

STATE OF NEW YORK

10544

IN ASSEMBLY

June 3, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Santabarbara) -- read once and referred to the Committee on Libraries and Education Technology

AN ACT to amend the education law, in relation to protecting library access to electronic literary materials

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 286 to
2 read as follows:

3 § 286. Access to electronic books and digital audiobooks. 1. For the
4 purposes of this section, the following terms shall have the following
5 meanings:

6 a. "Digital audiobook" means a published work that is in the form of a
7 voice recording (narrated) and is released as a digital audio file;

8 b. "Electronic book" means a published work that is in written form
9 and is released as a digital text file;

10 c. "Electronic literary materials" means digital audiobooks and/or
11 electronic books;

12 d. "Libraries" includes:

13 (1) public libraries;

14 (2) public elementary school or secondary school libraries;

15 (3) tribal libraries;

16 (4) academic libraries;

17 (5) research libraries; and

18 (6) archives;

19 e. "Publisher" means one whose business is the manufacture, promulga-
20 tion, license, and/or sale of books, audiobooks, journals, magazines,
21 newspapers, or other literary productions including those in the form of
22 electronic literary materials;

23 f. "Aggregator" means one whose business is the licensing of access to
24 electronic literary material collections that include electronic liter-
25 ary material from multiple publishers;

26 g. "Literary monograph" means a literary work that is published in one
27 volume or a finite number of volumes;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 h. "Technological protection measures" means any technology that
2 enhances the secure loaning and/or circulation by a library of electron-
3 ic literary materials;

4 i. "Borrower" means a person or organization, including another
5 library, to whom the library loans media of any sort;

6 j. "Virtually" means transmitted to receiving parties via the internet
7 in such a way that the transmission appears in front of the receiving
8 parties on a computer, tablet, smart phone, or electronic device;

9 k. "Loan" means create and transmit to a borrower a copy of electronic
10 literary material and delete it at the end of the loan period;

11 l. "Loan period" means the time between the transmission of electronic
12 literary material to a borrower and the copies' deletion, as determined
13 by any individual library.

14 2. a. Any contract offered by a publisher to a library located in the
15 state for the purposes of licensing electronic literary material to the
16 public shall be governed by the laws of this state.

17 b. Any contract to purchase or license electronic literary materials
18 that includes a prohibited provision as enumerated in subdivision three
19 of this section is unconscionable pursuant to section 2-302 of the
20 uniform commercial code in violation of public policy in this state and
21 is deemed unenforceable and void. Any waiver of the provisions of this
22 section is contrary to public policy and shall be deemed unenforceable
23 and void.

24 c. The prohibited provisions as enumerated in subdivision three of
25 this section shall only apply to licensing agreements governing the use
26 of literary monographs.

27 d. The prohibited provisions as enumerated in subdivision three of
28 this section shall not apply to licensing agreements between libraries
29 and aggregators.

30 3. A contract between a library and a publisher to purchase or license
31 electronic literary material shall not contain any provision that:

32 a. precludes, limits, or restricts the library from performing their
33 core missions, including any provision that:

34 (1) precludes, limits, or restricts the library from licensing elec-
35 tronic literary materials;

36 (2) bars the library from loaning electronic literary materials to
37 borrowers;

38 (3) restricts or limits the library's right to loan the electronic
39 literary materials to borrowers using technological protection measures;

40 (4) restricts or limits the use of technological protection measures
41 for loaning the work to borrowers;

42 (5) restricts or limits the library's right to make non-public preser-
43 vation copies of the electronic literary materials;

44 (6) restricts or limits the library's right to loan electronic liter-
45 ary materials via interlibrary loan systems; or

46 (7) restricts or limits the library's ability to virtually recite text
47 and display artwork of any materials to library patrons such that the
48 materials would not have the same educational utility as when recited or
49 displayed at a library facility.

50 b. restricts the number of licenses for electronic literary materials
51 that the library may acquire after the same item is made available to
52 the public;

53 c. requires the library to acquire a license for any electronic liter-
54 ary material at a price greater than that charged to the public for the
55 same item;

1 d. restricts the library's right to determine loan periods for
2 licensed electronic literary materials;

3 e. restricts the total number of times the library may loan any
4 licensed electronic literary materials over the course of any license
5 agreement;

6 f. restricts the duration of any licensing agreements;

7 g. restricts the library from disclosing any terms of its license
8 agreements to other libraries; or

9 h. requires the library to violate the law protecting the confiden-
10 tiality of a patron's library records pursuant to section forty-five
11 hundred nine of the civil practice law and rules.

12 4. a. Any contract to purchase or license electronic literary materi-
13 als that includes a prohibited provision listed in subdivision three of
14 this section shall constitute an unfair and deceptive act pursuant to
15 section three hundred forty-nine of the general business law, and any
16 remedy provided pursuant to article twenty-two-A of the general business
17 law shall be available for the enforcement of this section.

18 b. Any publisher may seek the opinion of the attorney general for
19 guidance on how to comply with the provisions of this section.

20 c. Actions for relief pursuant to this section may be brought by
21 libraries, library officers, or borrowers or shall be brought by the
22 attorney general.

23 d. Any publisher that violates any provision of this section shall be
24 subject to an injunction and liable for a civil penalty of not more than
25 two thousand five hundred dollars for each violation or seven thousand
26 five hundred dollars for each intentional violation, to be imposed by
27 the court.

28 § 2. Severability. If any clause, sentence, paragraph, subdivision,
29 section, or part of this act shall be adjudged by any court of competent
30 jurisdiction to be invalid, such judgment shall not affect, impair, or
31 invalidate the remainder thereof, but shall be confined in its operation
32 to the clause, sentence, paragraph, subdivision, section, or part there-
33 of directly involved in the controversy in which such judgment shall
34 have been rendered. It is hereby declared to be the intent of the legis-
35 lature that this act would have been enacted even if such invalid
36 provisions had not been included herein.

37 § 3. This act shall take effect immediately.