

March 17, 2023

VIA EMAIL ([consumerpolicy@ontario.ca](mailto:consumerpolicy@ontario.ca))

Consumer Protection Act Review  
Manager, Consumer Policy Unit  
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To Whom It May Concern:

Re: Consultation Paper on Modernizing the Consumer Protection Act, 2002

This consultation paper is jointly submitted by the Canadian Association of Research Libraries (CARL), the Canadian Federation of Library Associations (CFLA), the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC), and the Canadian Urban Libraries Council (CULC). The submitters of this letter are publicly-supported libraries and their advocates who welcome the opportunity to participate in consultations regarding the modernization of the *Consumer Protection Act*. In response to summary question 7.2, our contribution focuses on the difficult contractual relationships regarding digital content between primarily multinational publishers and publicly-supported libraries. The submission addresses:

1. by way of background, the nature of the relationship between primarily multinational publishers and publicly-supported libraries;
2. the inclusion of publicly-supported libraries as a consumer under the *CPA*; and
3. additional sector specific legislative proposals.

#### 1. Background: Nature of the Relationship between Primarily Multinational Publishers and Publicly-Supported Libraries

While digital content has become mainstream, Canada's publicly-supported libraries are finding the evolving marketplace a difficult one in which to build digital collections.<sup>1</sup> The current contractual landscape for digital content between primarily multinational publishers and libraries prohibits libraries from purchasing digital content at fair market prices. Instead of allowing the purchase of digital content on the same terms as traditional content, publishers set conditions, prices, and terms for licensing digital content to publicly-supported libraries that publishers cannot obtain for print sales. Ontario's libraries need a solution. As outlined in Appendix A, CULC/CBUC highlights the need for government action to ensure all published works are made available to libraries in digital formats at fair prices.

Pricing schemes treat digital content differently than traditional print without justification, allowing publishers to drive up prices to the detriment of libraries, their readers, and the general public. The cost of digital purchase and license renewal is up to 10 times higher than the cost of a printed book.<sup>2</sup> Rather than charging 11 to 18 dollars for an eBook, publishers charge libraries up to 120 dollars for a two-year restricted license.<sup>3</sup> CULC/CBUC has publicized [examples](#) of the gross disparity in pricing between print and eBook content. Multinational publishers' digital pricing adversely impacts the public. The cost of licensing digital content limits

<sup>1</sup> Juliya Ziskina, "Library Futures Releases Policy Paper: Digital Ownership for Libraries and the Public" (14 February 2019), online: *Library Futures* <<https://www.libraryfutures.net/post/digital-ownership-for-libraries-and-the-public>>.

<sup>2</sup> Canadian Federation of Library Associations, "CFLA-FCAB Position Statement E-Books and Licensed Digital Content in Public Libraries" (January 2019), online (pdf): CFLA-FCAB <[http://cfla-fcab.ca/wp-content/uploads/2019/03/CFLA-FCAB\\_position\\_statement\\_ebooks.pdf](http://cfla-fcab.ca/wp-content/uploads/2019/03/CFLA-FCAB_position_statement_ebooks.pdf)>.

<sup>3</sup> *Ibid.*

the public's access to knowledge and education, and prevents libraries from building enduring digital collections, ultimately costing taxpayers and creating access and equity issues.

Libraries have no bargaining power and are rarely able to change the terms of the contracts. This type of unconscionability regarding price difference is protected under Section 15 of Ontario's *Consumer Protection Act* (*CPA*) (see Appendix B). However, libraries are not considered consumers under the current *CPA*. Should libraries be included in the definition of consumers, s. 15(1) and (2) would apply to prevent unconscionable licensing agreements.

Contrary to s.15(2)(b), the price of eBooks for libraries grossly exceeds the price of both print books sold to libraries and an e-book sold to a private consumer. Libraries are the sole target of this unbalanced pricing scheme. In addition, the transaction between the publisher and library is excessively in favour of the publisher, contrary to s. 15(2)(e). Similarly, under s. 15(2)(f), the terms of the contract for the library are averse to a degree where the result is inequitable.

In addition to lopsided bargaining practices, some publishers refuse to license e-books to libraries preventing them from acquiring digital titles altogether. For instance, Amazon has long refused to offer their e-books to libraries.<sup>4</sup> Should e-book licensing be governed under the *CPA*, a concern is that many publishers will refuse to sell their e-books to libraries. In the United States, legislative proposals have sought to address this concern by using "reasonable term" provisions.<sup>5</sup> We propose the same below.

## 2. Recommendation: Libraries as a consumer under the *CPA*

Recommendation: Expand the definition of "consumer" in section 15 of the *CPA* to extend to publicly-supported libraries the benefit of protection against unfair trade practices.

The signatories call on the Ontario government to extend the protection of section 15 of the *CPA* to include publicly-supported libraries by expanding the definition of "consumer" to capture such institutions. There is precedent for such an approach in Canada.

The Saskatchewan *Consumer Protection and Business Practices Act* defines a "consumer" in section 10(1)(d) as "a person who acquires a consumer product from a retail seller and includes a non-profit organization, whether incorporated or not, that has objects of a benevolent, charitable, educational, cultural or recreational nature."<sup>6</sup> A definition that explicitly encompasses non-profit organizations would encompass libraries acting on behalf of consumers in a personal rather than business capacity.

## 3. Additional sector specific legislative proposals

Recommendation: Implement sector-specific protections against unfair digital contracts that target publicly-supported libraries. These include:

- fair and equitable licensing terms in eBook contracts
- provisions that require publishers to make eBooks available

The signatories suggest that the Ontario government should consider sector specific legislative amendments that would further address the digital contract problems between publishers and libraries. In the United States, several states have advanced legislative proposals that empower libraries to negotiate fairer contracts. For instance, this year, Massachusetts filed a new bill to address libraries' access to digital content

<sup>4</sup> Geoffrey Fowler, "Want to borrow that e-book from the library? Sorry, Amazon won't let you" (March 2021), online: *The Washington Post* <<https://www.washingtonpost.com/technology/2021/03/10/amazon-library-ebook-monopoly/>>.

<sup>5</sup> Library Futures, "Library Futures Ebooks Policy Paper: Mitigating the Library eBook Conundrum Through Legislation" (June 2022), online (pdf): *Library Futures* <<https://www.libraryfutures.net/library-futures-ebooks-policy-paper/>>.

<sup>6</sup> *The Consumer Protection and Business Act*, SS 2-13, c 30.2, s 10(1)(d).

to be considered in the current legislative session.<sup>7</sup> The legislative text, outlined in Appendix C, is designed to make fair and equitable licensing terms in eBook contracts by mitigating inequities between libraries and publishers. For instance, one provision in the Massachusetts bill restricts the ability of a library and publishers to purchase an eBook for more than what is charged to the public for the same item.<sup>8</sup>

Other proposed legislation, such as in Maryland and New York, provides more robust protection for libraries by requiring that eBooks available to the public also be made available to libraries on reasonable terms.<sup>9</sup> Reasonable terms provisions address both the contracting inequities and the refusal of some publishers to enter into contracts with libraries. Reasonable terms provisions would require publishers to make eBooks available to libraries for a price comparable to, for example, current paper books.

We would be pleased to discuss these proposals with you.

Yours truly,

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<sup>7</sup> Juliya Ziskina, "Library Futures Ebook Bills are on the Move" (9 February 2023), online: *Library Futures* <  
<https://www.libraryfutures.net/post/library-futures-ebook-bills-are-on-the-move>>.

<sup>8</sup> US HD 3425, An Act empowering library access to electronic books and digital audiobooks, 193rd, Reg Sess, MA, 2023.

<sup>9</sup> Library Futures, *supra* note 6.

## Appendix A – CULC/CBUC Digital Content Policy Paper

### DIGITAL EQUITY FOR CANADIAN PUBLIC LIBRARIES

Public libraries play an important role in supporting learning and knowledge acquisition in Canada. Recent data shows that 82% of Canadians believe that access to public libraries is important and 41% visited a local public library in person or online in 2020.

Libraries have a long history as places of discovery where all readers can access information and find new content and authors. Libraries' core mandate is to make the widest range of information and expressions of knowledge available to all members of Canadian society.

Annually, libraries spend millions of dollars to provide Canadians with access to books. Print books are protected by copyright law from library embargoes, however, copyright law and the transition from print to digital are undermining Canada's public libraries' ability to fulfill this mandate.

Overall, Canadian libraries circulated 49 million eBooks, eAudiobooks, and magazines in 2021, which is 16% over 2020 and 56% over 2019. The introduction of digital content has changed the nature of library collections. Libraries purchase and own print books. However, with the emergence of eBooks and eAudio, publishers now license eBooks and e-audio to libraries. Copyright law gives publishers power to set conditions, prices, and terms for licensing of digital content that is not possible for print. Publishers' exercise of this new power is proving challenging for Canada's public libraries and detrimental to library users.

As a result these conditions undermine access to titles customers want, limit the ability for the library to prudently manage its funding, impact the ability for libraries to have consistent and complete collections in all formats and increases wait times for customers waiting for access to popular content.

#### Multinational Publishers Dominate the Market and are Restricting Access

Recent consolidation in the publishing industry has left the book market highly concentrated. There are five major publishers: Penguin Random House, HarperCollins, Simon & Schuster, Hachette Book Group, and Macmillan (the so-called "Big 5"). Together, the Big 5 publish many of the biggest names in fiction and non-fiction. In 2010, their titles accounted for over 90% of the *New York Times* bestsellers in the United States. The Big 5 have adopted similar licensing models.

#### International French Publishers

These trends also exist in our francophone markets through international French publishers where content is not available and/or has increased up to 30 percent in price in the last year.

#### Canadian Publishers

The restrictive licensing models enacted by the multinational publishers do not represent practices by smaller and independent presses. Canadian Libraries are also an important distributor of works by Canadian publishers. Canadian publishers, including those that serve the francophone markets, have historically worked with libraries to provide more flexible pricing models to support library acquisitions.

#### Amazon

Initially a book retailer, Amazon has become a publisher and major distributor of unique published content in the eBook and eAudio space. Amazon refuses to sell content to Canadian libraries, restricting access to important works for customers. In addition, they have refused to allow Canadian libraries to lend any books available in their proprietary Kindle format making library borrowing inaccessible to all Canadian Kindle users.

### Publisher Licensing Practices

Publishers are adopting four distinct licensing practices that are undermining public libraries' ability to fulfil their mandate:

1. High price of digital content v print: Digital content is at least three times the cost of print, and in some cases significantly more expensive.
2. "Windowing" (imposing restrictive library purchasing rules for new releases): Publishers are in some cases refusing to grant libraries sufficient licenses for new releases to meet library needs or requiring them to delay purchases after the commercial release.
3. Refusal to deal: Some publishers are simply refusing to make digital content available to public libraries. Digital titles from Amazon Publishing, for example, are not available to Canadian libraries at any price or terms. Amazon is one of the largest publishers of books in Canada and the USA. Amazon dominates the eBook marketplace, conducting approximately 90% of eBook sales.
4. Inflexible licensing conditions: This content is made available with significant time and use restrictions which results in loss of access to purchased content at different time and use intervals, requiring the library to consistently monitor the status of each title and to repurchase expensive content to ensure continued access.

With the continued growth of digital content consumption, a more sustainable solution is required to provide users access to the materials needed from their local library.

### Implications

- Undermining Access: Restrictive eBook licensing models make it difficult for libraries to fulfill their central mission: ensuring access to information for all. Limiting access to new titles means limiting access for those most dependent on libraries. The result is that the publishers' business priorities, rather than library collection development policies, dictate what books the public can read and when they can access it. This is especially concerning as more and more titles are published exclusively in digital form.
- Undermining Prudent Management of Taxpayer Dollars: Public libraries have a mandate to spend taxpayer dollars to provide Canadians with access to information. Public library "demand" for digital content is in this sense not very responsive to high prices: libraries must spend their budgets in response to community needs and interests. The digital licensing strategies of the Big 5 can be seen as restricting supply and raising prices without fear that libraries won't spend.
- Incomplete Collections: Public libraries can no longer afford to maintain a "complete collection" consistent with their physical collections as they are being forced to choose between purchasing new content and repurchasing expired digital content. This coupled with their inability to buy electronic content from some publishers leads to inconsistent access across multiple formats – leaving digital readers with less choice. To provide equitable and inclusive collection, libraries need complete collections digitally.
- Increased Wait Times: The price points for eBooks and eAudio books means that libraries sometimes can't afford specific titles or cap spending on them to keep within a specific budget – leading to increased wait times on holds lists to get access to the most in demand titles.

### Guiding Principles

Libraries need a solution to support sustainable access going forward. Other jurisdictions have enshrined the rights of the local library and the constituents they represent in legislation to support equity of access to content for all. The following guiding principles would provide the basis for discussion of a framework to support sustainable purchasing for library materials going forward in Canada.

1. **Universal Availability:** All published works must be made available for public libraries to purchase in all available formats to make available to their customers. Libraries play an important role in the provision of equal access to information. This change would be consistent with new legislation that has been passed in Maryland and New York.
2. **Right to Acquire:** Library rights to purchase should be free from embargo periods. Publisher embargoes single out libraries among potential purchasers of digital content. The model also short-changes Canadians who are arbitrarily prevented from accessing digital content through the library, which may be their only point of access.
3. **Flexibility:** Libraries require flexible licensing models to support the needs of all types of libraries, and to allow options for libraries to maintain content in their digital collections into perpetuity. Publishers must provide a variety of pricing and licensing models, including the option of purchasing time and use meters that account for library budgets of varying sizes and collection strategies. Flexible purchasing models can be offered to libraries without unduly impacting publisher compensation.
4. **Parity with Print:** Library pricing models should be aligned to print models. Licensing options should be made available which refer to the print as the basis for calculation of pricing. Models which would have content last longer than the physical medium should reflect a higher price while models with shorter lifespans should be lower and more reflective of the price of print.

Canadians still believe in and depend on public libraries for equitable access to information. The continued increases in pricing, restrictive access, and lack of access through monopolistic competition for eBooks and eAudiobooks is challenging the ability of Canadian libraries to provide access to the electronic formats required to support their customer's needs, including bilingual Canadian content. This, coupled with increased customer demand is impacting the ability of libraries to purchase and retain the materials required to support inclusive library collections and their ability to provide timely access to content requested by their users. Other jurisdictions including New York and Maryland have worked with their legislators to set out rules governing publisher sales to help enshrine the rights of libraries to purchase the content they require. Canadian libraries are looking for our governments to help craft similar legislation to ensure library sustainability and support access of eBooks and eAudiobooks to all Canadians through their public libraries.

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## Appendix B – Relevant Provisions of the *Consumer Protection Act*

### Interpretation

1 In this Act,

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes; (“consommateur”)

### Unconscionable representation

15 (1) It is an unfair practice to make an unconscionable representation. 2002, c. 30, Sched. A, s. 15 (1).

- (2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person’s employer, or principal knows or ought to know,
- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
  - (b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
  - (c) that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
  - (d) that there is no reasonable probability of payment of the obligation in full by the consumer;
  - (e) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
  - (f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
  - (g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
  - (h) that the consumer is being subjected to undue pressure to enter into a consumer transaction. 2002, c. 30, Sched. A, s. 15 (2).

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## Appendix C – United States Legislative Proposals

### 1. MASSACHUSETTS LEGISLATIVE PROPOSAL – [BILL HD.3425](#)

An Act empowering library access to electronic books and digital audiobooks.

#### A. Definitions

For purposes of this act, the following terms mean:

- (1) "Digital audiobook" means a published work that is in the form of a voice recording (narrated) and is released as a digital audio file;
- (2) "Electronic book" means a published work that is in written form and is released as a digital text files;
- (3) "Electronic literary materials" means digital audiobooks and/or electronic books;
- (4) "Libraries" include:
  - (A) public libraries;
  - (B) public elementary school or secondary school libraries;
  - (C) tribal libraries;
  - (D) academic libraries;
  - (E) research libraries;
  - (F) special libraries
  - (G) talking book libraries; and
  - (H) archives;
- (5) "Publisher" means one whose business is the manufacture, promulgation, license, and/or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions including those in the form of electronic literary materials. For the purposes of this bill the term 'publisher' shall also include aggregators who enter into contracts with libraries for the purposes of providing materials for purchase or license from the publishers;
- (6) "Aggregator" means one whose business is the licensing of access to electronic literary material collections that include electronic literary material from multiple publishers;
- (7) "Literary monograph" means a literary work that is published in one volume or a finite number of volumes;
- (8) "Technological protection measures" means any technology that ensures the secure loaning and/or circulation by a library of electronic literary materials;
- (9) "Borrower" means a person or organization, including another library, to whom the library loans electronic literary materials of any sort;
- (10) "Virtually" means transmitted to receiving parties via the Internet in such a way that the transmission appears in front of the receiving parties on a computer, tablet, smart phone, or electronic device;
- (11) "Loan" means create and transmit to a borrower a copy of electronic literary material and delete it at the end of the loan period;
- (12) "Loan period" means the time between the transmission of electronic literary material to a borrower and the copies' deletion, as determined by any individual library.

#### B. Contracts Between Libraries and Publishers

- (a) Any contract offered by a publisher to a library for the purposes of licensing electronic literary materials to the public in this state is governed by Massachusetts law.
- (b) A contract between a library and a publisher shall contain no provision that:
  - (1) Precludes, limits, or restricts the library from performing customary operational functions, including any provision that:
    - (A) Precludes, limits, or restricts the library from licensing electronic literary materials from publishers;
    - (B) Precludes, limits, or restricts the library's ability to employ technological protection measures as is necessary to loan the electronic literary materials;



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- (C) Precludes, limits, or restricts the library's right to make non-public preservation copies of the electronic literary materials;
  - (D) Precludes, limits, or restricts the library's right to loan electronic literary materials via interlibrary loan systems; or
  - (2) Precludes, limits, or restricts the library from performing customary lending functions, including any provision that:
    - (A) Precludes, limits, or restricts the library from loaning electronic literary materials to borrowers;
    - (B) Restricts the library's right to determine loan periods for licensed electronic literary materials;
    - (C) Requires the library to acquire a license for any electronic literary material at a price greater than that charged to the public for the same item;
    - (D) Restricts the number of licenses for electronic literary materials that the library may acquire after the same item is made available to the public;
    - (E) Requires the library to pay a cost-per-circulation fee to loan electronic literary materials, unless substantially lower in aggregate than the cost of purchasing the item outright;
    - (F) Restricts the total number of times a library may loan any licensed electronic literary materials over the course of any license agreement, or restricts the duration of any license agreement; unless the publisher also offers a license agreement to libraries for perpetual public use without such restrictions; at a price which is considered reasonable and equitable as agreed to by both parties
    - (G) Restricts or limits the library's ability to virtually recite text and display artwork of any materials to library patrons such that the materials would not have the same educational utility as when recited or displayed at a library facility;
  - (3) Restricts the library from disclosing any terms of its license agreements to other libraries.
  - (4) Requires, coerces, or enables the library to violate the law protecting the confidentiality of a patron's library records found in Chapter 78, Section 7.

#### C. Remedies

##### (A) Unfair and Deceptive Practices

- (1) Offers to license electronic literary materials that include a prohibited provision listed in Section 3 constitute unfair and deceptive practices within the meaning of Section 2 of Chapter 93A, Regulation of Business Practices for Consumer Protection, and any remedy provided pursuant to Chapter 93A shall be available for the enforcement of this act.
- (2) Actions for relief pursuant to this act may be brought by libraries, library officers, or borrowers.
- (3) Parties shall be enjoined by the courts from enforcing license agreements that include a prohibited provision listed in Section 3.

##### (B) Unconscionability

- (1) Contracts to license electronic literary materials that include prohibited provisions listed in Section 3 of this chapter are unconscionable within the meaning of Chapter 106, Section 2-302 in violation of Massachusetts public policy and are deemed unenforceable and void. Any waiver of the provisions of this title is contrary to public policy and shall be deemed unenforceable and void.
- (C) Any publisher that violates this title shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation or seven thousand five hundred dollars (\$7,500) for each intentional violation, which shall be imposed by the court.

#### D. Severability

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

#### E. Existing Contracts

Nothing in this subsection affects existing contracts that are currently in force providing libraries with electronic literary products from vendors and aggregators.

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**F. Effective Date**

This act shall take effect upon its enactment into law unless otherwise specified. The provisions of this act apply to transactions entered into and events occurring after such date

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## 2. HAWAII LEGISLATION – [HB1412 HD.1](#)

A Bill for an Act Relating to Libraries

BE IT ENACTED BY THE LEGISLATURE FOR THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to be read as follows:

### “CHAPTER CONTRACT AND LICENSE AGREEMENTS FOR ELECTRONIC BOOKS”

SS –1. Definitions. As used in this chapter:

“Aggregator” means an individual or entity whose business is the licensing of access to electronic literary material collections that include electronic literary materials from multiple publishers.

“Borrower” means a person or organization, including another library, to whom the library loans electronic literary materials of any sort.

“Digital audiobook” means a published work that is in the form of a voice recording or narrated and released as a digital audio file.

“Electronic book” means a published work that is in written form and released as a digital text file.

“Library” means

- 1) Public libraries, including elementary or secondary school libraries;
- 2) Academic libraries;
- 3) Research libraries;
- 4) Special libraries;
- 5) Talking book libraries; and
- 6) Archives.

“Loan” means to create and transmit to a borrower a copy of electronic literary material and delete it at the end of the loan period.

“Loan Period” means the time between the transmission of electronic literary material to a borrower and the copy’s deletion, as determined by any individual library.

“Publisher” means an individual or entity whose business is the manufacture, promulgation, license, or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions including those in the form of electronic literary materials. “Publisher” includes aggregators who enter into contracts with libraries for the purposes of providing materials for purchase or license from the publishers.

“Technological protection measures” means any technology that ensures the secure loaning or circulation by a library of electronic literary materials.

“Virtually” means transmitted to receiving parties via the Internet in a way that the transmission appears in front of the receiving parties on a computer, tablet, smart phone, or electronic device.

SS – 2 Contracts between publishers and libraries.

- (a) No contract or license agreement entered into between any publisher and any library in the State shall:
  - 1) Preclude, limit, or restrict the library from performing customary operational functions, including
    - a) Licensing electronic literary materials;
    - b) Employing technological protection measures as is necessary to loan electronic literary materials;

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- c) A library's right to make non-public preservation copies of electronic literary materials; and
  - d) A library's right to loan electronic literary materials via interlibrary loan systems;
- 2) Preclude, limit or restrict the library from performing customary lending functions, including any provision that:
- a) Precludes, limits or restricts the library from loaning electronic literary materials to borrowers;
  - b) Restricts the library's right to determine loan periods for licensed electronic literary materials;
  - c) Requires the library to acquire a license for any electronic literary material at a price greater than that charged to the public for the same item;
  - d) Restricts the number of licenses for electronic literary materials that the library may acquire after the same item is made available to the public;
  - e) Requires the library to pay a cost per circulation fee to loan electronic literary materials, unless substantially lower in aggregate than the cost of purchasing the item outright;
  - f) Restricts the total number of times a library may loan any licensed electronic literary materials over the course of any license agreement, or restricts the duration of any license agreement, unless the publisher offers a license agreement to libraries for perpetual public user without such restrictions, at a price that is considered reasonable and equitable as agreed to by both parties; and
  - g) Restricts or limits the library's ability to virtually recite text and display artwork of any materials to library patrons such that the materials would not have the same educational utility as when recited or displayed at a library;
- 3) Restrict the library from disclosing any terms of its licensing agreements to other libraries; and
- 4) Require, coerce or enable the library to violate the law protecting the confidentiality of a patron's library records as specified in section 8-200.5-3, Hawaii Administrative Rules.

**SS – 3. Remedies.**

- (a) An offer to license electronic literary materials to a library that includes a prohibited provision listed in section -2 shall constitute an unfair or deceptive act or practice within the meaning of section 480-2 and shall be deemed void and unenforceable pursuant to section 480-12. Any remedy provided pursuant to section 480-13 shall be available for the enforcement of this chapter. Actions for relief pursuant to this section may be brought by libraries, library officers, or borrowers. Parties shall be enjoined from enforcing license agreements that include a prohibited provision under section-2.
- (b) A contract to license electronic literary materials to a library that includes prohibited provisions under section-2 shall be unconscionable within the meaning of section 490:2-302 and shall be deemed unenforceable and avoid. Any attempt to waive any provisions of this chapter is contrary to public policy and shall be deemed unenforceable and void."

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

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