

- 1 library loans electronic literary materials of any sort;
- 2 (3) “Digital audiobook” means a published work that is in the form of a voice recording
3 (narrated) and is released as a digital audio file;
- 4 (4) “Electronic book” means a published work that is in written form and is released as a
5 digital text file;
- 6 (5) “Electronic literary materials” means digital audiobooks and/or electronic books;
- 7 (6) “Libraries” or “Library” means any library, library system, or library consortium that
8 serves the public or receives public funds from the State of Rhode Island or any political subdivision
9 thereof. This includes, but is not limited to, public libraries; public elementary and secondary school
10 libraries; tribal libraries; publicly supported academic and research libraries; special libraries that
11 serve the public; library consortia administering public funds; talking book libraries; and archives.
- 12 (7) “Literary monograph” means a literary work that is published in one volume or a finite
13 number of volumes;
- 14 (8) “Loan” means to create and transmit to a borrower a copy of electronic literary material
15 and delete it at the end of the loan period;
- 16 (9) “Loan period” means the time between the transmission of electronic literary material
17 to a borrower and the copies’ deletion, as determined by any individual library.
- 18 (10) “Portable electronic device” means any self-contained electronic device for personal
19 use for communicating, reading, viewing, listening, playing video games, or computing, including
20 a mobile telephone, tablet computer, electronic book reader, and other similar devices;
- 21 (11) “Publisher” means one whose business is the manufacture, promulgation, license,
22 and/or sale of books, audiobooks, journals, magazines, newspapers, or other literary productions
23 including those in the form of electronic literary materials. For the purposes of this chapter the term
24 “publisher” shall also include aggregators who enter into contracts with libraries for the purposes
25 of providing materials for purchase or license from the publishers;
- 26 (12) “Reasonable terms” means purchase or licensing specifications listed in § 6-13.4-2(b)
27 that consider a publisher's business model as well as a library's need to continue its mission to
28 provide access to materials and the efficient use of funds in providing library services.
- 29 (13) “Technological protection measures” means any technology that ensures the secure
30 loaning and/or circulation by a library of electronic literary materials;
- 31 (14) “Virtually” means transmitted to receiving parties via the Internet in such a way that
32 the transmission appears in front of the receiving parties on a computer, tablet, smart phone, or
33 electronic device.

34 **6-13.4-2. Contracts between libraries and publishers.**

1 (a) Any contract between a publisher or aggregator and a library to license electronic
2 literary materials to the public in this state shall be governed by Rhode Island law.

3 (b) No contract or license agreement between any publisher and any library shall:

4 (1) Preclude, limit, or restrict the library from performing customary operational functions,
5 including any provision that:

6 (i) Preclude, limit, or restrict the library from licensing electronic literary materials from
7 publishers;

8 (ii) Preclude, limit, or restrict the library's ability to employ technological protection
9 measures as is necessary to loan electronic literary materials;

10 (iii) Preclude, limit, or restrict the library's right to make non-public preservation copies of
11 the electronic literary materials;

12 (iv) Preclude, limit, or restrict the library's right to loan electronic literary materials via
13 interlibrary loan systems; or

14 (2) Preclude, limit, or restrict the library from performing customary lending functions,
15 including any provision that:

16 (i) Preclude, limit, or restrict the library from loaning electronic literary materials to
17 borrowers;

18 (ii) Restrict the library's right to determine loan periods for licensed electronic literary
19 materials;

20 (iii) Require the library to acquire a license for any electronic literary material at a price
21 greater than that charged to the public for the same item;

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

24 (v) Require the library to pay a cost-per-circulation fee to loan electronic literary materials,
25 unless substantially lower in aggregate than the cost of purchasing the item outright;

26 (vi) Restrict the total number of times a library may loan any licensed electronic literary
27 materials over the course of any license agreement, or restricts the duration of any license
28 agreement; unless the publisher also offers a license agreement to libraries for perpetual public use
29 without such restrictions, at a price which is considered reasonable and equitable as agreed to by
30 both parties; or

31 (vii) Restrict or limits the library's ability to virtually recite text and display artwork of
32 any materials to library patrons such that the materials would not have the same educational utility
33 as when recited or displayed at a library facility.

34 (3) Restrict the library from disclosing any terms of its license agreements to other

1 libraries.

2 (4) Require, coerce, or enable the library to violate the law protecting the confidentiality
3 of a patron's library records found in § 11-18-32.

4 **6-13.4-3. Remedies.**

5 (a) Unfair and deceptive acts or practices shall include:

6 (1) Offers to license electronic literary materials to a library that include a prohibited
7 provision set forth in § 6-13.4-2(b) constitute unfair methods of competition and unfair or deceptive
8 acts or practices as defined in § 6-13.1-1.

9 (2) Any remedy provided pursuant to §§ 6-13.1-8 and 6-13.1-14 shall be available for the
10 enforcement of this chapter.

11 (3) Actions for relief pursuant to this chapter may be brought by libraries, library officers,
12 or borrowers, or, pursuant to § 6-13-6, by the attorney general. Enforcement of the provisions of
13 this chapter shall be delayed until the attorney general determines and publishes notice that at least
14 four (4) other states have enacted laws that establish enforceable limitations on contract terms for
15 the licensing of electronic books or digital audiobooks to libraries that are substantially similar in
16 purpose to this chapter, and that those states collectively represent a combined population of at least
17 ten million (10,000,000) persons, as determined by the most recent United States decennial census.

18 (4) Parties shall be enjoined from enforcing license agreements that include a prohibited
19 provision set forth in § 6-13.4-2(b).

20 (b) Contracts to license electronic literary materials to a library that include prohibited
21 provisions set forth in § 6-13.4-2(b) are unconscionable within the meaning of § 6A-2-302 in
22 violation of Rhode Island law and public policy and are deemed unenforceable. Any waiver of the
23 provisions of this title is contrary to public policy and shall be deemed unenforceable and void.

24 **6-13.4-4. Severability.**

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

28 **6-13.4-5. Existing contracts.**

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

31 SECTION 3. This act shall take effect upon passage.

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LC005144/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
LIBRARY EBOOK CONTRACTS

1 This act would establish enforcement limitations on contract terms for the licensing of
2 electronic books or digital audiobooks to libraries to preclude the library from being subject to
3 unfair sales practices. This act would not be enforceable until the attorney general determines and
4 publishes notices that at least four (4) other states have enacted laws that establish enforcement
5 limitations on contract terms for the licensing of electronic books or digital audiobooks to libraries.

6 This act would take effect upon passage.

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