

HOUSE No. 3239**The Commonwealth of Massachusetts**

PRESENTED BY:

Ruth B. Balser

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/20/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/27/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/17/2023</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>3/8/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/15/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/15/2023</i>
<i>Paul A. Schmid III</i>	<i>8th Bristol</i>	<i>3/15/2023</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>3/15/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>3/15/2023</i>
<i>Jennifer Balinsky Armini</i>	<i>8th Essex</i>	<i>3/15/2023</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>3/15/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>3/16/2023</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>3/16/2023</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>3/22/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>3/22/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/22/2023</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>3/22/2023</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>3/27/2023</i>

<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>3/27/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>3/27/2023</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>3/27/2023</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>4/10/2023</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Hampden</i>	<i>4/27/2023</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>5/8/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>6/15/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>6/15/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>6/15/2023</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>6/15/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>6/15/2023</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>6/20/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>6/23/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>9/11/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>9/26/2023</i>
<i>Christopher Richard Flanagan</i>	<i>1st Barnstable</i>	<i>12/3/2023</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>2/2/2024</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/2/2024</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>2/2/2024</i>
<i>Norman J. Orrall</i>	<i>12th Bristol</i>	<i>2/2/2024</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/2/2024</i>
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>2/2/2024</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/2/2024</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/2/2024</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/2/2024</i>
<i>Pavel Payano</i>	<i>First Essex</i>	<i>2/2/2024</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/2/2024</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/23/2024</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/29/2024</i>

HOUSE No. 3239

By Representative Balser of Newton, a petition (accompanied by bill, House, No. 3239) of Ruth B. Balser and others relative to authorizing library access to electronic books and digital audiobooks. Tourism, Arts and Cultural Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 78 of the General Laws is hereby amended by adding the following section:

2 SECTION 35. An Act empowering library access to electronic books and digital
3 audiobooks.

4 A. Definitions

5 For purposes of this act, the following terms mean:

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

8 (2) “Electronic book” means a published work that is in written form and is released as a
9 digital text file;

(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:

49 (A) Precludes, limits, or restricts the library from licensing electronic literary materials
50 from publishers;

51 (B) Precludes, limits, or restricts the library's ability to employ technological protection
52 measures as is necessary to loan the electronic literary materials;

53 (C) Precludes, limits, or restricts the library's right to make non-public preservation
54 copies of the electronic literary materials;

55 (D) Precludes, limits, or restricts the library's right to loan electronic literary materials
56 via interlibrary loan systems; or

57 (2) Precludes, limits, or restricts the library from performing customary lending
58 functions, including any provision that:

59 (A) Precludes, limits, or restricts the library from loaning electronic literary materials to
60 borrowers;

61 (B) Restricts the library's right to determine loan periods for licensed electronic literary
62 materials;

63 (C) Requires the library to acquire a license for any electronic literary material at a price
64 greater than that charged to the public for the same item;

65 (D) Restricts the number of licenses for electronic literary materials that the library may
66 acquire after the same item is made available to the public;

67 (E) Requires the library to pay a cost-per-circulation fee to loan electronic literary
68 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.

F. Effective Date

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