media Alliance, Motion Picture Association, Recording Industry Association of America, and Software & Information Industry Association, among others.

HB 1412 ignores a record-breaking number of digital checkouts in library markets.

American publishers are extremely proud of their role in championing public libraries, including their transitions to the digital age. As digital “check-outs” are booming, we note that HB 1412 is at best a solution in search of a problem, or at worst an effort to force businesses to subsidize public institutions at the expense of themselves and other stakeholders.

Today, the reading public has unprecedented library access to literary works in eBook as well as audiobook formats. This fact is true even while publishers compete rigorously and simultaneously to

serve readers in the commercial marketplace. Indeed, library e-lending has exploded to the point that commercial revenue for eBooks continues to decline as library check-outs increase. In 2022, readers borrowed more than half a billion eBooks, audiobooks, digital magazines, comics, and other digital content, ten percent more than the record-breaking numbers of 2021.

Moreover, libraries enjoy special licenses from publishers that permit them to do things that readers in the consumer markets may not do. Libraries make eBooks available over and over again to their patrons, at an aggregate cost that is nowhere close to the per-reader rates. This balance is critical. Authors, publishers, and bookstores would not survive if every consumer could instead immediately “borrow” a digital version of every book that they might otherwise decide to purchase. Indeed, no industry of any kind could function if forced to give unfettered free access while also trying to recoup investments.

CONCLUSION

In closing, American intellectual property is a point of pride for both local and global economies. Today's literary market is agile and offers consumers more choices than ever before, including digital formats that customers can enjoy in the comfort of their own homes. Especially now, in the face of challenging economic times, the success of authors depends on the success of publishing houses and the incredibly important commercial markets they support. HB 1412 seeks to unconstitutionally intervene in this market and disrupt the balance between art and commerce that it has so carefully struck.

For all of the reasons outlined above and more, we therefore respectfully urge the Senate Education Committee to reject HB 1412.

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

Respectfully submitted,



Shelley H. Husband
Senior Vice President, Government Affairs
Association of American Publishers

HB-1412-HD-1

Submitted on: 3/20/2023 11:37:56 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Oluwaseun Igwubor Gilbert	Testifying for The Yellowkeed Corporation	Oppose	Written Testimony Only

Comments:

Additional comments;

I would oppose this if it doesn't support the fair use of authors, publishers and other creators works alike with adequate remuneration. If this bill generates adequate revenue for the users and creators alike, then I am in total support, except otherwise and I'd be in support of it being rescinded.

HB-1412-HD-1

Submitted on: 3/21/2023 1:03:02 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
David DeLuca	Testifying for Bess Press Inc.	Oppose	Written Testimony Only

Comments:

Aloha Senator Chair Kidani and members of the Senate Education Committee.

I am emailing in opposition to the proposed bill HB 1412. Hawai‘i represents a small, but incredibly vital part of the publishing community worldwide, particularly for representing native and ethnic voices that detail the histories, culture, and communities making up our state and the Pacific region.

I work as the Director of Publishing at Bess Press, a local, small business begun in 1979 as a direct result of the Hawai‘i State Constitutional Convention’s decisions to create greater access to Hawaiian and Pacific Island resources within our educational system and libraries. I previously served as President of the Hawai‘i Book Publishers Association and as Board Chair of the Hawai‘i Book and Music Festival, both 501c3 non-profit organizations.

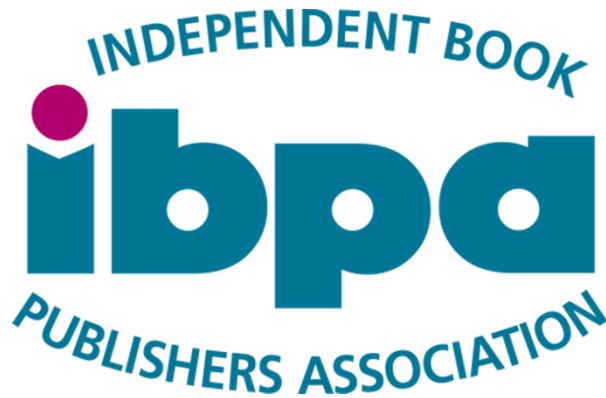
As a representative for authors, publishers, and librarians I can genuinely say that our goal and the costs we undertake to make these works is so that they are made widely available to the public. Although HB 1412 on the surface seems to support this concept, it is flawed, and components of this bill seem to be creating what is effectively a compulsory license for literary works. Within the proposal there are serious constitutional and copyright law concerns, and it seems to be in violation of the exclusive rights of copyright owners as well as in direct conflict US Congressional authority.

Local members of this industry have long championed and worked tirelessly to make available and disseminate the invaluable research, scholarship, and practices of authors, kupuna, artists, and other creators who have collaborated to create publishable works in both print and digital form. Much of these works are directed toward education and are vitally important to our younger generations. What makes it invaluable is the authenticity from which the materials are derived. Should HB 1412 pass it would seriously undercut the livelihoods of those working to create books and knowledge sources for our community.

Mahalo for your time.

Me ke aloha,

David DeLuca



22 March 2023

The Independent Book Publishers Association respectfully submits the following testimony in opposition to Hawaii House Bill 1412 (HB1412), which, if enacted, would violate our members' rights under federal copyright law and the United States Constitution by unconstitutionally regulating literary works by dictating licensing terms from copyright owners to libraries for eBook formats. The Independent Book Publishers Association is a national non-profit association of over 4,000 small and mid-sized publishers, as well as author-publishers, including members from the State of Hawaii. IBPA works to promote the rights and professional interests of our publisher members. Our membership would be directly impacted by HB1412.

While the Independent Book Publishers Association and its membership would like nothing more than for all books to be available to libraries in every format, we strongly oppose the legislative initiative taken by the drafters of HB1412 to achieve this otherwise laudable goal.

HB1412 would represent a fundamental, unprecedented intrusion into the free exercise of copyright by both authors and publishers by restricting certain licensing terms for digital materials under the guise of unfair and deceptive trade practices. When the State dictates licensing terms for copyrighted materials it violates the free exercise of Copyright under 17 U.S.C. §106. Only Congress, not the State, has the right to regulate copyright. In a lengthy written opinion analyzing the similar proposed legislation in other states, dated August 30, 2021, Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office, stated, "we conclude that under current precedent, the state laws at issue are likely to be found preempted." Meaning that the state laws interfere with the authority of Congress and thus violate the Supremacy Clause of the U.S. Constitution.

As the court recognized in the case *AAP v. Frosh*, concerning similar legislation passed by the Maryland legislature, "[i]t is clear from the text and history of the Copyright Act that the balance of rights and exceptions is decided by Congress alone" and "[s]triking the balance between the critical functions of libraries and the importance of preserving the exclusive rights of copyright holders... is squarely in the province of Congress and not this Court or a state legislature." States cannot avoid federal preemption by recasting restrictions on the exercise of copyrights as protections against unfair, deceptive, or unconscionable conduct, such as is the case with HB1412. Absent an evidentiary record that clearly establishes actual fraud or misrepresentation, bills

restricting price and licensing terms will be preempted where the supposed misconduct the state law aims to remedy is no more than the perception by the state that the licensor negotiated a favorable deal.

The Supremacy Clause is not the only constitutional concern raised by HB1412. As the sale of electronic literary products by definition represents interstate commerce, this legislation would also directly violate article 1, section 8, clause 3 of the Constitution, which gives Congress the right to regulate interstate commerce. Imposing terms on publishers from the several states in their commercial relationship with the Hawaii libraries, and ultimately the State of Hawaii itself, interferes with interstate commerce which is the exclusive purview of the Congress of the United States.

HB1412 would ultimately compel publishers to accept licenses they might otherwise choose not to or, tragically, to not offer their works to libraries at all. Under this proposed legislation, publishers would lose the ability to control to whom they license their works and on what terms, eviscerating their rights under 17 U.S.C. §106. The Supreme Court already decided this issue in its 1999 decision in *Orson, Inc. v. Miramax* expressly in which it ruled that states cannot infringe upon the rights of copyright holders: “The state may not mandate distribution and reproduction of a copyrighted work in the face of the exclusive rights to distribution granted under §106.” The law at issue in that case, just as HB1412 would do, “direct[ed] a copyright holder to distribute and license against its will and interests.”¹

It is the contention of the Independent Book Publishers Association that HB1412 suffers from the same constitutional defects that led to the Federal court decision in the *AAP v. Frosch* case last year to swiftly strike down similar legislation enacted in Maryland, finding it “unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act.” It held that the now-overturned Maryland law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”² Maryland declined to appeal this well-reasoned decision.

While we are sympathetic to the motivations underlying this legislation, a law that sweeps in thousands of small publishers and self-published authors who cannot manage distribution and licensing at scale is not the right approach and is in fundamental violation of federal copyright law. We concur with United States District Judge Deborah Boardman, who, in the *AAP v. Frosch* case, stated: “Libraries serve many critical functions in our democracy. They serve as a repository of knowledge — both old and new — and ensure access to that knowledge does not depend on wealth or ability. They also play a special role in documenting society’s evolution. Congress has underscored the significance of libraries and has accorded them a privileged status on at least one occasion, legislating an exception to the Copyright Act’s regime of exclusive rights that permits libraries to reproduce copyrighted material so it may be preserved in the public record across generations. See 17 U.S.C. § 108. Libraries face unique challenges as they sit at the intersection of public service and the private marketplace in an evolving society that is increasingly reliant on digital media. However, striking the balance between the critical functions of libraries and the

¹ *Orson, Inc. v. Miramax Film Corp.*, 189 F.3d 377 (3d Cir. 1999).

² *Ass'n of Am. Publishers, Inc. v. Frosch*, No. DLB-21-3133, 2022 U.S. Dist. LEXIS 105406 (D. Md. June 13, 2022).

importance of preserving the exclusive rights of copyright holders is squarely in the province of Congress and not this Court or a state legislature.”³

We respectfully oppose HB1412 and ask that you reject it in light of the broader legal context and possible serious repercussions of this legislation for hardworking independent publishers and self-published authors already facing serious challenges in the current economic environment.

Respectfully submitted,



Andrea Fleck-Nisbet
CEO
Independent Book Publishers Association



Dr. Kurt Brackob
Advocacy Committee
Independent Book Publishers Association

³ United States District Court for the State of Maryland, Case 1:21-cv-03133-DLB Document 19 Filed 02/16/22, p. 27.

HB-1412-HD-1

Submitted on: 3/20/2023 10:00:13 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Francis Zera	Testifying for Left Coast Creative, Inc.	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.



BILL: HB 1412, Relating to Libraries
COMMITTEE: Senate Committee on Education
HEARING DATE: March 22, 2023
CONTACT: Keith Kupferschmid, keithk@copyrightalliance.org
POSITION: Oppose

The Copyright Alliance, on behalf of our membership, submits this statement of opposition for the record concerning the hearing on HB 1412 before the Hawaii Senate Committee on Education. We urge the Committee to oppose this bill that attempts to legislate in areas that fall within the scope of federal copyright law and, therefore, are under the exclusive jurisdiction of Congress, and would harm authors, publishers, and other creators.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The Copyright Alliance represents the copyright interests of over 15,000 organizations in the United States, across the spectrum of copyright disciplines, and over 2 million individual creators, including photographers, authors, songwriters, coders, bloggers, artists and many more individual creators and small businesses that rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

The state of Hawaii is renowned for its creativity. Unsurprisingly, Hawaii's representatives in Congress have been long time supporters of copyright. In fact, Sen. Mazie Hirono was one of the original co-sponsors of the CASE Act, which created the copyright small claims court, and is co-chair of the Congressional Creative Rights Caucus (CRC).

For years, various organizations have unsuccessfully lobbied Congress to weaken federal copyright protections. Because Congress has not agreed that copyright should be weakened, these groups have now decided to circumvent Congress' authority by lobbying state legislatures to enact the very same legislation that Congress would not. This has resulted in a recent influx of state legislation like HB 1412 that would regulate licensing terms between publishers and libraries—imposing government-mandated terms and price caps and eviscerating the national, uniform copyright framework.

Since copyright is under the exclusive jurisdiction of Congress, legislation like this is inappropriate at the state level and runs the risk of being struck down. In fact, similar legislation has been struck down or vetoed in three other states already—Maryland, New York and Virginia. Earlier this year, legislation in Virginia (SB1528) nearly identical to HB 1412 was

rejected unanimously in committee. In December 2021, New York Governor Kathy Hochul vetoed legislation which similarly sought to regulate licensing terms between book publishers and libraries (A5837B), explaining that “[b]ecause the provisions of this bill are preempted by federal copyright law, I cannot support this bill;”¹ and in Maryland, after its bill was signed into law, the U.S. District Court for the District of Maryland held the bill to be unconstitutional. We believe these bills act as a cautionary tale for states like Hawaii that are considering similar legislation.

The individual creators and organizations that we represent—including the many creators who hail from the great state of Hawaii—rely on a strong federal copyright system to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. The strength of our copyright system relies in large part on the uniformity of copyright laws across the United States, guaranteed by both the Supremacy Clause of the U.S. Constitution, and by the Copyright Act. HB 1412 undermines that important legal system and threatens the ability of authors and publishers to create and disseminate books to the public.

We respectfully ask that the Senate Committee on Education reject HB 1412. Please let us know if we can provide additional information or answer any questions regarding our opposition to this bill.



Keith Kupferschmid
CEO
Copyright Alliance

¹ Letter vetoing New York State Assembly Bills Nos. 5565 and 5837-B from Governor Kathy Hochul, State of N.Y., to the N.Y. State Assembly (Dec. 29, 2021), available at <https://authorsguild.org/app/uploads/2021/12/GovernorHochulVetoMessage.pdf>.



**House of Representatives
State of Hawaii, 32nd Legislature 2023**

March 20, 2023

Testimony in Opposition to HB 1412

The Authors Guild respectfully submits the following testimony in opposition to bill HB 1412. With over 13,000 members, the Authors Guild is the oldest and largest professional association of published writers of all genres including historians, biographers, academicians, journalists, and other writers of nonfiction and fiction. Since its founding in 1912, the Guild has worked to promote the rights and professional interests of authors in various areas, including copyright, freedom of expression, and fair contracts.

We oppose HB 1412 because it prejudices the exclusive rights guaranteed by federal copyright law to our members and all authors. It goes without saying that the Authors Guild and its member authors believe that libraries should have all the resources they need to distribute ebooks to patrons, but we strongly object to a legislative approach that interferes with authors' and publishers' fundamental rights under constitutionally-based copyright law to license their works on terms they chose. We want to emphasize that in December 2021 a similar bill in New York was vetoed by the governor, and a federal court in Maryland struck down a law that required publishers to license ebooks and other digital products to libraries as being pre-empted by the Copyright Act.

Copyright incentivizes authors to write books and publishers to publish them by creating economic value for books; without it, few books get written and published. Recognizing the importance of creating an economy for books throughout the nation, the Founders placed copyright law in the hands of Congress.¹ Section 301 of the current copyright law – the 1976 Copyright Act – is unambiguous on the principle of federal supremacy, stating that “all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright . . . [that] come within the subject matter of copyright as specified by sections 102 and 103 . . . are governed exclusively by this title.”² Upholding the principle of federal preemption of copyright, and, in particular, the copyright owner's exclusive rights, courts across the federal

¹ Art. 1, Sec. 8, cl. 8

² 17 U.S.C. 103

circuits have struck down state laws that interfere with the copyright owner's right to control his or her work.³

HB 1412 encroaches upon Congress' exclusive authority under the U.S. Constitution to enact legislation within the scope of copyright, and is therefore pre-empted by the Copyright Act. By prohibiting and placing restrictions on copyright licensing terms, HB 1412 attempts to amend federal copyright law, and interferes with an author's or publisher's right to decide to whom, when and on what terms to license their works. As Authors Guild members rely on enforceable copyrights to protect their work and to maintain a robust publishing ecosystem that provides them with the financial ability to be able to continue to write for the public good, the Guild has a strong interest in protecting the exclusive rights provided for under the U.S. Constitution and federal copyright law.

We oppose HB 1412 for the reasons discussed above and respectfully request that it be withdrawn in light of the broader legal context, disruptions to the copyright system, and the possible serious repercussions for hard-working authors, and especially those who publish independently.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary E. J.", with a long horizontal flourish extending to the right.

Mary Rasenberger
CEO, The Authors Guild

³ See, e.g., *Close v. Sotheby's, Inc.*, 894 F.3d 1061 (9th Cir. 2018) (finding requirement for re-sellers of fine art to pay artist a 5% royalty on sales within California violated section 301 of Copyright Act because it conflicted with exclusive distribution right under section 106(3)); *Authors Guild v. Google, Inc.*, 770 F. Supp. 2d 666, 681 (S.D.N.Y. 2011) (noting that "[a] copyright owner's right to exclude others from using his property is fundamental and beyond dispute" and "[t]he owner of the copyright, if he pleases, may refrain from vending or licensing and content himself with simply exercising the right to exclude others from using his property"); *Rodrigue v. Rodrigue*, 218 F.3d 432, 436-42 (5th Cir. 2000) (finding that Louisiana's community property law could not interfere with the copyright author's right to control his or her work).

HB-1412-HD-1

Submitted on: 3/20/2023 12:05:06 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Muriel Palmer-Rhea	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, a member of ASCAP, I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft

HB-1412-HD-1

Submitted on: 3/20/2023 10:04:59 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Catherine Singer	Individual	Oppose	Written Testimony Only

Comments:

I am a writer and photographer and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.

HB-1412-HD-1

Submitted on: 3/20/2023 9:52:26 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
rashell shumate harris	Individual	Oppose	Written Testimony Only

Comments:

I oppose the digital copyright. The bill of rights and amendments 14 freedom of press and in amendment 5 freedom of speech. I do not feel america states which is hawaii should eliminate copyright laws against these. Joe Biden and others disagree with new constitution but the trade of natives and colonies agreed that England remain England and we are separate states to liberal freedoms including digital expression that constitute our freedom also of religion amendment 52. I do not think we should eliminate these. Fiction or non-fiction which is true. Mythological and statics of quota state that we are living so history does not repeat itself and that what we see is what we see and change is staying the same. So create as the bible states God is the creator. We are going against the bible not like the web is the devil but the inventor of images and as we stay in Eden of information and images we are not a sinner.

HB-1412-HD-1

Submitted on: 3/20/2023 10:44:18 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shanda Guillory	Individual	Oppose	Written Testimony Only

Comments:

I am a creator. I oppose this unconstitutional legislation, as it will hurt the property rights of authors and creators. The HB 1412 will be detrimental to our ability to earn a living from our craft. PLEASE DO NOT APPROVE HB 1412. - Shanda Guillory

HB-1412-HD-1

Submitted on: 3/20/2023 11:34:42 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cheryl Ritzel	Individual	Oppose	Written Testimony Only

Comments:

As a photographer, I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators like myself and harm my ability to earn a living from my craft. A copyright owner's works should never have licenses granted involuntarily for digital works or any other creative work. To do so would violate constitutional laws and protections.

HB-1412-HD-1

Submitted on: 3/20/2023 10:18:55 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Candace Sams	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators, and harm my ability to earn a living from my craft. Authors already face illegal file share sites popping up all over the internet, stealing millions upon millions of books per year. This is just the same, only this legislation means to legalize theft. An argument could then be made by online pirate sites that they, too, have the right to post any book, without payment to the author...simply by calling themselves an online 'library'. These digital pirate site owners have tried this in the past and have been struck down. This legislation is more of the same stealing process, denying authors the right to make a living. License books you want. LEGALLY. Buy a certain number of licensed downloads. Then renew the license at terms for which each author agrees. I don't personally work years authoring a book only to have it stolen via pirating legislation. You don't go into a landscaper's garage and steal his lawnmower...why would you steal my only means of making a living? It is a created piece of work, not yours to deal with simply because it is in digital format! Digital doesn't mean you get to take what you want, regardless of the creator's rights. Why have a copyright at all if any book can be reproduced and disseminated at will? The State does not have the right to decide when and how to copy my works!!! Not without the author's permission.

HB-1412-HD-1

Submitted on: 3/20/2023 10:46:54 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chidalu fortune tony	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft

HB-1412-HD-1

Submitted on: 3/20/2023 9:45:52 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Katie Preiss	Individual	Oppose	Written Testimony Only

Comments:

I am an intellectual property attorney, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm their ability to earn a living from their craft.

HB-1412-HD-1

Submitted on: 3/20/2023 10:58:22 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Langston Childs	Individual	Oppose	Written Testimony Only

Comments:

HB 1412 would be an unethical and illegal action towards creatives because it would require them to involuntarily grant licenses for their digital works to libraries in Hawaii, without their permission or control over the terms of the license. This violates the fundamental principles of intellectual property, which recognize the right of creators to control and monetize their creations. Furthermore, this bill would be in direct violation of US copyright laws, which protect the exclusive rights of authors and publishers to distribute and license their works. Therefore, it is essential that creators' rights and intellectual property are always protected, and that they are never licensed without their permission.

HB-1412-HD-1

Submitted on: 3/20/2023 12:10:21 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michelle Shocked	Individual	Oppose	Written Testimony Only

Comments:

Dear Hawai'i Legislators

I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.

I am a 30+ year professional creator. My livelihood has been decimated due to the relentless devaluation of my copyright protected intellectual property at the hands of scofflaws.

There is a relentless assault on copyright protections for authors, coming from a shadow network of private interests intent on forum shopping among state legislatures. In Maryland, HB 0518 <https://mgaleg.maryland.gov/mgaweb/site/Legislation/Details/hb0518>, in Rhode Island, SB 2773 <https://legiscan.com/RI/text/S2773/2020>, in New York, S7576 and now in Hawai'i, HB 1412.

In each case, the legislation would force authors, publishers, and other copyright owners to involuntarily grant licenses to libraries for their digital works on terms decided by the state. These bills are clearly unconstitutional, based on a campaign of misinformation, and in violation of federal copyright law.

I urge you to follow New York's rejection of mandatory e-book licensing and reject the dark money influence campaign being waged by a shadow network which claims to represent consumers and creators but in fact is anti-democratic and anti-creator.

A radical libertarian ideology, represented as advocacy for consumers, belies a self-serving, private interest. Omidyar Network is just one example. Often disguised as privacy advocacy on behalf of the public interest, the real agenda includes spies-for-hire, such as Edward Snowden, stealing publicly funded warrantless surveillance data on their behalf.

This network includes collusion between willful copyright infringers such as Internet Archive and YouTube/Google, as well as advocacy/think tanks such as Public Knowledge, Demand Progress, Fight for the Future as well as the Omidyar funded American Economic Liberties Project, and partnerships with More Perfect Union, Union of Musicians and Allied Workers, etc.

My own advocacy for independent creators concerns resale markets such as Pierre Omidyar's eBay, which has generated a market failure for independent creators challenged by greymarket trafficking of counterfeit physical goods.

Thank you for considering the voices of independent creators such as mine, opposed to this legislation. An injury to one creator is an injury to all creators.

Michelle Shocked
President, FFS Project

Our newly formed non-profit, FFSC (Fraudulent First Sale Coalition), is welcoming a conversation among self-administered songwriters, independent recording artists, and indie labels interested in combating first sale fraud and corruption.

We as independent music creators are working in a failed market – we are not being compensated fairly, because our work product is devalued, and often stolen. Online marketplace third party distributors are currently selling unauthorized or counterfeit "used like new" physical product – vinyl, CDs, cassettes. The distribution of counterfeit product both deprives independent artist and our labels of compensation in sales, as well as an overall market devaluation.

The doctrine of "right of first sale," provides the simulacrum for several aspects of online third-party marketplace counterfeit trafficking

1. warehoused 'cutouts' and 'returns,' often distributed via one stops
2. bulk lots of charitable donation inventory
3. unlicensed compilations
4. greymarket product and bootlegs
5. promotional goods
6. file sharing sites hiding in plain sight as third-party marketplaces

This Oct 31, 2016 report: [RIAA: One Out of Every Four CDs Sold On Amazon is Counterfeit](#) eventually resulted in Amazon being added to The US Trade Office's list of [Notorious Sites](#), the piracy equivalent of the FBI's Most Wanted list, and more recently, this May 5, 2019 article [Counterfeit Crackdown as Vinyl Revival Rekindles Bootlegging](#) quotes BPI executive Geoff Taylor,

"The vinyl revival, which has seen sales of LPs reaching their highest levels in almost three decades, has generated an increase in the supply of counterfeit and bootleg product, often distributed via online marketplaces," said Geoff Taylor, BPI chief executive. "While some of these may look genuine to fans, they are often lower in quality and mean that the artist is not paid at all for their music, since all the profits go to criminal gangs."

In this Nov 20, 2019 Reverb article, [What's Behind the Rise of Counterfeit Records?](#) Richard Burgess, president of A2IM, says,

"Recently it's gone up again. I think it's somewhere in the 11 percent range, which is serious."

FFSC coalition members are exploring several legal and legislative initiatives for holding fraudulent first sale traffickers accountable. These include

1. copyright enforcement through the CASE Act small claims tribunal
2. trademark enforcement against third party distributors
3. education campaigns tailored toward legislators and various stakeholders
4. aggregation of a class for potential legal action

Thank you,
Michelle Shocked, president
FFSC

HB-1412-HD-1

Submitted on: 3/20/2023 9:11:27 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Eileen Bramlet	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft. Thank you!
Eileen Bramlet

HB-1412-HD-1

Submitted on: 3/20/2023 9:44:18 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kaylie Rodriguez	Individual	Oppose	Written Testimony Only

Comments:

Having copyright owners involuntarily grant licenses to libraries in Hawaii for their digital works on terms decided by the state is clearly unconstitutional. Based on a campaign of misinformation, and in violation of federal copyright law.

I oppose.

HB-1412-HD-1

Submitted on: 3/20/2023 9:40:25 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Rich Iwasaki	Individual	Oppose	Written Testimony Only

Comments:

As a photographer and creator, I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators such as myself, and it will impede my ability to earn a living from my craft.

HB-1412-HD-1

Submitted on: 3/20/2023 10:04:03 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lucy Hawkins	Individual	Oppose	Written Testimony Only

Comments:

I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living as a publisher. But more than that, it denies authors and legitimate creators a way to earn a living at their craft which is truly unconstitutional.

HB-1412-HD-1

Submitted on: 3/20/2023 9:55:09 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tyler Wade	Individual	Oppose	Written Testimony Only

Comments:

Having copy write owners involuntarily grant licenses to libraries in Hawaii for their digital works on terms decided by the state is clearly unconstitutional, based on a campaign of misinformation, and in violation of federal copyright law. I oppose to passing this bill.

HB-1412-HD-1

Submitted on: 3/20/2023 9:44:55 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Clayton Spangler	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft. copyright is understood to be the creators unless there is a transference from creator to a separate entity by written release.

the creator can also give the right to own an artwork, but retains the right to make more-not the end user.

this legislation could lead to "orphaned works" where the creator or copyright owner could lose the ability to determine who gets to use their work or semblances and therefore lose income for current and future sales of their work-and how that work can be portrayed as well as used.

HB-1412-HD-1

Submitted on: 3/20/2023 12:22:38 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Robert Henry	Individual	Oppose	Written Testimony Only

Comments:

My son is a minor (17) and creator, and we oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm his ability to earn a living from his craft.

HB-1412-HD-1

Submitted on: 3/20/2023 12:25:47 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chris Moore	Individual	Oppose	Written Testimony Only

Comments:

I am proud to be a creator/photographer who supports my fellow creative professionals across the country, including Hawai'i and I vehemently oppose HB 1412 because this unconstitutional legislation would harm the property rights that creators rely upon to earn a living from our craft. Through unprecedented and unjustifiable intervention, HB 1412 interferes with the rights of Hawai'i's creators to make their own business decisions by dictating how copyright owners would license their works to libraries in the state.

HB 1412 would punish copyright owners for exercising the rights that are afforded to them under the federal copyright law and is similar to legislation that was struck down in federal district court in Maryland last year and vetoed in New York because it is clearly preempted by federal copyright law.

HB1412 is an anathema to creators everywhere. This bill must be voted down.

HB-1412-HD-1

Submitted on: 3/20/2023 12:32:59 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sabbithry Persad	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.

HB-1412-HD-1

Submitted on: 3/20/2023 1:31:37 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Llewellyn	Individual	Oppose	Written Testimony Only

Comments:

To Whom It May Concern:

I am an individual creator and own a small arts business in which licensing Copyright use is an important income stream. I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft. Copyright Law is federal, not state, and it should stay that way. At the very least, United States' creators do not have the resources to keep track of the laws governing copyright usage across 50 different states (or more if US territories are included) which is what passing this law would lead to. Libraries already retain exceptional status with regard to Copyright Use through the Fair Use doctrine, so beggaring artists on behalf of libraries is short-sided and lacks sense.

Yours sincerely,

Michael Llewellyn

HB-1412-HD-1

Submitted on: 3/20/2023 1:15:43 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Mike Bradley	Individual	Oppose	Written Testimony Only

Comments:

I'm a copyright holder on several books and articles. I have never given permission to any library for copying or lending my works. Although my publishers might appear to grant permission, they do not own all the rights to my works and cannot grant permission to any work for which I have reserved the rights. HB1412 avoids accounting for my copyrights and for my publishers' illegal granting of permissions. It has the effect of permanently enshrining copyright infringement of my works and innumerable works of other creators.

Obtaining legal permission for library lending of works has not been fully addressed in the US. There are ways to do it, but the US has not adopted any, nor has the state of Hawaii. This bill, HB1412, is not an adequate solution.

HB-1412-HD-1

Submitted on: 3/20/2023 1:38:27 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica N. Wombles	Individual	Oppose	Written Testimony Only

Comments:

My name is Jessica Wombles, I am a creator/author and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm not only my ability to earn a living from my craft but others as well.

HB-1412-HD-1

Submitted on: 3/20/2023 2:14:35 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cynthia Hanevy	Individual	Oppose	Written Testimony Only

Comments:

This bill provides more rights to libraries than are afforded under commercial licensing agreements while limiting the amount charged to that charged the general public.

Commercial licensing agreements typically specify the number of usages, the duration of the license, and the type of usage. Requiring me to license my work to libraries without these specifications is an unwarranted restriction on my right to control my work and receive just compensation.

HB-1412-HD-1

Submitted on: 3/21/2023 1:37:23 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
George Mahn	Individual	Oppose	Written Testimony Only

Comments:

- I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.

HB-1412-HD-1

Submitted on: 3/20/2023 3:22:44 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Seth Jackson	Individual	Oppose	Written Testimony Only

Comments:

“I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.”

To: House of Representatives & Senate: State of Hawaii
From: Norman Mellin
Date: March 20, 2023
Re: HB 1412

House bill HB1412 violates my constitutional rights as an author, composer, songwriter and publisher. It is also a violation of federal copyright law. I firmly oppose any such bill interfering with the rights of a copyright holder. I reserve the right to refuse to send any of my works to anyone or any institution for any reason that endanger my copyrights and loss of income. The State of Hawaii does not have the right to dictate what will be done with any of my works, copyrighted or not, on its terms. This bill will easily be defeated by Federal Courts and the Supreme Court. Under no circumstances I will obey this unconstitutional law. You will be subject to a massive class-action lawsuit by ASCAP, BMI, publishers, authors, composers, artists, photographers, and film makers.

What incompetent lawyers and politicians drafted this bill?

See you in court!

A handwritten signature in black ink that reads "Norman Mellin". The signature is written in a cursive, flowing style.

HB-1412-HD-1

Submitted on: 3/20/2023 4:57:42 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
James Sturz	Individual	Oppose	Written Testimony Only

Comments:

I am a Hawaii resident, and live in North Kohala, on Hawaii Island.

I've been a professional writer for more than 30 years—first as a journalist and later as a fiction writer. My magazine and newspaper articles have run in more than 80 publications in the U.S. and abroad, and my novels have been published in nine countries. Despite this, it is hard to be a writer—not just from the perspective of doing and selling the work to ever-constricting markets—but from the perspective of earning enough from it to survive. Sure, there are some authors who have become famous and wealthy, just there are actors and musicians like that, but most are not. I am not. So I work hard, every day, and I do it because it is what I love. And love of any kind is hard to find, and it needs to be protected.

U.S. Copyright Law tries to do exactly that by ensuring that only copyright holders (the ones who create a work, or ones who have purchased specific rights to that work) have the right to decide how that work may be used or licensed. At its heart, this is what makes it possible to earn a living from writing, and what gives writers an incentive to create new works, in the face of all the roadblocks that exist.

However, HB1412 seeks to do away with this protection, by forcing copyright holders to transfer their digital rights to Hawaii libraries at whatever terms the State might decide. It's the same as forcing musicians to give the digital rights to their music away for free, or forcing filmmakers to do the same. HB 1412 isn't just in violation of U.S. Copyright Law, but it tells content producers—writers, filmmakers, musicians, etc—that their content belongs to the State as soon as they make it, which also sounds strangely like an argument for the State seizing a farmer's crop. And that wouldn't just apply to Hawaii Residents, but to artists everywhere, threatening to turn Hawaii into an artistic black hole, a place where it isn't safe for your art to exist, and a place where writers and artists around the world might choose not to let their work circulate.

I urge you to oppose HB1412 in the strongest possible terms.

Mahalo for your consideration,

James Sturz

HB-1412-HD-1

Submitted on: 3/20/2023 5:27:12 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Janice Pilch	Individual	Oppose	Written Testimony Only

Comments:

I am an academic librarian and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm their ability to earn a living. It will ultimately also harm the mission of libraries by destroying the incentives of creative people, intellectuals, and scholars to produce new works. The proposed legislation, that would force authors, publishers, and other copyright owners to involuntarily grant licenses to libraries in Hawaii for their digital works on terms decided by the state, is based on a campaign of misinformation by the digital and internet industries that wish to destroy traditional publishing, and it is in violation of federal copyright law. This bill should not go forward.

HB-1412-HD-1

Submitted on: 3/21/2023 3:13:47 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Whitney Sands	Individual	Oppose	Written Testimony Only

Comments:

I am a creator, and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.

HB-1412-HD-1

Submitted on: 3/21/2023 2:00:58 PM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cami Nihipali	Individual	Oppose	Written Testimony Only

Comments:

My name is Cami Nihipali (residing in Ewa Beach), and I am a Hawai‘i resident and small business owner of Mixed Plate Press (registered with the state of Hawai‘i), an independent imprint under which I publish my books as well as offer freelance editorial work. In order to get a book to marketplace as a small, independent publisher, it takes countless hours and severely budgeted dollars—many of which do not see a profit in a marketplace dominated by traditional publishing houses, or the Big Five (which is an interesting parallel here in Hawai‘i). The costs to publish, market, and copyright the work is significant for a small publisher and EVERY dollar counts. The cost of licensure for borrows in libraries may seem exorbitant, but consider the amount of lost revenue an independent author and small press must navigate when a single eBook title is purchased at cost and then shared over and over and over.

As an independent author and publisher, this bill is unfairly biased against independent authors and small publishers. As Independent Publisher Association wrote regarding the unconstitutional ruling of the same legislation in Maryland:

"While we are sympathetic to the motivations of many who propose such legislation, a law that sweeps in thousands of small publishers and self-published authors who cannot manage distribution and licensing at scale is not the right approach and is in fundamental violation of federal copyright law. We concur with United States District Judge Deborah Boardman, who, in the AAP v. Frosch case, stated: "Libraries serve many critical functions in our democracy. They serve as a repository of knowledge — both old and new — and ensure access to that knowledge does not depend on wealth or ability. They also play a special role in documenting society’s evolution. Congress has underscored the significance of libraries and has accorded them a privileged status on at least one occasion, legislating an exception to the Copyright Act’s regime of exclusive rights that permits libraries to reproduce copyrighted material so it may be preserved in the public record across generations. See 17 U.S.C. § 108. Libraries face unique challenges as they sit at the intersection of public service and the private marketplace in an evolving society that is increasingly reliant on digital media. However, striking the balance between the critical functions of libraries and the importance of preserving the exclusive rights of copyright holders is squarely in the province of Congress and not this Court or a state legislature."

Please do not pass this legislation. I am a creator and I oppose this unconstitutional legislation because it will hurt the property rights of authors and creators and harm my ability to earn a living from my craft.

Sincerely,

Cami Nhipali

LATE

BILL: HB 1412, Contract and License Agreements for Electronic Books
COMMITTEE: Senate Committee on Education
HEARING DATE: March 22, 2023
CONTACT: Kyle K. Courtney, Esq. (kylekcourtney@gmail.com)
Juliya M. Ziskina, Esq. (j.ziskina@gmail.com)
POSITION: Support

We respectfully submit this testimony in support of Hawaii House Bill 1412. We are the authors of the Library Futures ebook policy paper (“Mitigating the Library eBook Conundrum Through Legislative Action in the States”¹), and write this testimony in our capacity as authors of the ebooks paper and as library, law, and policy experts.

The purpose of this bill is to support libraries as consumers in the ebook marketplace to fulfill their mission of providing broad and equitable access to information for all by ensuring that licensing and contractual agreements between libraries and publishers contain equitable terms. The bill represents a reasonable, productive, and viable alternative pathway for Hawaii to address the inequities and unequal bargaining power in the ebook marketplace and focuses on the state’s traditional and well-accepted role in regulating how its own state contract law will apply, particularly in cases of unequal bargaining power.

Hawaii has a long history of supporting libraries and increasing access to ebooks to the benefit of the public. HB 1412’s goals are no different. **HB 1412 does, however, differ from previous ebooks legislation attempts.** This bill is firmly grounded in Hawaii state law. HB 1412 does not include any language that *requires* publishers to grant a license. It merely harnesses existing state law to ensure ebook licenses and contracts are fair, equitable, and reflective of a library’s mission.

The state of Hawaii has always had the ability to regulate markets. And, because libraries have a forward-facing mission in service of the public, the Hawaii state legislature is within its power to pass a law aiding that mission through the use of existing state consumer protection, state contract law, and contract preemption clauses. HB 1412 would put all libraries in a position to negotiate better terms, preempt restrictive terms, and control the untenable costs of providing access to ebooks for Hawaii communities.

This bill is proposed pursuant to the power inherent in the state of Hawaii to protect public policy and promote the life, education, public convenience, general prosperity, well-being of society, and the welfare of the state’s population and economy, all of which are dependent on libraries’ ability to continue, as technology advances, their traditional practice of providing open and nondiscriminatory access to literary materials.

¹ Kyle K. Courtney and Juliya Ziskina, *Policy Paper: Mitigating the Library eBook Conundrum Through Legislative Action in the States* (June 2022), <https://www.libraryfutures.net/library-futures-ebooks-policy-paper>.

As themselves *consumers* in a market, libraries of all types have a long-standing practice of buying books and lending them to their patrons, whether done as individual actors or through library consortia or networks. Public and school libraries in particular play a vital role in delivering this access to a wide range of users, many of whom do not have the resources to purchase their own individual copies; this is also the case with special libraries, such as the talking book library, that serve particular populations. In some cases, having materials available through libraries frequently also acts as a product-marketing opportunity for authors and publishers, prompting those who can and desire to purchase their own copies.

Presently, ebooks are, in most cases, *rented* or *leased* to libraries or library consortia via restrictive and expensive licensing agreements. In other cases, ebooks are simply withheld from the library market. This system is unlike that for print books, where libraries only have to purchase once and may lend to their community continually according to established lending rules and practices. Under these licensing agreements, publishers set non-negotiable terms of library contracts with complicated clauses, conditions, and definitions that impede the library's ability to provide traditional access in service of their communities.

Libraries must continually replace items in their digital catalogs because of the restrictive nature of current licensing agreements, instead of focusing library collection budgets on procuring new material and providing educational services to the public.² For example, despite spending as much as \$84 to license books that can normally be purchased for \$14.99, most agreements offered to libraries limit item licenses to two years, at which point the exact same materials must be re-purchased.³ Some libraries pay a cost per circulation fee on top of initial fees, entering into de facto rental agreements at unrestrained prices.⁴ Publishers often charge libraries three to 10 times as much as the consumer price for the same ebook.⁵ Further, some electronic materials are simply not available to libraries to license from some publishers and distributors. Or, worse, publishers have even attempted an outright embargo sale of ebooks to libraries, sometimes called "windowing," falsely claiming that "library lending was cannibalizing sales."⁶

² Andrew Albanese, *Hachette Book Group Changes Library E-book Terms*, PUBLISHERS WEEKLY (Jun. 17, 2019), <https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/80486-hachette-book-group-changes-library-e-book-terms.html>.

³ ALA 'concerned' over Hachette Book Group ebook and audio book lending model changes, AMERICAN LIBRARY ASSOCIATION, (June 17, 2019) <http://www.ala.org/news/press-releases/2019/06/ala-concerned-over-hachette-book-group-ebook-and-audio-book-lending-model>.

⁴ *A New Twist in Ebook Library Licensing Fees*, THE AUTHORS GUILD (Jun. 21, 2019), <https://web.archive.org/web/20220303210514/https://www.authorsguild.org/industry-advocacy/a-new-twist-in-ebook-library-licensing-fees/>

⁵ Jennie Rothschild, Trashy Books Blog, *Hold On, ebooks Cost HOW Much? The Inconvenient Truth About Library eCollections*, Trashy Books Blog (Sept. 6, 2020); David Moore, *Publishing Giants Are Fighting Libraries on E-Books*, Sludge (Mar. 17, 2022), <https://readsludge.com/2022/03/17/publishing-giants-are-fighting-libraries-on-e-books/>.

⁶ Lynn Neary, *You May Have To Wait To Borrow A New E-Book From The Library*, NPR All Things Considered (Nov. 1, 2019), <https://www.npr.org/2019/11/01/775150979/you-may-have-to-wait-to-borrow-a-new-e-book-from-the-library/>

Libraries have no choice but to enter into these agreements. As a result, many Hawaii libraries face financial and practical challenges in making ebooks available to their patrons, which jeopardizes their ability to fulfill their mission. The exorbitant costs and burdensome restrictions of these ebook contracts are thus draining resources from many Hawaii local libraries and/or the consortia to which they belong, forcing them to make difficult choices to attempt to provide a consistent level of service and put books—print or electronic—in the hands of their patrons.

Due to the unequal bargaining power between publishers/distributors and libraries, as well as the pattern of abuse of market power by publishers/distributors through use of these restrictive contracts, **the state of Hawaii has a sufficiently compelling interest in adopting legislation to protect the interests of Hawaii citizens in accessing information.** The contracts for libraries must be reflective of the special role libraries play in Hawaii, allowing reasonable terms regarding price, access, preservation, and loaning. HB 1412 advances the public good by making the contracts in which these ebooks collections are licensed more equitable and fair.

HB 1412 seeks to help libraries, publishers, and associated entities carry on their traditional roles to the benefit of all. *It is not intended to hinder publishers' innovation in the digital space but rather to allow libraries to participate in it fully and fairly as consumers.*

Again, HB 1412 differs from previous ebooks legislative solutions attempted in other states. The goal of the bill is to firmly ground these ebook contracts and licenses under Hawaii state law. It does not implicate the purview of the federal government. HB 1412 does not include any language that requires publishers to grant a license; the language proposes an approach that does not demand that publishers license to libraries, but instead merely utilizes existing state law to make sure ebook license and contract terms are fairly balanced and are an effective use of Hawaii taxpayer money.

Previous attempts at state ebooks legislation, such as the legislation at issue in *AAP v. Frosh*, contained language requiring that publishers “shall offer” licensed ebooks to Maryland public libraries “on reasonable terms.” The court in *Frosh* stated that the “shall offer” language in the Maryland ebooks bill was preempted by federal law because “[t]he Act’s mandate that publishers offer to license their electronic literary products to libraries interferes with copyright owners’ exclusive right to distribute by dictating whether, when, and to whom they must distribute their copyrighted works.”⁷

By contrast, HB 1412 does not contain the “shall offer” language and instead is rooted in the purview of the state (*i.e.* contract law), **clarifying that Hawaii is within its rights to regulate rather than mandate contracts.**

Without state intervention, Hawaii libraries will continue to struggle to afford electronic literary materials for their patrons. These institutions will be forced to devote increasing portions of their

⁷ *Ass'n of Am. Publishers v. Frosh*, No. DLB-21-3133 (D. Md. Feb. 16, 2022).

budgets to license agreements or face losing their ability to provide digital information for the citizens of Hawaii altogether.

HB 1412 is based on the assertion that, *if publishers and aggregators want to continue to do business in the state of Hawaii, then contracts must be reflective of the library mission and feature equitable clauses, terms, and fair pricing.* HB 1412 accomplishes this by drawing on the rich history of existing Hawaii laws for consumer protection and contract preemption.

HB 1412 would assist in meeting the goals and protecting the interests of Hawaii libraries and their patrons. We respectfully ask the Senate Committee on Education to pass HB 1412.

Thank you for this opportunity to provide testimony. We would be happy to provide any additional information or answer any questions regarding our support for HB 1412.

Respectfully submitted,

Kyle K. Courtney, Esq.
Juliya M. Ziskina, Esq.

LATE

HB-1412-HD-1

Submitted on: 3/22/2023 8:02:44 AM

Testimony for EDU on 3/22/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tom Brownold	Individual	Oppose	Written Testimony Only

Comments:

I am a visual creator in Arizona. I have visited Hawaii and appreciate it's natural diversity in every respect. This bill is an infringement on our rights on our copyright and should be opposed.

Thank you, Tom