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## **OLR Bill Analysis**

### **sSB 131**

#### ***AN ACT CONCERNING ELECTRONIC BOOK AND DIGITAL AUDIOBOOK LICENSING.***

#### **SUMMARY**

This bill requires publishers who offer electronic books (ebooks) or digital audiobooks to the public to give any Connecticut library, if requested, a license agreement or contract on reasonable terms. Under the bill, “reasonable terms” are those that allow the library to give its users access to the ebook or digital audio book and consider the publisher’s business model and the library’s efficient use of its funds.

The bill outlines prohibited and allowed provisions in the agreements or contracts, particularly with respect to lending terms. (While the federal Copyright Act’s “first sale” rule allows libraries to lend copyrighted material that they own, like books, to their users freely, there is no such rule for licensed formats like ebooks (see BACKGROUND).)

A violation of the bill’s reasonable terms requirement is violation of the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND).

Under the bill, an “ebook” is a text document converted into, or published in, a digital format that can be read on a computer or portable electronic device (e.g., cell phone or electronic book reader). A “digital audiobook” is a sound recording of a reading of a literary production, converted into, or published in, a digital audio file that can be listened to on a computer or portable electronic device. “Publishers” are people in the business of manufacturing, promulgating, or selling books, journals, or other literary productions (including digital formats and digital audiobooks) with text, pictures, or both.

EFFECTIVE DATE: October 1, 2022

## **PERMITTED TERMS**

Under the bill, a contract or license agreement between a publisher and requesting library may require that the library:

1. limit the number of users that may simultaneously access an ebook or digital audiobook or
2. use technological protection measures that prevent users from (A) accessing an ebook or digital audiobook after the access period ends, as specified in the license, and (B) giving other users access to an ebook or digital audiobook.

## **PROHIBITED TERMS**

Under the bill, no contract or license agreement between a publisher and requesting library may:

1. prohibit the library from loaning ebooks or digital audiobooks, including through any interlibrary loan system;
2. restrict the number of times the library can loan an ebook or digital audiobook or the loan period;
3. limit the number of ebook or digital audiobook licenses the library can buy on the date that the ebook or digital audiobook is made available for public purchase;
4. prohibit the library from making nonpublic preservation copies of an ebook or digital audiobook; or
5. restrict the library from disclosing to another library in the state the terms of a license agreement.

Under the bill, “loan” means to create and transmit to a library user a copy of an ebook or digital audiobook, which is deleted when the loan period expires.

## **BACKGROUND**

### **CUTPA**

The law prohibits businesses from engaging in unfair and deceptive

acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order (CGS § 42-110a et seq.).

***Federal Copyright Act's "First Sale" Rule (17 U.S.C. § 109)***

Under the "first sale" rule, publishers must generally allow a library to (1) purchase print books and phonorecords (e.g., CDs) in the same way as members of the public and (2) lend the materials to its users without the publisher's consent or paying for the privilege. Ebooks and digital audiobooks, however, are generally licensed to libraries, and so are not covered by the rule.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/11/2022)