

ALA American Library Association

April 26, 2022

Senator Sandra Cano, Chair
Senator Hanna M. Gallo, Vice Chair
State of Rhode Island General Assembly
Senate Committee on Education
82 Smith Street
Providence, Rhode Island 02903

Subject: American Library Association Endorses Rhode Island S 2842

Dear Senators Cano and Gallo,

The American Library Association (ALA) urges the Rhode Island General Assembly to adopt 2022—S 2842. This legislation would add Chapter 59, “Electronic Book Licenses to Libraries and Schools” to Title 6—Commercial Law—General Regulatory Provisions.

ALA is the primary national association for the 117,000 libraries across the United States. ALA collaborates closely with the Rhode Island Library Association (RILA) to advocate for policies to ensure that information and technology are accessible to everyone through libraries, in Rhode Island and across the country.

The Need for Legislation

The legislation is intended to enable libraries to continue in the digital age to fulfill their mission of providing the public with access to information—for everyone. Libraries in Rhode Island increasingly are providing Rhode Island residents with access to digital books. In particular, older residents, people with disabilities, and people with mobility challenges find digital books more accessible and manageable than print books.

Libraries can purchase physical books from any outlet at the same price as any other customer, and then lend them to users. In contrast, the lending of digital books requires the licensing of the digital books from the publishers’ partners who provide the technical infrastructure for the lending. As the digital book licensing market has evolved, libraries have encountered three profound problems.

First, the publishers impose a significantly higher price on library digital book licenses than on consumer licenses: often between three to five times as much. At the same time, the library license typically lasts only two years or 26 circulations. Either the higher price or the limited duration might be

justified as replicating the physical market. However, forcing libraries to pay a higher price for a license of limited duration is nothing more than price gouging enabled by the publishers' market power over digital book licensing—a market power that does not exist with physical books.

Second, some publishers, at various times in the past years, including Simon & Schuster and Macmillan Publishers, have simply not licensed their digital books to libraries—at any price or under any terms. Other publishers, such as Amazon, released some titles only as digital books and have refused to license these titles to libraries. Because these titles are not available in physical copies, libraries have simply not been able to provide these titles to their users in any form. These practices discriminate against Rhode Island residents who cannot afford to purchase the titles themselves.

Third, some publishers have imposed embargoes on the licensing of digital books to libraries. For example, a publisher might allow a library to purchase only one license for a title for the first eight weeks the title is on the market. Such embargoes undermine the democratic and educational function of library systems. Many library patrons are lower income or face barriers to other means of information access.

During the pandemic, publishers such as Macmillan have suspended their embargoes, but nothing prevents them from resuming this practice.

S. 2842 addresses these three problems. It requires digital books to be licensed to Rhode Island libraries if they are licensed to Rhode Island consumers; it prohibits the embargoes of digital book licenses to libraries; and it requires that digital books be licensed to libraries on reasonable terms. The legislation will simply require publishers to behave more fairly, as they do with print books. This legislation will help restore the equilibrium that digital technology has disrupted.

AAP Challenge to the Maryland Digital Book Legislation

The first library digital book bill in the U.S. was enacted in Maryland in June 2021. The Association of American Publishers (AAP) sued the Attorney General of Maryland in December 2021, seeking to block enforcement of this Maryland law. On February 16, 2022, Judge Deborah L. Boardman of the U.S. District Court for the District of Maryland granted a preliminary injunction of the Maryland law. Further action on this case is pending.

ALA does not agree with the basis for the preliminary injunction. The court failed to recognize that the ultimate objective of the copyright system is to promote public access to information. The Maryland law, by enabling libraries to provide public access to digital books, advances and does not conflict with the objective of the copyright system. Furthermore, the court did not acknowledge the privileged status of libraries within the copyright system. Additionally, the Maryland law does not cause irreparable harm to the publishers.

However, even if the final ruling by Judge Boardman prevents the Maryland law from being enforced in the long run, ALA notes that the ruling is not determinative in other district courts; we are confident that a federal judge in Rhode Island would not repeat the errors of the Maryland court. And of course, any ruling by a district court could be reversed at the appellate level.

Moreover, the Rhode Island bill is different in material respects to the Maryland law. Notably, it contains a severability clause so that even if part of the bill is found to be in conflict with federal law, the remainder of the law would remain in force.

Conclusion

In the course of the federal court proceedings, Judge Boardman said “It does seem to me that there is inequity and an unfairness on how publishers have treated public libraries.” And during the course of these proceedings, Brian E. Frosh, Attorney General of Maryland, said:

1. “Publishers capitalize on the digital revolution at libraries’ [expense](#).”
2. “We [Office of the Attorney General of Maryland] think publishers should not be able to unfairly take advantage of Maryland public libraries. We will continue to pursue fair treatment for Maryland public [libraries](#).”
3. “Many publishers have exploited the rapid advancement of digital technology to discriminate against public libraries when licensing e-books and [audiobooks](#).”
4. “Technology has enabled publishers to create two classes of customers—those who can afford to buy electronic literary products and public libraries who serve those who cannot—while charging the latter substantially more for the same [product](#).”

As ALA has monitored and interacted with other state legislatures with similar legislation, such as in Connecticut and Massachusetts, invariably we hear similar sentiments, namely that 1) there is a serious problem in our state and the public is being harmed; 2) surprise at the unfavorable terms accorded to libraries; and 3) in the public interest, an intervention is necessary.

Accordingly, ALA strongly endorses Rhode Island S 2842. We do not expect it to be the final word on this issue in Rhode Island or beyond. However, it would provide important progress and make a badly needed statement that libraries and librarians of Rhode Island are being poorly treated, deserve better, and legislative intervention is warranted—in the interests of all Rhode Islanders, especially those who need library services the most.

Regards,



Alan S. Inouye, Ph.D.
Senior Director, Public Policy & Government Relations

Email: ainouye@alawash.org
Phone: 202-276-6738

Copy: Ms. Julie Holden, Rhode Island Library Association
Ms. Maria Marin, Committee Clerk, Rhode Island General Assembly