



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
KA 'OIHANA HO'ONA'AUAO  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/17/2026

**Time:** 02:00 PM

**Location:** 309 VIA VIDEOCONFERENCE

**Committee:** EDN

**Department:** Education

**Person Testifying:** Keith T. Hayashi, Superintendent of Education

**Title of Bill:** HB2577, RELATING TO LICENSING OF ELECTRONIC LITERARY MATERIAL.

**Purpose of Bill:** Establishes limits and restrictions on licensing contracts between libraries and publishers for electronic literary materials and provides options for remedy. Suspends enforcement until at least one other state enacts a similar law.

**Department's Position:**

The Hawaii State Department of Education (Department) appreciates the opportunity to testify on HB 2577. The Department supports the intent of this measure and recognizes school libraries as essential hubs for literacy and digital equity.

As defined in Section 1, "Library" explicitly includes public elementary and secondary school libraries. As the digital landscape evolves, our schools increasingly rely on electronic literary materials to meet the diverse and evolving learning needs of students and teachers.

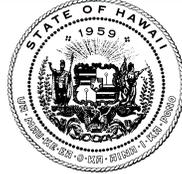
While the Department appreciates the intent to prohibit contracts that restrict customary lending functions or impose excessive costs, we offer the following comments regarding the rapidly changing digital resource landscape:

- **Licensing Flexibility:** New licensing models are constantly being developed by publishers and aggregators.
- **Collection Building:** The Department seeks to ensure school libraries maintain the ability to enter into agreements provided pricing and access are considered reasonable to continue building collections that meet specific educational needs.
- **Pricing Considerations:** In some instances, specialized educational access may require pricing different from that charged to the general public; the Department would like to preserve the ability to secure these resources to ensure student success.

The Department remains committed to ensuring our libraries have the tools necessary to bridge the digital divide. Thank you for the opportunity to provide these comments.

JOSH B. GREEN, M.D.  
GOVERNOR

SYLVIA LUKE  
LIEUTENANT GOVERNOR



STACEY A. ALDRICH  
STATE LIBRARIAN  
Ke Po'o Hale Waihona Puke Moku'āina

STATE OF HAWAII  
HAWAII STATE PUBLIC LIBRARY SYSTEM  
'OIHANA HALE WAIHONA PUKE AUPUNI O KA MOKU'ĀINA O HAWAII  
OFFICE OF THE STATE LIBRARIAN  
44 MERCHANT STREET  
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**House Committee on Education  
Tuesday, February 17, 2026, 9:00am  
State Capitol, Room 309**

**HB 2577 – Relating to Licensing of Electronic Literary Material**

The Hawai'i State Public Library System (HSPLS) **supports** H.B. 2577 to establish limits and restrictions on licensing contracts between libraries and publishers for electronic literary materials and provides options for remedy; and suspends enforcement until at least one other state enacts a similar law.

Public libraries in Hawai'i ensure equitable access to education, workforce development, and cultural resources. Today, that access increasingly depends on digital books and audiobooks. Yet, unlike physical books — which libraries can purchase, preserve, and lend freely — most eBooks are governed by restrictive, non-negotiable licensing contracts that undermine HSPLS' ability to serve the public.

Libraries across Hawai'i are routinely required to repurchase the same digital titles through time-limited or checkout-limited licenses, pay prices significantly higher than those charged to individual consumers, and accept restrictions on lending, preservation, and educational use.

For example, a popular eBook that costs a consumer about \$15 may cost a library \$60 or more — and instead of owning it permanently, the library license is limited. Typically, licenses sold to libraries may expire after a set period of time or after a limited number of checkouts. This means libraries must repurchase the same title again and again to continue to provide access for the public. This model forces HSPLS to spend public funds to repeatedly rent materials, rather than building sustainable collections.

These “take-it-or-leave-it” contracts weaken long-term access to knowledge and place unnecessary strain on limited public resources. Once a license expires, the HSPLS and community no longer has access to the digital copy of the eBook.

H.B. 2577 provides a practical, balanced solution. The bill does not regulate copyright or require publishers to license materials to libraries. Instead, it ensures that publishers who enter into contracts to license digital materials to Hawai'i libraries must comply with Hawai'i law and public policy.

In addition to provisions that modernize state law to reflect the realities of digital collections, the bill also includes a "trigger clause," which delays enforcement until at least one other state adopts similar legislation. This approach reduces risk for Hawai'i by encouraging a multi-state solution to a national marketplace issue, provides advance notice to publishers, and helps build broader momentum for fair eBook licensing nationwide, while preserving Hawai'i's leadership and policy position.

Hawai'i's public libraries have long been trusted leaders in protecting access to information, education, and culture. HB 2577 carries that legacy forward by ensuring fair, sustainable, and equitable access to digital books for all residents. These protections are especially important in Hawai'i, where libraries serve geographically dispersed communities and play a critical role in connecting residents to education, job training, government services, and cultural resources.

Thank you for the opportunity to testify on HB 2577 and your continued support of the Hawai'i State Public Library System and our communities.



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February 16, 2026

COMMITTEE ON EDUCATION  
Rep. Justin H. Woodson, Chair  
Rep. Trish La Chica, Vice Chair

HEARING DATE: February, February 17, 2026  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Re: TESTIMONY ON BEHALF OF ASSOCIATION OF  
AMERICAN PUBLISHERS, INC. OPPOSING  
HOUSE BILL NO. 2577

Dear Chair Woodson, Vice Chair La Chica and Committee Members:

We write on behalf of our client, Association of American Publishers, Inc. ("**AAP**")<sup>1</sup>, in opposition to House Bill No. 2577 ("**HB 2577**").

We are concerned that this bill has significant flaws and will likely result in substantial legal challenges in the courts. As discussed more fully below, it is highly likely that the proposed bill would be in violation of existing federal law, including the United States Copyright Act, codified at 17 U.S.C. §§ 101 et seq. (hereinafter, the "**Copyright Act**"). As such, it would likely be preempted by the United States Constitution.

Specifically, HB 2577 would effectively preclude authors and their publishers from making the determination as to what contract terms apply, and in which markets and channels they direct their works, despite the fact that such control is guaranteed by the Copyright Act. The terms of HB 2577 essentially say that the copyright holder cannot restrict in any way the library's use of the copyrighted works. Any license agreements that have any restrictions on the number of licenses or the duration of such licenses are not permitted under the bill. Entering

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<sup>1</sup> AAP is a trade association that represents its members on matters of law and public policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions and that enables publishers to effectively enforce their intellectual property rights. Among AAP's most critical priorities is ensuring the viability of the United States' more than 200-year-old framework of federal copyright law that encourages publishers to invest in and distribute a great variety of books to the public.

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into a contract (assuming a library was to agree) or even making an offer for a contract that includes any kind of restriction on the scope, duration or cost of the license would expose the copyright holder to automatic liability and damages, including either treble damages or \$1000 per occurrence, plus reasonable attorneys' fees.<sup>2</sup> Even if a library and the copyright holder were to reach an agreement, such contract provisions would be void under the bill, and the copyright holder could still face a lawsuit from other third parties like borrowers as this bill allows private rights of action.

It is difficult to see how any publisher would want to take such a risk to even negotiate with a library in Hawaii where the mere offering of terms could lead to the publisher being sued. This would likely have the converse effect of the bill's intent as it could substantially reduce the works made available to Hawaii's libraries and its borrowers. This is not a good thing for Hawaii's citizens.

As discussed more fully herein, not only is this bill bad policy, but it is likely to be deemed to be in violation of federal law. Similar legislation to HB 2577 has been introduced in other states and has been found to be preempted by federal law, including the Copyright Act. For these reasons, we would strongly urge that the Committee not pass this bill as it will result in substantial litigation and is likely to be deemed by the courts to be of no effect.

### **The United States Constitution and Federal Copyright Law Have Supremacy on Issues of Copyright.**

The United States Constitution authorizes the U.S. Congress to prescribe to authors the exclusive rights to their writings for limited times, for the ultimate benefit of the public. Acting pursuant to this constitutional directive, Congress has enacted a comprehensive federal system of exclusive rights, remedies, exceptions, and limitations, embodied in the Copyright Act. The Copyright Act not only encourages authors to create a vast variety of literary works, it also incentivizes authors to disseminate these works to the public by transferring or licensing their exclusive rights to publishers for the promise of financial rewards. Publishers in the United States disseminate some of the most acclaimed fiction, nonfiction, children's books, education materials, and scholarly works in the world. Publishers invest considerable resources and make incalculable marketplace-based decisions to promote and sustain their literary catalogs, relying on the uniform and unambiguous authority of the Copyright Act.

The Copyright Clause of the U.S. Constitution provides that "Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . . ."<sup>3</sup>

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<sup>2</sup> HRS §480-13.

<sup>3</sup> U.S. Const. art. I, § 8, cl. 8.

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Pursuant to that grant of authority, the United States Congress enacted the Copyright Act in 1976. The Copyright Act grants copyright owners certain exclusive rights. In particular, the Copyright Act provides that “the owner of copyright . . . has the exclusive rights to do and to authorize” others to reproduce and distribute works, prepare derivative works, and publicly display works, among other rights, subject to the Act’s carefully prescribed limitations.<sup>4</sup> Pursuant to the Copyright Act, copyright owners have the authority to exercise these exclusive rights and to authorize others to do so. Importantly, copyright owners have the prerogative to refrain from exercising their rights or authorizing others to do so—for example, by declining to distribute their works.<sup>5</sup>

“It is a familiar and well-established principle that the Supremacy Clause [of the United States Constitution] invalidates state laws that interfere with, or are contrary to, federal law.”<sup>6</sup>

The Supremacy Clause provides that the “Constitution, and the laws of the United States which shall be made in pursuance thereof . . . , shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2. The key issue in reviewing whether a state law is preempted is whether the operation of state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>7</sup>

### **HB 2577 Violates Federal Law by Taking Away Control From Copyright Holders.**

HB 2577 would limit the ability of copyright holders to limit the terms of any license in any agreement with any Library in the State. Specifically, HB 2577 would not allow a license agreement to limit the scope of any license, including: the number of loans, the duration of loans or the price of such licenses. Specifically, the relevant language in HB 2577 includes a number of instances where the law would restrict the ability of copyright holders to control the scope of their licenses, including:

**§ 2 Contracts between publishers and libraries.** (a) Any contract between a publisher and a library to license electronic literary materials to the public in the State is governed by state law.

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<sup>4</sup> 17 U.S.C. § 106.

<sup>5</sup> See, e.g., *Stewart v. Abend*, 495 U.S. 207, 229 (1990) (“[T]his Court has held that a copyright owner has the capacity arbitrarily to refuse to license one who seeks to exploit the work.”).

<sup>6</sup> *Hillsborough Cty., Fla. v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 712 (1985) (citation and internal quotation marks omitted).

<sup>7</sup> *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 479, 94 S.Ct. 1879, 1885, 40 L.Ed.2d 315 (1974) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)).

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

(1) Preclude, limit, or restrict the library from performing customary operational functions by including any provision that precludes, limits, or restricts:

**(A) The library from licensing electronic literary materials from publishers;**

..., or

**(D) The library's right to loan electronic literary materials via interlibrary loan systems;**

(2) Preclude, limit, or restrict the library from performing customary lending functions by 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 number of times the library may loan any electronic library material over the course of the contract or license agreement if the contract or agreement also imposes a time-based limitation on the duration of the library's license to such materials;**  
or

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**(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) Restrict the library from disclosing the terms of the contract or license agreement to any other library in the State; or

(4) Require, coerce, or enable the library to violate any law or rule protecting the confidentiality of a patron's library records.

HB 2577 (emphasis added).

As such, should a copyright holder enter into any agreement with a public library, the copyright holder would have no ability to restrict how the library may subsequently use the materials, including the scope and duration of such licenses. HB2577 would allow the library the unlimited freedom to loan the licensed work out to any person or even millions of persons or other libraries in the world for an unlimited duration of time, and would allow the library the freedom to make unlimited displays of the text and artwork of the copyrighted work. HB2577 would thus eviscerate the right of a copyright holder to control the licensing and distribution of the work, and would be directly contrary to the U.S. Constitution and the Copyright Act's provisions allowing the copyright holders such an exclusive prerogative. For this reason, HB 2577 would likely be in violation of federal law and preempted by the U.S. Constitution.

#### **Other States Have Considered Similar Legislation, Which Has Been Deemed in Violation of Federal Law.**

It is instructive to look at other jurisdictions where their legislatures have sought to pass similar legislation to HB 2577. While other States have sought to pass similar legislation, only two state legislatures have done so.

Perhaps most informative is the experience of the State of Maryland.<sup>8</sup> In May 2021, the Maryland state legislature passed the Maryland Act for the stated "purpose of requiring a publisher who offers to license an electronic literary product to the public to also offer to license the electronic literary product to public libraries in the State on reasonable terms that would enable public libraries to provide library users with access to the electronic literary product."<sup>9</sup> Like HB 2577, the Maryland Act sought to limit the ability of copyright holders to control

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<sup>8</sup> The other state legislature to have passed similar legislation is New York. However, the legislation originally known as Bill 5837-B was subsequently vetoed by the governor on December 29, 2021 on the grounds that the bill's provisions "are preempted by federal copyright law."

<sup>9</sup> 2021 Md. Laws Ch. 411 (H.B. 518).

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dissemination of their works in favor of allowing libraries to have such control. Further, like HB 2577, it required copyright holders to offer licenses at “reasonable” rates.

As part of a lawsuit brought in the Federal Court in the District of Maryland, the court enjoined the enactment of the Maryland legislation, finding that the Maryland legislation was likely preempted by Federal Law, stating that “It is clear the Maryland Act likely stands as an obstacle to the accomplishment of the purposes and objectives of the Copyright Act. The Maryland Act commands that, if a publisher offers to license an electronic literary product to the public at large, the publisher “shall offer to license” the same product to libraries “on reasonable terms that would enable public libraries to provide library users with access to the electronic literary product.”<sup>10</sup> The court noted that the exclusive right to distribute also encompasses the right not to distribute. The Maryland Law necessarily infringed on that right as it proscribed terms and limited the control of copyright holders to control such distribution. The court concluded that the law “interferes with copyright owners’ exclusive right to distribute by dictating whether, when, and to whom they must distribute their copyrighted works.”<sup>11</sup> Further, the court found that substantial irreparable harm would result from the application of the Maryland Law. Accordingly, the court issued a preliminary injunction. Subsequently, the court issued a declaratory judgment and concluded that “the Maryland Act conflicts with and is preempted by the Copyright Act. The Act stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>12</sup>

In *Orson, Inc. v. Miramax Film Corporation*<sup>13</sup>, cited in the *Frosh* court, the Third Circuit considered whether § 203-7 (“**Pennsylvania law**”) of the Pennsylvania Feature Motion Picture Fair Business Practices Law conflicted with § 106 of the Copyright Act. 189 F.3d at 379. Plaintiff, a Philadelphia theater owner, sued Miramax Film Corporation under the Pennsylvania law, which provided:

No license agreement shall be entered into between distributor and exhibitor to grant an exclusive first run or an exclusive multiple first run for more than 42 days without provision to expand the run to second run or subsequent run theatres within the geographical area and license agreements and prints of said feature motion picture shall be made available by the distributor to those subsequent run theatres that would normally be served on subsequent run availability.<sup>14</sup>

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<sup>10</sup> *Ass’n of Am. Publishers, Inc. v. Frosh*, 586 F.Supp.3d 379, 389 (D. Md. 2022).

<sup>11</sup> *Id.* at 393.

<sup>12</sup> *Ass’n of Am. Publishers, Inc. v. Frosh*, 607 F.Supp.3d 614, 618 (D. Md. 2022).

<sup>13</sup> 189 F.3d 377 (3d Cir. 1999) (en banc).

<sup>14</sup> 73 Pa. Stat. § 203–7.

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Thus, the statute explicitly addressed the terms of the license that could be entered into by inserting the 42 day limitation on the exclusivity. The *Orson* court noted that:

The forty-two day exclusive first-run license limitation in section 203–7 of the Pennsylvania Act is a distinctly different regulation from those within the state's power over improper market practices. **If the state's ban on exclusivity after forty-two days directly regulates a right that is protected by federal copyright law, it must, of necessity, be preempted under conflict preemption principles.**<sup>15</sup>

The court continued by stating:

[T]he section cannot stand because it prohibits the copyright holder from exercising rights protected by the Copyright Act. Among the “exclusive rights” granted under § 106 in the Copyright Act are the rights to “distribute” and to “perform the copyrighted work publicly.” However, section 203–7 requires the distributor to expand its distribution after forty-two days by licensing another exhibitor in the same geographic area, even if such expansion is involuntary and uneconomic.<sup>16</sup>

The court held that this restriction on the ultimate control over the licensed work violated the right recognized by the United States Supreme Court that the copyright holder had “the capacity arbitrarily to refuse to license one who seeks to exploit the work.”<sup>17</sup> As such, the Third Circuit held the state law was preempted.

It is important to note that, in *Orson*, as in HB 2577, film distributors still had the right to choose to negotiate or not negotiate, but the condition regarding the subsequent control of their work was merely a required feature of any license that they choose to enter. Similarly, HB 2577 includes express requirements that limit the control of the licensed work after an agreement to license is entered. As such, HB 2577 is seeking to enact the type of restrictions faced by the *Orson* court found to be preempted by the Copyright Act. That HB 2577 allows the library to have the control of subsequent licensing as opposed to compelling the copyright holder to perform the subsequent licensing is a distinction without a difference. Both statutes take control of the price, scope and duration away from the copyright holder. For these reasons, the terms of HB 2577 are likely in violation of the Copyright Act and thus preempted under federal law.

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<sup>15</sup>*Id.* at 385 (emphasis added).

<sup>16</sup>*Id.* at 385.

<sup>17</sup> *Stewart v. Abend*, 495 U.S. 207, 228–29, 110 S.Ct. 1750, 109 L.Ed.2d 184 (1990) (citing *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127, 52 S.Ct. 546, 76 L.Ed. 1010 (1932))

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### **The State Could Face Significant Litigation.**

For the foregoing reasons, we are extremely concerned that passage of HB 2577 would result in significant litigation for the State. Further, the result of that litigation would almost certainly be to find that the law was in violation of federal law and of no effect.

It is axiomatic that the Hawai'i State Legislature has a duty to pass laws that are consistent with and effectuate the protections of the Hawai'i State Constitution.<sup>18</sup> Passage of this bill, which is substantively similar to other laws that courts have found to be preempted and in violation of the Copyright Act would not be consistent with the Legislature's obligations to make sound decisions consistent with constitutional principles.

### **Conclusion**

For the reasons set forth herein, we have significant concerns about the proposed terms of HB 2577 and would strongly recommend that the Committee hold this bill.

Very truly yours,

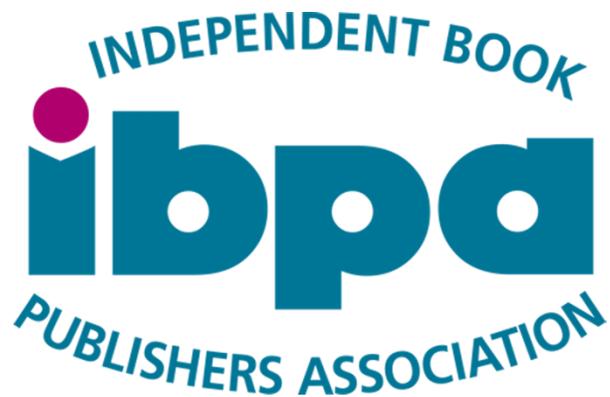


DAVID M. LOUIE, ESQ.

for  
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<sup>18</sup> “[E]very enactment of the Legislature is presumptively constitutional.” *Schwab v. Ariyoshi*, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977) (citing *State v. Kahalewai*, 56 Haw. 481, 541 P.2d 1020 (1975)); cf. *League of Women Voters of Honolulu v. State*, 150 Hawaii 182, 194, 499 P.3d 382, 394 (2021) (“[I]f the Legislature could alter the meaning of the Hawai'i Constitution through its own rules of procedure, theoretically, there would be no need to go through the formality of amending the Hawai'i Constitution. See *Mason's Manual [of Legislative Procedure]* (2010 ed.) § 12, ¶ 1 ('A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do by indirection what it cannot directly do.').”).



14 February 2026

The Independent Book Publishers Association respectfully submits the following testimony in opposition to Hawaii House Bill 2577 (HB2577), which, if enacted, would violate our members' rights under federal copyright law and the United States Constitution by unconstitutionally regulating literary works by dictating licensing terms from copyright owners to libraries for eBook formats. The Independent Book Publishers Association is a national non-profit association of over 4,000 small and mid-sized publishers, as well as author-publishers, including members from the State of Hawaii. IBPA works to promote the rights and professional interests of our publisher members. Our membership would be directly impacted by HB2577.

While the Independent Book Publishers Association and its membership would like nothing more than for all books to be available to libraries in every format, we strongly oppose the legislative initiative taken by the drafters of HB2577 to achieve this otherwise laudable goal.

While many independent publishers have strong relationships with and license their works to libraries, HB2577 would *require* that they offer licenses on “reasonable terms” to libraries in Hawaii. This would create an undue burden on small publishers across the nation who simply do not have the resources or sophistication to manage licensing at scale on a state-by-state basis.

The legislation makes no distinction between large publishers and distributors, such as Amazon, and small independent publishers and author-publishers. All of these publishers would be subject to potential violations of Hawaii law on unfair, abusive, or deceptive trade practice laws if they do not “offer to license” their electronic publications to libraries.

HB2577 would represent a fundamental, unprecedented intrusion into the free exercise of copyright by both authors and publishers by restricting certain licensing terms for digital materials under the guise of unfair and deceptive trade practices. When the State dictates licensing terms for copyrighted materials it violates the free exercise of Copyright under 17 U.S.C. §106. Only Congress, not the State, has the right to regulate copyright. In a lengthy written opinion analyzing the similar proposed legislation in other states, dated August 30, 2021, Shira Perlmutter, former Register of Copyrights and Director of the U.S. Copyright Office, stated, “we conclude that under

current precedent, the state laws at issue are likely to be found preempted.”<sup>1</sup> Meaning that the state laws interfere with the authority of Congress and thus violate the Supremacy Clause of the U.S. Constitution.

As the court recognized in the case *AAP v. Frosh*, concerning similar legislation passed by the Maryland legislature, “[i]t is clear from the text and history of the Copyright Act that the balance of rights and exceptions is decided by Congress alone” and “[s]triking the balance between the critical functions of libraries and the importance of preserving the exclusive rights of copyright holders... is squarely in the province of Congress and not this Court or a state legislature.” States cannot avoid federal preemption by recasting restrictions on the exercise of copyrights as protections against unfair, deceptive, or unconscionable conduct, such as is the case with HB2577. Absent an evidentiary record that clearly establishes actual fraud or misrepresentation, bills restricting price and licensing terms will be preempted by federal law. The reason for this is the supposed misconduct the state law aims to remedy is no more than the perception by the state that the licensee negotiated an unfavorable deal.

The Supremacy Clause is not the only constitutional concern raised by HB2577. As the sale of electronic literary products by definition represents interstate commerce, this legislation would also directly violate article 1, section 8, clause 3 of the Constitution, which gives Congress the right to regulate interstate commerce. Imposing terms on publishers from the several states in their commercial relationship with the Hawaii libraries, and ultimately the State of Hawaii itself, interferes with interstate commerce which is the exclusive purview of the Congress of the United States.

HB2577 would ultimately compel publishers to accept licenses they might otherwise choose not to or, tragically, to not offer their works to libraries at all. Under this proposed legislation, publishers would lose the ability to control to whom they license their works and on what terms, eviscerating their rights under 17 U.S.C. §106. The Supreme Court already decided this issue in its 1999 decision in *Orson, Inc. v. Miramax* expressly in which it ruled that states cannot infringe upon the rights of copyright holders: “The state may not mandate distribution and reproduction of a copyrighted work in the face of the exclusive rights to distribution granted under §106.” The law at issue in that case, just as HB2577 would do, “direct[ed] a copyright holder to distribute and license against its will and interests.”<sup>2</sup>

It is the contention of the Independent Book Publishers Association that HB2577 suffers from the same constitutional defects that led to the Federal court decision in the *AAP v. Frosh* case last year to swiftly strike down similar legislation enacted in Maryland, finding it “unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act.” It held that the now-overturned Maryland law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>3</sup> Maryland declined to appeal this well-reasoned decision.

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<sup>1</sup> Letter from Shira Perlmutter, Register of Copyrights and Dir., United States Copyright Office, to Sen. Thom Tillis, Ranking Member, Subcomm. on Intellectual Prop., United States Senate (Aug. 30, 2021), <https://copyright.gov/laws/hearings/2021-08-30-Response-to-Senator-Tillis-on-eBook-Licensing.pdf>.

<sup>2</sup> *Orson, Inc. v. Miramax Film Corp.*, 189 F.3d 377 (3d Cir. 1999).

<sup>3</sup> *Ass'n of Am. Publishers, Inc. v. Frosh*, No. DLB-21-3133, 2022 U.S. Dist. LEXIS 105406 (D. Md. June 13, 2022).

While we are sympathetic to the motivations underlying this legislation, a law that sweeps in thousands of small publishers and self-published authors who cannot manage distribution and licensing at scale is not the right approach and is in fundamental violation of federal copyright law. We concur with United States District Judge Deborah Boardman, who, in the AAP v. Frosch case, stated: “Libraries serve many critical functions in our democracy. They serve as a repository of knowledge — both old and new — and ensure access to that knowledge does not depend on wealth or ability. They also play a special role in documenting society’s evolution. Congress has underscored the significance of libraries and has accorded them a privileged status on at least one occasion, legislating an exception to the Copyright Act’s regime of exclusive rights that permits libraries to reproduce copyrighted material so it may be preserved in the public record across generations. See 17 U.S.C. § 108. Libraries face unique challenges as they sit at the intersection of public service and the private marketplace in an evolving society that is increasingly reliant on digital media. However, striking the balance between the critical functions of libraries and the importance of preserving the exclusive rights of copyright holders is squarely in the province of Congress and not this Court or a state legislature.”<sup>4</sup>

We respectfully oppose HB2577 and ask that you reject it in light of the broader legal context and possible serious repercussions of this legislation for hardworking independent publishers and self-published authors already facing serious challenges in the current economic environment.

Respectfully submitted,



Dr. Kurt Brackob  
Chair  
Legislation and Standards Committee  
Independent Book Publishers Association

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<sup>4</sup> United States District Court for the State of Maryland, Case 1:21-cv-03133-DLB Document 19 Filed 02/16/22, p. 27.



February 16, 2026

House Committee on Education  
Rep. Justin H. Woodson, Chair  
Rep. Trish La Chica, Vice Chair

**RE: Hearing Testimony in Opposition to HB 2577**

Dear Chair Woodson, Vice Chair La Chica and Committee Members:

The Association of American Publishers (AAP) is the national trade association for book, journal, and education publishers in the United States, including large, small, and specialized publishing houses from across the country. We respectfully submit this testimony in opposition to HB 2577 because this legislation is unconstitutional, would significantly harm readers in Hawaii, undermine the rights of authors and publishers, and threaten the viability of independent bookstores.

Publishers have served public libraries and their communities very well in the digital age—to the point that today more patrons than ever before can access for free, at the push of a button, a record number of award winning and best-selling literary works that they might otherwise have purchased from booksellers.

Last year, readers borrowed more than *820 million* ebooks, audiobooks, and other digital content – an increase of nearly 11% over the previous year – and library check-outs continue to increase even while commercial revenue for ebooks declines each year. These “digital check outs” are made possible because publishers have long offered discounted access to public libraries, for them to make digital formats available to their patrons under controlled terms, as a supplement to physical books, which by far remain the most popular format.

While we recognize that many libraries are looking for ways to efficiently and cost effectively serve their patrons, collections spending and spending on electronic materials in particular, represents a small portion of overall library budgets. Moreover, libraries enjoy special multi-user licenses from publishers that permit them to do things that readers in the consumer markets may not do. Libraries make ebooks available over and over again to their patrons, at an aggregate cost that is far less than the per-reader rates in the consumer market.

The U.S. Copyright Act governs the distribution of literary works in all formats, including the licensing of ebooks and audiobooks to public libraries. The Copyright Act is the basis of invaluable creativity and innovation in the marketplace. The basic bargain of the Copyright Act is economic. It serves the public by encouraging and incentivizing authorship and publication, including through modern delivery models. Efforts to regulate the terms under which authors and publishers may exercise their exclusive, federally protected rights are unconstitutional and threaten the entire creative economy that is so critical to Hawaii and the Nation.

As a result, AAP strongly opposes legislation – such as HB 2577 – that would regulate licensing of ebooks to libraries and expose copyright owners to serious penalties and liabilities that it has no right to impose.

To put a fine point on the unconstitutional conflict, such legislation seeks to punish copyright owners for exercising the very rights and remedies that federal law so clearly affords them!

In late 2021, Governor Hochul vetoed such legislation in New York stating that "because the provisions of this bill are preempted by federal copyright law, I cannot support this bill."

In 2022, a federal district court in Maryland found a similar bill "unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act" and because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [Ass'n of American Publishers v. Frosh, 2022].

It is for these reasons and more that the groups who stand in opposition to such legislation represent hundreds of thousands of creators including the Association of American Publishers, the Authors Guild, American Booksellers Association, Copyright Alliance, News Media Alliance, and Motion Picture Association, among others.

The ultimate irony and shame of this misguided legislation is that it would likely impede – rather than expand – access to digital library materials in Hawaii. This legislation will likely have the opposite effect that lawmakers desire: when publishers aren't able to bend to the restrictive and extreme demands dictated by this legislation, libraries may experience higher costs or lose access to new releases or to ebooks and audiobooks altogether.

While they are not required to do so, publishers currently license new release ebooks and audiobooks to libraries on the first day of a book's release. However, this legislation may make it impossible to do so while also protecting the viability of independent bookstores in Hawaii. As a result, it is possible that libraries in Hawaii may have less early access to new titles in digital formats.

As a result of this legislation, authors may be prevented from getting their books in libraries in Hawaii. Further, library patrons will likely lose access to some ebooks and audiobooks and be redirected to purchasing books they wish to read. In short, this legislation will, in the end, harm both authors and Hawaii's readers who are library patrons.

Especially now – in the face of increasing threats to the freedom to read, disruption from artificial intelligence, and the widespread theft of copyrighted digital books by AI companies – the livelihoods of bookstores, publishers, authors, and other creators are especially fragile. Any legislative effort to intervene in commercial markets and disrupt the balance between art and commerce that has been so carefully struck would result in harm to authors, creators, and bookstores that is unsustainable for library lending in Hawaii. Therefore, we must strongly oppose and respectfully urge the rejection of HB 2577.

We appreciate the opportunity to present these views to the House Committee on Education.

Respectfully submitted,



Shelley H. Husband  
Executive Vice President, Government Affairs  
Association of American Publishers



BILL: HB2577, A Bill for An Act Relating to Licensing of Electronic Literary Material  
COMMITTEE: Hawaii House Education Committee  
HEARING DATE: February 17, 2026  
CONTACT: Keith Kupferschmid, keithk@copyrightalliance.org  
POSITION: Oppose

The Copyright Alliance, on behalf of our membership, submits this statement of opposition for the record concerning the hearing on bill HB2577 before the Hawaii House Education Committee. We urge the Committee to oppose the bill which attempts to legislate in areas that fall within the scope of federal copyright law and, therefore, are under the exclusive jurisdiction of Congress, and would harm authors, publishers, and other creators.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The Copyright Alliance represents the copyright interests of over 15,000 organizations in the United States, across the spectrum of copyright disciplines, and over 2 million individual creators, including photographers, authors, songwriters, coders, bloggers, artists and many more individual creators and small businesses that rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

For years, various organizations have unsuccessfully lobbied Congress to weaken federal copyright protections. Because Congress has not agreed that copyright should be weakened, these groups have now decided to circumvent Congress' authority by lobbying state legislatures to enact the very same legislation that Congress would not. This has resulted in a recent influx of state legislation like HB2577 that would force book publishers to license their e-books to libraries on terms that are determined individually by each state rather than terms negotiated between the parties.

Since copyright is under the exclusive jurisdiction of Congress, legislation like this is inappropriate at the state level and, if passed, would almost certainly be struck down on the basis of federal preemption. In a [letter](#) dated August 30, 2021, the U.S. Copyright Office—the agency responsible for providing expert advice on copyright law to Congress—conducted an analysis of legislation similar to HB2577, compelling the licensing of certain electronic books and audiobooks, and concluded that “a court considering the state legislation at issue would

likely find it preempted under a conflict preemption analysis.”<sup>1</sup> In December 2021, New York Governor Kathy Hochul vetoed an almost identical bill (A5837B), explaining that “[b]ecause the provisions of this bill are preempted by federal copyright law, I cannot support this bill;”<sup>2</sup> and in February 2022, the U.S. District Court for the District of Maryland granted a [preliminary injunction](#) suspending Maryland’s bill (HB518), adding that “[s]triking the balance between the critical functions of libraries and the importance of preserving the exclusive rights of copyright holders ... is squarely in the province of Congress and not this Court or a state legislature.”<sup>3</sup>

The individual creators and organizations that we represent rely on a strong federal copyright system to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy. The strength of our copyright system relies in large part on the uniformity of copyright laws across the United States, guaranteed by both the Supremacy Clause of the U.S. Constitution, and by the Copyright Act. HB2577 undermines that important legal system and threatens the ability of authors and publishers to create and disseminate books to the public.

We respectfully ask that the Hawaii House Education Committee reject HB2577. Please let us know if we can provide additional information or answer any questions regarding our opposition to this bill.



Keith Kupferschmid  
CEO  
Copyright Alliance

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<sup>1</sup> Letter from Shira Perlmutter, Register of Copyrights and Dir., United States Copyright Office, to Sen. Thom Tillis, Ranking Member, Subcomm. on Intellectual Prop., United States Senate (Aug. 30, 2021), <https://copyright.gov/laws/hearings/2021-08-30-Response-to-Senator-Tillis-on-eBook-Licensing.pdf>.

<sup>2</sup> Letter vetoing New York State Assembly Bills Nos. 5565 and 5837-B from Governor Kathy Hochul, State of N.Y., to the N.Y. State Assembly (Dec. 29, 2021), available at <https://www.authorsguild.org/wp-content/uploads/2021/12/GovernorHochulVetoMessage.pdf>.

<sup>3</sup> Association of Am. Publishers, Inc. v. Frosh, No. DLB-21-3133, slip op. at 27 (D. Md. Feb. 16, 2022).



**BILL:** HB 2577 - Relating to Licensing of Electronic Literary Material

**COMMITTEE:** Committee on Education

**HEARING DATE:** February 17, 2026

**CONTACT:** Regan Smith, Senior Vice President & General Counsel, News/Media Alliance, [regan@newsmediaalliance.org](mailto:regan@newsmediaalliance.org)

**POSITION:** Oppose

The News/Media Alliance (“N/MA”) respectfully submits the following testimony in opposition to bill HB 2577, which we believe is unnecessary, preempted, and unconstitutional. We therefore call on the Committee to reject the bill.

N/MA is a nonprofit organization representing over 2,200 diverse newspaper, magazine, and digital media publishers in the United States, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news for centuries. Covering all subject matter and political viewpoints, the Alliance’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, over 500 individual magazine brands, and dozens of digital-only properties.

HB 2577 is a blunt instrument to a non-existent problem. While we deeply share the legislature’s sincere interest in the wellbeing of our public library systems, there is no proof of an existing licensing market failure facilitated or initiated by publishers – books, news, magazines, or others. Libraries by and large have access to a wide range of written materials in a variety of formats, from physical books and magazines to electronic editions of newspapers and digital media publishers, and many media publishers also offer readers direct access to their valuable written material in ways that do not require a paid subscription. There are various ways for state legislatures to strengthen our public libraries and ensure communities’ access to high-quality information and entertainment, but this bill is not the answer. Instead, it would encroach on publishers’ ability to freely license their works and to invest in new, original content, thereby risking the access to news and media content our communities rely on.

Most disconcertingly, HB 2577 would undermine – and be in violation of – the federal copyright framework that is built on a careful balance between the interests of copyright owners and users. The Copyright Act protects creators’ investments into the production of creative content, including by establishing clear exclusive rights that are reserved for copyright owners. These

rights include the right “to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.”<sup>1</sup>

Section 301 of the Copyright Act establishes a strong federal preemption with regards to any state bills that aim to limit or regulate the exclusive rights reserved for copyright owners, stating that “all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright... *are governed exclusively by this title*. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.”<sup>2</sup> By effectively regulating licensing terms for publishers – including book, newspaper and magazine publishers – when it comes to library licenses, HB 2577 impinges on the exclusive rights created by the Copyright Act and is therefore preempted under it.

Similar bills in other states have failed for this same reason. In Maryland, a federal court found in 2022 that the state’s law “likely conflicted with the Copyright Act because it forced publishers to forgo their exclusive rights to decide when, to whom, and on what terms to distribute their copyrighted works,” later declaring “the Maryland Act unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act.”<sup>3</sup> In New York, Governor Kathy Hochul vetoed an analogous bill on the same grounds, stating that the federal Copyright Act reserves the right to decide to whom and on what terms to license copyrighted works solely to the author of that work.<sup>4</sup> Further, in 2023, Virginia’s Senate Committee on General Laws and Technology decided unanimously to reject a similar proposal in a 15-0 vote.<sup>5</sup> And in 2024, the Municipal and County Government Committee of the New Hampshire House of Representatives voted in favor of a motion of Inexpedient to Legislate with regards to a similar bill introduced in the state.<sup>6</sup>

While HB 2577 also raises other questions and concerns, the abovementioned constitutional deficiencies are especially concerning as they threaten the delicate balance of the federal copyright system and reduce publishers’ incentives to invest in the creation of new original works.

For the reasons noted above, N/MA respectfully opposes HB 2577 and strongly urges the Committee to reject it. We appreciate the opportunity to present these views to the Committee.

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<sup>1</sup> 17 U.S.C. § 106(3).

<sup>2</sup> 17 U.S.C. § 301(b) (emphasis added).

<sup>3</sup> *Ass'n of Am. Publishers, Inc. v. Frosh*, 586 F. Supp. 3d 379 (D. Md. 2022); *Ass'n of Am. Publishers, Inc. v. Frosh*, No. DLB-21-3133, 2022 U.S. Dist. LEXIS 105406 (D. Md. June 13, 2022).

<sup>4</sup> Andrew Albanese, *Hochul Vetoes New York’s Library E-Book Bill*, Publishers Weekly (Dec. 30, 2021), available at <https://www.publishersweekly.com/pw/by-topic/digital/copyright/article/88205-hochul-vetoes-new-york-s-library-e-book-bill.html> (last accessed on Feb. 20, 2024).

<sup>5</sup> Katy Hershberger, *Bill to Limit Library E-Book Lending Fails in VA Senate*, Publishers Marketplace (Feb. 3, 2023), available at <https://lunch.publishersmarketplace.com/2023/02/bill-to-limit-library-e-book-lending-fails-in-va-senate/> (last accessed on Feb. 20, 2024).

<sup>6</sup> New Hampshire H.B. 1342, [https://gencourt.state.nh.us/bill\\_Status/billinfo.aspx?id=1234&inflect=2](https://gencourt.state.nh.us/bill_Status/billinfo.aspx?id=1234&inflect=2).



February 16, 2026

House Committee on Education  
Rep. Justin H. Woodson, Chair  
Rep. Trish La Chica, Vice Chair

Dear Chair Woodson, Vice Chair La Chica and Committee Members:

The undersigned organizations represent a broad cross-section of the creative industries, including authors, publishers, bookstores, motion pictures, music, newspapers, and software. We are writing to express our strong opposition to HB 2577, which would unconstitutionally regulate literary works by dictating licensing terms from copyright owners to libraries for ebook and other formats.

This legislation will harm individual authors and artists, undermine creative industries, drastically reduce the value of creative works to the economy, and—as a federal court has already found—represents an impermissible state intrusion into an exclusively federal body of law. In threatening both the integrity and efficacy of the U.S. Copyright Act, HB 2577 also threatens the creators and creative industries that depend on a uniform law and would undercut the Nation’s critically important protections of intellectual property. In short, it is of grave concern to all of us and the members we represent.

HB 2577 Will Harm the Creative Industries and Hawaii’s Economy

Copyright industries create high-paying jobs and employ millions of people, and the copyright economy consistently grows at a faster rate than the overall U.S. economy. More than eleven million people are directly employed by core copyright industries—including books, motion pictures, music, software, newspapers, and magazines—and these industries add more than \$2 trillion in annual value to U.S. GDP and create numerous jobs for distribution partners in Hawaii. That economic growth is the direct result of a uniform federal system of rights and responsibilities and the innovation it spurs.

This bill will harm both creativity and competition. By regulating when and how authors make their works available, this legislation will artificially devalue competitive markets, not only undercutting the royalties that would otherwise be earned by authors, but also exacerbating an already difficult economic environment. In addition, this legislation would distort, if not cannibalize, the commercial markets that local bookstores rely on, thereby threatening family-sustaining jobs that these institutions provide in their communities. HB 2577 would threaten the very foundation that has governed the disposition of copyrighted works to great success, a foundation upon which both libraries and the economy depend.

We understand and appreciate the value and critical importance of our public libraries. Book publishers of all sizes already make their full digital catalogs available for library lending, and as a result, digital library lending is booming at unprecedented levels, with a dizzying *820 million* checkouts last year, an increase of nearly 11% over the previous year. Indeed, despite arguments to the contrary, there is no market failure that would justify the systemic regulation that this bill would establish, even if Hawaii was not federally preempted from enacting legislation of this nature. Rather, literary works of all kinds, motion pictures, music and software are more broadly accessible than they have been at any time in our history.

We appreciate that public libraries will naturally aspire to serve as many patrons as possible with as many creative works as possible. However, this should not be done at the expense of creators whose very livelihoods depend on their ability to control and enforce the use and monetization of their works in accordance with the Copyright Act, including vigorously pursuing their respective marketplace opportunities. While there may be legitimate reasons to examine other ways to support and strengthen public libraries, HB 2577 is harmful and unnecessary. The unprecedented number of digital check outs confirms the premise that there is no shortage of support for libraries from publishers.

### HB 2577 Is Unambiguously Unconstitutional

Both state governments and courts have rejected the bill's approach as an illegal and unwise attempt to regulate intellectual property. In December of 2021, New York Governor Kathy Hochul vetoed almost identical legislation in concluding that **“copyright protection provides the author of a work with the exclusive right to their works. As such, federal law would allow the author, and only the author, to determine to whom they wish to share their work and on what terms. Because the provisions of this bill are preempted by federal copyright law, I cannot support this bill.”**<sup>1</sup>

The federal courts agreed. In 2022, a federal district court swiftly struck down a similar bill enacted in Maryland, finding it **“unconstitutional and unenforceable because it conflicts with and is preempted by the Copyright Act.”** It held that the now-overturned Maryland law **“stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”**<sup>2</sup> Maryland declined to appeal from this well-reasoned decision.

### HB 2577 Would Decrease Public Access to Books and Other Copyrighted Works

As organizations who represent authors, artists, creators, and other copyright holders, we are committed to ensuring broad access to copyrighted works by bringing those creative works to market, and it is the copyright law that makes that possible. Across the creative industries, robust federal copyright protection has been the bedrock upon which flexible business models have been built, giving consumers more choices than ever before

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<sup>1</sup> “Hochul Vetoes New York's Library E-book Bill,” Publishers Weekly (Dec. 30, 2021), <https://www.publishersweekly.com/pw/by-topic/digital/copyright/article/88205-hochul-vetoes-new-york-s-library-e-book-bill.html>.

<sup>2</sup> [Ass'n of Am. Publishers, Inc. v. Frosh, No. DLB-21-3133, 2022 U.S. Dist. LEXIS 105406 \(D. Md. June 13, 2022\)](#).

about how, when and where they view the content they love. By regulating the license terms of copyrighted works, HB 2577 would put a chilling effect on these vital freedoms. The legislation encroaches upon these freedoms not only by regulating a certain manner of commercial dealing under penalty of law but by regulating when and how authors ought to make their works available.

In closing, we are happy to support public libraries in ways that do not violate federal law or undermine authors, publishers, and other copyright holders. But we must vigorously oppose legislation that will hurt small businesses, including bookstores, authors, and other creators and that violates the federal copyright framework, endangering our ability to bring books and other copyrighted works to the public marketplace.

For all of these reasons, we respectfully oppose HB 2577.

Sincerely,

Association of American Publishers  
American Booksellers Association  
American Society of Composers, Authors & Publishers  
Broadcast Music Inc  
CreativeFuture  
Entertainment Software Association  
Independent Film & Television Alliance  
Music Workers Alliance  
National Press Photographers Association  
Recording Industry Association of America  
Software & Information Industry Association

The Authors Guild  
American Association of Independent Music  
American Society of Media Photographers  
Copyright Alliance  
Digital Media Licensing Association  
Independent Book Publishers Association  
Motion Picture Association  
National Music Publishers' Association  
News Media Alliance  
Screen Actors Guild – American Federation of  
Television and Radio Artists

**HB-2577**

Submitted on: 2/13/2026 8:08:56 PM

Testimony for EDN on 2/17/2026 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Johnnie-Mae L. Perry	Individual	Support	Written Testimony Only

Comments:

I, Johnnie-Mae L.Perry, Support

2577 HB RELATING TO LICENSING OF ELECTRONIC LITERARY MATERIAL.



February 16, 2026

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Rep. Justin H. Woodson, Chair  
Rep. Trish La Chica, Vice Chair

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This legislation will harm individual authors and artists, undermine creative industries, drastically reduce the value of creative works to the economy, and—as a federal court has already found—represents an impermissible state intrusion into an exclusively federal body of law. In threatening both the integrity and efficacy of the U.S. Copyright Act, HB 2577 also threatens the creators and creative industries that depend on a uniform law and would undercut the Nation’s critically important protections of intellectual property. In short, it is of grave concern to all of us and the members we represent.

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National Press Photographers Association  
Recording Industry Association of America  
Software & Information Industry Association

The Authors Guild  
American Association of Independent Music  
American Society of Media Photographers  
Copyright Alliance  
Digital Media Licensing Association  
Independent Book Publishers Association  
Motion Picture Association  
National Music Publishers' Association  
News Media Alliance  
Screen Actors Guild – American Federation of  
Television and Radio Artists