

Mitigating the Library eBook Problem Through Washington State Legislative Action

In response to the unavailability of equitable terms and fair pricing for library ebooks, **we are recommending the adoption of state law based on Washington state consumer protection, contract law, and contract preemption** to regulate library ebook contracts with publishers.

The Problem: Currently, a number of publishers and ebook aggregators prevent libraries from acquiring ebooks with licensing (or purchasing) terms that make it possible for libraries to fully meet their standard access and preservation missions. Among other issues, ebook licenses offered to libraries often:

- Are prohibitively expensive – ebooks can cost a library three to 10 times the consumer price for the same ebook.¹
- Come with many restrictions on use – for example, all ebook licenses offered to libraries by the “Big Five” publishers expire either after 24 months or 26 checkouts.²
- Sometimes are not available to libraries at any price.³

Most libraries have little, if any, bargaining power and are rarely able to change the terms of the contracts offered to them by publishers. As a result, many libraries face financial and practical challenges in making ebooks available to their patrons.

State eBook Legislation: We propose a bill grounded in Washington state consumer protection law ([Unfair Business Practices – Consumer Protection, Chapter RCW 19.86](#)). This proposed bill uses the **power of the state government to regulate the terms of consumer contracts and protect public policy**. The bill aims to ensure:

- Contractual agreements between libraries and publishers contain **equitable licensing terms** for the acquisition of ebooks.
- Literary materials have at least the **same utility in digital form** as they have in analog form.
- The availability of **remedies**: The ability of a court to rule that a contract (or provision of a contract) is “**unconscionable**” or a “**deceptive trade practice**” and therefore **unenforceable**.

¹ Jennie Rothschild, [Hold On, eBooks Cost HOW Much? The Inconvenient Truth About Library eCollections](#) (Sept. 6, 2020).

² [“Publisher Price Watch,” ReadersFirst](#) (last visited August 11, 2023).

³ ALA News, [ALA turns to Congress as Macmillan ignores public call to reverse library e-book embargo](#) (Nov. 1, 2019).

Different Than the Maryland Bill: The proposed bill is based entirely in existing state law, does not implicate copyright law, and does not violate the rights of publishers. The below table summarizes the differences:

Previous Maryland Bill	Current Proposed Bill
<ul style="list-style-type: none"> • Contained language requiring that publishers “shall offer” ebooks to libraries. • “Forced” publishers to offer ebooks to libraries, therefore creating a compulsory license and interfering with federal copyright law. • Preempted by federal copyright law because the bill <i>mandated</i> that publishers offer licenses to libraries. • Made no mention of state law, including consumer protection law. 	<ul style="list-style-type: none"> • Does not include the “shall offer” language. All of the Maryland language to <i>force</i> publishers to offer licenses has been removed. • Does not involve copyright law because it does not mandate that publishers offer ebooks to libraries. • Grounded in existing state consumer protection law that <i>regulates</i> contracts. The state is within its rights to <i>regulate</i> rather than <i>mandate</i> contracts, such as net neutrality laws that have been developed in many states. • Provides that <i>if</i> the publishers want to conduct ebooks business in Washington, they must follow Washington state law. • Does not violate publishers’ rights in any way, as it is merely using consumer protection and other laws the way the legislature intended them to be used.

Further Information: A more detailed version of the policy paper outlining the rationale and specifics of the proposed model bill [can be found here](#), and common questions about the bill [can be found here](#).

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