

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: 02/10/2025

Time: 03:02 PM

Location: CR 229 & Videoconference

Committee: Senate Education

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Bill Title: SB 0757 RELATING TO LIBRARIES.

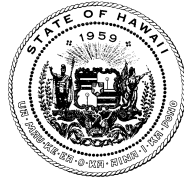
Purpose of Bill: Requires reasonable terms in license agreements for digital literary materials between libraries and publishers. Defines prohibited terms for license agreements between libraries and publishers. Declares offer of a license agreement with a prohibited term an unfair or deceptive act. Makes a license agreement with a prohibited term void and unconscionable. Creates right of action by libraries, library officers and borrowers.

Department's Position:

The Hawaii State Department of Education (Department) supports the intent of SB 757 and respectfully offers comments.

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 pricing and access are considered reasonable. Even if, at times, the cost to enter into licensing agreements is greater than the price charged to the public, school libraries remain committed to building library collections that meet the needs of students and teachers.

Thank you for the opportunity to testify on SB 757.



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

SENATE COMMITTEE ON EDUCATION
Monday, February 10, 2025
3:02 pm
Conference Room 229

By Stacey A. Aldrich
State Librarian

S.B. 757 RELATING TO LIBRARIES

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

The Hawai'i State Public Library System (HSPLS) **supports S.B. 757**, which, among other things, requires reasonable terms in license agreements for digital literary materials between libraries and publishers.

Digital books (i.e., e-books and digital audiobooks) are a vital part of library collections in the 21st Century. In fact, Hawai'i's public libraries rely on digital books to create equity of access to titles when it may not be possible to place a physical copy in every library. Since the pandemic, the demand for and number of digital books in our collection has continued to increase each year. Between FY2021 and FY2024, HSPLS has seen a 27% increase in circulation of digital materials.

	FY2021	FY2022	FY2023	FY2024
Digital Materials circulated (includes ebooks, e-audio and e-magazines)	1,157,403	1,181,418	1,363,611	1,586,560

This bill is important because it outlines expectations for future State library contracts, and it is necessary because publishers have created unreasonable pricing and access models that are unsustainable for ensuring that the public has access to digital books through public libraries.

Publishers charge libraries higher fees for e-books. This dynamic exists with physical books, too, but for centuries, libraries have been valued precisely because they provide access to free information and resources creating equal opportunities to learn and grow. In return, public libraries introduce and promote authors and titles, and readers may purchase a book after checking it out of the library or becoming impatient when there's a long wait list for the latest bestseller.

In the past decade, publishers have moved away from public libraries being allowed to own digital books and towards a licensing or leasing model. Some titles are available for perpetual access, but it is not the majority.

For example, *No. 1 Ladies' Detective Agency* by Alexander McCall Smith, which is 20 years old, illustrates how costs for e-books have grown over time and perpetual access has vanished:

TITLE: *No. 1 Ladies' Detective Agency* – Alexander McCall Smith

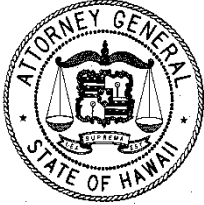
YEAR	COST	ACCESS
2010	\$14	Perpetual Access
2013	\$44.85	Perpetual Access
2018	\$44.85	2-year license (after 2 years libraries have to buy again)
2023	\$27.50 or \$55.00	12 months license 2-year license

In addition to high licensing costs, there are limits to the number of times a digital book title may be borrowed. For example, if HSPLS obtains a copy of an e-book 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 that title several times. When we renew access three times at \$65 per renewal, we pay \$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.

Based on the trends, libraries expect the big five publishers to move to a pay-per-use model in which libraries would have to pay each time a title was checked out. This model is unsustainable for public libraries to be able to manage and pay for titles on an ongoing basis. No public library has an unending supply of collection funding to keep ensuring access to a diverse collection to support the community.

Libraries are recognized as vital community resources. However, current licensing models for digital books are increasingly unsustainable for public libraries and threaten their ability to provide equitable access and serve their communities.

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



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 757, RELATING TO LIBRARIES.

BEFORE THE:
SENATE COMMITTEE ON EDUCATION

DATE: Monday, February 10, 2025 **TIME:** 3:02 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Anne T. Horiuchi or Randall M. Wat, Deputy Attorneys General

Chair Kidani and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of this bill is to ensure that state public libraries can acquire and lend digital literary materials on fair and reasonable terms, allowing them to remain vital public resources for education and equitable access to information. The bill seeks to accomplish this by (1) requiring reasonable terms in license agreements for digital literary materials between libraries and publishers; (2) defining prohibited terms for license agreements between libraries and publishers; (3) declaring the offer of a license agreement with a prohibited term an unfair or deceptive act; (4) making a license agreement with a prohibited term void and unconscionable; and (5) creating a right of action by libraries, library officers, and borrowers.

The Department offers clarifying amendments. First, to ensure consistency with title 17 U.S.C. section 108, which provides libraries certain rights to reproduce copyrighted works, we recommend revising the proposed new section 312-B(a)(1)(C), Hawaii Revised Statutes (HRS), to state: "Making non-public preservation copies of digital literary materials [~~;~~ **and**] **in accordance with federal law; and**". Page 4, lines 9-10 (suggested changes in bold).

Second, to clarify that the bill does not restrict a publisher's right to choose whether or not to distribute, the Department recommends the following revisions to new section 312-B(a)(6):

Restrict the number of loans of any digital literary material during the term of the license agreement ~~[, or restrict the duration of any license agreement]~~. The publisher may offer a license agreement to the library for perpetual public use of digital literary materials without lending and duration restrictions at a price that is reasonable and equitable to both parties;

Page 5, lines 9-15 (suggested changes in bold).

Additionally, because certain requirements in the bill could be interpreted as impairing existing agreements, potentially conflicting with the Contract Clause of the United States Constitution (U.S. Const. art. I, § 10, cl. 1.), we recommend inserting the following non-impairment savings clause after page 8, line 4:

SECTION 4. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Constitution of the State of Hawaii or article I, section 10, of the United States Constitution.

The current sections 4, 5, and 6 should then be renumbered as sections 5, 6, and 7.

Thank you for the opportunity to provide comments on this bill.



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 SB 757. 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 SB 757.

SB 757 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, SB 757 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, SB 757 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 SB 757 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 even more recently, similar bills have been rejected by other state legislatures due to a plethora of legal and business concerns.

SB 757 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, SB 757 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 SB 757 envisions would threaten the entire creative economy that is so critical to the state of Hawaii and the Nation.

SB 757 would threaten Hawaii’s economy and national interests.

SB 757 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, SB 757 would limit the downstream economic contributions of the publishing ecosystem which results in jobs and revenue for truckers, warehouses, manufacturers, and many other industries. Nearly ten million people are directly employed by core copyright industries—including books, motion pictures, music, software, newspapers, and magazines—and these industries add more than \$1.8 trillion in annual value to U.S. GDP. Simply put, SB 757 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 SB 757 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, and Motion Picture Association, among others.

SB 757 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 SB 757 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 2024, readers borrowed more than 739 million eBooks, audiobooks, digital magazines, comics, and other digital content, seventeen percent more than the record-breaking numbers of 2023.

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. SB 757 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 SB 757.

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

Respectfully submitted,



Shelley H. Husband

Executive Vice President, Government Affairs
Association of American Publishers



BILL: SB757, A Bill for An Act Relating to Libraries
COMMITTEE: Hawaii Senate Education Committee
HEARING DATE: February 10, 2025
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 bill SB757 before the Hawaii Senate Education Committee. We urge the Committee to oppose the bill which 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.

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 SB757 that would force book publishers to license their e-books to libraries on terms that are determined individually by each state rather than terms negotiated between the parties.

Since copyright is under the exclusive jurisdiction of Congress, legislation like this is inappropriate at the state level and, if passed, would almost certainly be struck down on the basis of federal preemption. In a [letter](#) dated August 30, 2021, the U.S. Copyright Office—the agency responsible for providing expert advice on copyright law to Congress—conducted an analysis of legislation similar to SB757, compelling the licensing of certain electronic books and audiobooks, and concluded that “a court considering the state legislation at issue would likely

find it preempted under a conflict preemption analysis.”¹ In December 2021, New York Governor Kathy Hochul vetoed an almost identical bill (A5837B), explaining that “[b]ecause the provisions of this bill are preempted by federal copyright law, I cannot support this bill;”² and in February 2022, the U.S. District Court for the District of Maryland granted a [preliminary injunction](#) suspending Maryland’s bill (HB518), adding that “[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.”³

The individual creators and organizations that we represent 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. SB757 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 Hawaii Senate Education Committee reject SB757. 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 from Shira Perlmutter, Register of Copyrights and Dir., United States Copyright Office, to Sen. Thom Tillis, Ranking Member, Subcomm. on Intellectual Prop., United States Senate (Aug. 30, 2021), <https://copyright.gov/laws/hearings/2021-08-30-Response-to-Senator-Tillis-on-eBook-Licensing.pdf>.

² 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://www.authorsguild.org/wp-content/uploads/2021/12/GovernorHochulVetoMessage.pdf>.

³ Association of Am. Publishers, Inc. v. Frosh, No. DLB-21-3133, slip op. at 27 (D. Md. Feb. 16, 2022).

SB-757

Submitted on: 2/9/2025 1:20:41 PM

Testimony for EDU on 2/10/2025 3:02:00 PM

Submitted By	Organization	Testifier Position	Testify
Terri Gately	Individual	Support	Written Testimony Only

Comments:

"I support this measure because many of Hawaii's students currently don't qualify for free school meals, yet their families struggle to put food on the table. Providing free meals to all keiki also eliminates the risk of social stigma".

SB-757

Submitted on: 2/8/2025 3:58:11 PM

Testimony for EDU on 2/10/2025 3:02:00 PM

Submitted By	Organization	Testifier Position	Testify
glenn oshiro	Individual	Support	Written Testimony Only

Comments:

Hungry students cannot function. This is among the best "education" accomplishments ever.
Please keep it going! Mahalo.

SB-757

Submitted on: 2/9/2025 10:50:24 AM

Testimony for EDU on 2/10/2025 3:02:00 PM

Submitted By	Organization	Testifier Position	Testify
Sunyeen Pai	Individual	Support	Written Testimony Only

Comments:

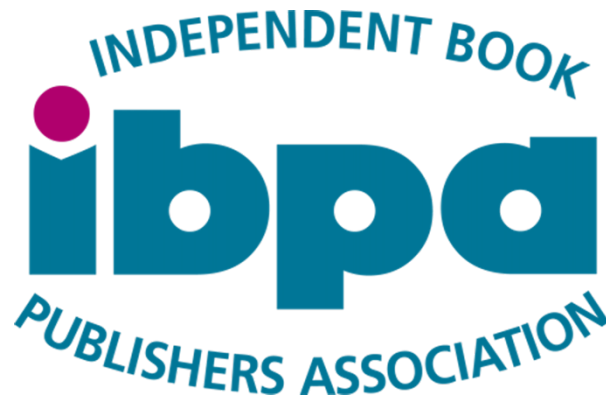
Dear Chair and Vice Chair of the Senate Committee on Education,

I am writing in support of SB 757, Relating to Libraries. I am a former professor and librarian, retired from our community college system. I wholly agree that public libraries are treated completely unfairly in the purchasing and rentals of e-books, being asked to pay exorbitant prices beyond prices normally charged to the average customer or to keep to highly restrictive loan policies that leave state public libraries (with our tax dollars) going broke and public library patrons waiting for weeks to read an e-book. I myself have waited for weeks to read a book and then I only have a very brief window to read that book. Our tax-paying citizens deserve better and our public libraries should be given the support they need to provide these services to our communities.

Yours truly,

Sunny Pai, PhD

LATE



9 February 2025

The Independent Book Publishers Association respectfully submits the following testimony in opposition to Hawaii Senate Bill 757 (SB757), 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 SB757.

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 SB757 to achieve this otherwise laudable goal.

While many independent publishers have strong relationships with and license their works to libraries, SB757 would *require* that they offer licenses on "reasonable terms" to libraries in Hawaii. This would create an undue burden on small publishers across the nation who simply do not have the resources or sophistication to manage licensing at scale on a state-by-state basis.

The legislation makes no distinction between large publishers and distributors, such as Amazon, and small independent publishers and author-publishers. All of these publishers would be subject to potential violations of Hawaii law on unfair, abusive, or deceptive trade practice laws if they do not "offer to license" their electronic publications to libraries.

SB757 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.”¹ 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 SB757. Absent an evidentiary record that clearly establishes actual fraud or misrepresentation, bills restricting price and licensing terms will be preempted by federal law. The reason for this is the supposed misconduct the state law aims to remedy is no more than the perception by the state that the licensee negotiated an unfavorable deal.

The Supremacy Clause is not the only constitutional concern raised by SB757. 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.

SB757 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 SB757 would do, “direct[ed] a copyright holder to distribute and license against its will and interests.”²

It is the contention of the Independent Book Publishers Association that SB757 suffers from the same constitutional defects that led to the Federal court decision in the *AAP v. Frosh* 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.”³ Maryland declined to appeal this well-reasoned decision.

¹ Letter from Shira Perlmutter, Register of Copyrights and Dir., United States Copyright Office, to Sen. Thom Tillis, Ranking Member, Subcomm. on Intellectual Prop., United States Senate (Aug. 30, 2021), <https://copyright.gov/laws/hearings/2021-08-30-Response-to-Senator-Tillis-on-eBook-Licensing.pdf>.

² *Orson, Inc. v. Miramax Film Corp.*, 189 F.3d 377 (3d Cir. 1999).

³ *Ass'n of Am. Publishers, Inc. v. Frosh*, No. DLB-21-3133, 2022 U.S. Dist. LEXIS 105406 (D. Md. June 13, 2022).

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 importance of preserving the exclusive rights of copyright holders is squarely in the province of Congress and not this Court or a state legislature.”⁴

We respectfully oppose SB757 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,

Kurt Brackob

Dr. Kurt Brackob

Chair

Legislation and Standards Committee

Independent Book Publishers Association

⁴ United States District Court for the State of Maryland, Case 1:21-cv-03133-DLB Document 19 Filed 02/16/22, p. 27.