

1 "Electronic book" means a published work that is in written
2 form and released as a digital text file.

3 "Electronic literary materials" means digital audiobooks or
4 electronic books.

5 "Library" means:

- 6 (1) Public libraries, including elementary or secondary
7 school libraries;
- 8 (2) Academic libraries;
- 9 (3) Research libraries;
- 10 (4) Special libraries;
- 11 (5) Talking book libraries; and
- 12 (6) Archives.

13 "Loan" means to create and transmit to a borrower a copy of
14 electronic literary material and delete it at the end of the
15 loan period.

16 "Loan period" means the time between the transmission of
17 electronic literary material to a borrower and the copy's
18 deletion, as determined by any individual library.

19 "Publisher" means an individual or entity whose business is
20 the manufacture, promulgation, license, or sale of books,
21 audiobooks, journals, magazines, newspapers, or other literary



1 productions including those in the form of electronic literary
2 materials. "Publisher" includes aggregators who enter into
3 contracts with libraries for the purposes of providing materials
4 for purchase or license from the publishers.

5 "Technological protection measures" means any technology
6 that ensures the secure loaning or circulation by a library of
7 electronic literary materials.

8 "Virtually" means transmitted to receiving parties via the
9 Internet in a way that the transmission appears in front of the
10 receiving parties on a computer, tablet, smart phone, or
11 electronic device.

12 § -2 **Contracts between publishers and libraries.** (a)

13 No contract or license agreement entered into between any
14 publisher and any library in the State shall:

- 15 (1) Preclude, limit, or restrict the library from
16 performing customary operational functions, including:
17 (A) Licensing electronic literary materials;
18 (B) Employing technological protection measures as is
19 necessary to loan electronic literary materials;
20 (C) A library's right to make non-public preservation
21 copies of electronic literary materials; and



- 1 (D) A library's right to loan electronic literary
- 2 materials via interlibrary loan systems;
- 3 (2) Preclude, limit, or restrict the library from
- 4 performing customary lending functions, including any
- 5 provision that:
 - 6 (A) Precludes, limits, or restricts the library from
 - 7 loaning electronic literary materials to
 - 8 borrowers;
 - 9 (B) Restricts the library's right to determine loan
 - 10 periods for licensed electronic literary
 - 11 materials;
 - 12 (C) Requires the library to acquire a license for any
 - 13 electronic literary material at a price greater
 - 14 than that charged to the public for the same
 - 15 item;
 - 16 (D) Restricts the number of licenses for electronic
 - 17 literary materials that the library may acquire
 - 18 after the same item is made available to the
 - 19 public;
 - 20 (E) Requires the library to pay a cost per
 - 21 circulation fee to loan electronic literary



1 materials, unless substantially lower in
2 aggregate than the cost of purchasing the item
3 outright;

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

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

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



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

5 § -3 Remedies. (a) An offer to license electronic
6 literary materials to a library that includes a prohibited
7 provision listed in section -2 shall constitute an unfair or
8 deceptive act or practice within the meaning of section 480-2
9 and shall be deemed void and unenforceable pursuant to section
10 480-12. Any remedy provided pursuant to section 480-13 shall be
11 available for the enforcement of this chapter. Actions for
12 relief pursuant to this section may be brought by libraries,
13 library officers, or borrowers. Parties shall be enjoined from
14 enforcing license agreements that include a prohibited provision
15 under section -2.

16 (b) A contract to license electronic literary materials to
17 a library that includes prohibited provisions under
18 section -2 shall be unconscionable within the meaning of
19 section 490:2-302 and shall be deemed unenforceable and avoid.
20 Any attempt to waive any provisions of this chapter is contrary
21 to public policy and shall be deemed unenforceable and void."



1 SECTION 2. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 3. This Act shall take effect on June 30, 3000;
8 provided that this Act shall apply to contracts between
9 publishers and libraries entered into or renewed after the
10 effective date of this Act.



Report Title:

Libraries; Publishers; Electronic Books; Contracts; Licensing Agreements; Unfair or Deceptive Acts or Practices

Description:

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)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

