

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Digital Library Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Aggregator" means any person in the business of licensing
8 access to electronic literary material collections that
9 include electronic literary material from multiple publishers.

10 "Borrower" means any person or organization, including
11 another library, to whom a library loans a copy of electronic
12 literary material.

13 "Digital audiobook" means a sound recording of a reading
14 of any literary production that has been converted into or
15 published in a digital audio file that may be listened to on a
16 computer or portable electronic device.

17 "Electronic literary material" means any digital audiobook
18 or electronic book.

19 "Electronic book" means a text document that has been
20 converted into or published in a digital format that may be
21 read on a computer or portable electronic device.

22 "Library" means a public library, public elementary school
23 or secondary school library, academic library, research

1 library, special library, library consortium, talking book
2 library, or an archive.

3 "Loan" means the creation and transmission by a library to
4 a borrower of a copy of any electronic literary material and
5 the deletion of the copy by the library upon the expiration of
6 the loan period.

7 "Loan period" means the period of time commencing with the
8 creation and transmission by a library to a borrower of a copy
9 of any electronic literary material and concluding with the
10 deletion of the copy by the library, as determined by the
11 library.

12 "Publisher" means (i) any person in the business of the
13 manufacture, distribution, licensing, or sale of books,
14 audiobooks, journals, magazines, newspapers, or other literary
15 productions, including electronic literary materials, and (ii)
16 any aggregator who enters into a contract with any library for
17 the purpose of providing materials for purchase or license
18 from any publisher.

19 "Technological protection measure" means any technology
20 that enhances the security of loaning or circulating
21 electronic literary materials by a library.

22 Section 10. Contracts between libraries and publishers. No
23 library shall enter into a contract or license agreement to
24 distribute electronic literary materials to the library if the
25 contract or agreement:

1 (1) restricts the library from performing customary
2 operational functions, including any provision that:

3 (A) restricts the library from licensing
4 electronic literary materials from publishers;

5 (B) restricts the library from employing
6 technological protection measures as necessary to loan
7 electronic literary materials;

8 (C) restricts the library from making preservation
9 copies of electronic literary materials; or

10 (D) restricts the library from loaning electronic
11 literary materials through interlibrary loan systems;

12 (2) restricts the library from performing customary
13 lending functions, including any provision that:

14 (A) restricts the library from loaning electronic
15 literary materials to borrowers;

16 (B) restricts the library from determining loan
17 periods for licensed electronic literary materials;

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

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

25 (E) requires the library to pay a
26 cost-per-circulation fee to loan electronic literary

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

4 (F) restricts the number of times the library may
5 loan any electronic literary material over the course
6 of the contract or license agreement if the contract
7 or agreement also imposes a time-based limitation on
8 the duration of the library's license to the
9 materials; or

10 (G) restricts or limits the library's ability to
11 virtually recite text or display artwork to library
12 patrons so that the materials would not have the same
13 educational utility as when recited or displayed at a
14 library facility;

15 (3) restricts the library from disclosing the terms of
16 the contract or license agreement to any other library in
17 this State; or

18 (4) requires, coerces, or enables the library to
19 violate the Library Records Confidentiality Act.

20 Section 15. Applicability; governing law; forum.

21 (a) This Act applies to any contract or license agreement
22 to distribute electronic literary materials to:

23 (1) a library located in this State; or

24 (2) a library consortium acting on behalf of one or
25 more libraries located in this State.

1 (b) A contract or license agreement subject to this Act,
2 and any dispute arising out of or relating to the contract or
3 license agreement, is governed by and shall be construed in
4 accordance with the laws of this State, without regard to
5 conflict of laws principles.

6 (c) A provision in a contract or license agreement subject
7 to this Act that requires the application of the law of another
8 jurisdiction or requires a library to bring or defend an
9 action in a forum outside this State is contrary to the public
10 policy of this State and is unenforceable and void.

11 (d) This Section does not apply to any existing contract
12 described in Section 25.

13 Section 20. Unenforceable contracts. Any contract to
14 license electronic literary materials to a library is deemed
15 unenforceable and void if the contract includes a provision
16 prohibited under this Act. Any provision of a contract that
17 waives any of the provisions of this Act is deemed
18 unenforceable and void.

19 Section 25. Existing contracts. Nothing in this Act shall
20 be construed to apply to any contract to distribute electronic
21 literary materials to a library entered into prior to the
22 effective date of this Act.

23 Section 30. Relation to other laws. Nothing in this Act

1 shall be construed to limit the authority of the Secretary of
2 State under the License to Read Act.

3 Section 97. Severability. The provisions of this Act are
4 severable under Section 1.31 of the Statute on Statutes. If
5 any provision of this Act or its application to any person or
6 circumstance is held invalid, that invalidity does not affect
7 any other provision or application of this Act that can be
8 given effect without the invalid provision or application.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.