



A Maryland Library Association Statement on Maryland’s Digital Content Law

In 2021, Maryland enacted a law requiring “...a publisher who offers to license an electronic literary product to the public to also offer to license the 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.” The following document sets forth what the Maryland Library Association (MLA) believes the Maryland General Assembly meant by “reasonable terms” in Public Libraries - Electronic Literary Product Licenses – Access. We invite discussion of these issues in the coming months and look forward to engaging with all stakeholders.

What are “reasonable terms?”

Libraries and publishers have a long established and mutually beneficial relationship buying and selling print materials. Digital technology has been disruptive. Faced with new parameters, publishers developed licensing models that are in some cases problematic for libraries. Some prices make digital lending far costlier for libraries than print lending, even to the point of being unsustainable, disadvantaging library readers. Some publishers have used various forms of embargoing to limit the availability of titles or refused to license to libraries altogether. Digital content can only be provided under the set license terms, so that readers are effectively prevented from seeing content through libraries. Faced with issues of cost and availability, libraries in Maryland turned to the General Assembly, which responded with the new legislation.

Testimony from legislators when proposing the legislation, and indeed the final bill itself, suggests the Maryland General Assembly meant first that eBooks and eAudiobooks offered to the public in Maryland must also be offered to libraries without restriction on when libraries can access the book or how many copies can be obtained.

The Maryland General Assembly further encouraged the development of basic eBook and eAudiobook license terms that use print as a model. Library eBooks and eAudiobooks with print-equivalent license terms (loaned sequentially for a limited lifespan) should have print-equivalent prices. Based upon a centuries old model, updated to the digital realm, print-equivalent terms could be fair to publishers, authors, libraries, and users, supporting the rich, healthy reading ecosystem on which we all depend. The terms we suggest below in response are not prescriptive. They are suggestions meant to open dialog.

The General Assembly also recognized that an eBook does not deteriorate in the same manner as a physical copy. “Reasonable terms” could include a limitation on the number of times a library could lend a digital copy, based on the number of times a library typically could lend a copy of a work in a physical format before replacing it due to damage or deterioration. Library research finds the following lifespans for physical items:

Format Average circulation

Hardback	30-35
Paperback	15-20
Audiobook on CD	55-60

It is reasonable for digital licenses to be similar: eBooks at 25 circs, eAudiobooks at 55. Since audiobooks on CD are being phased out, however, a circulation number for eAudiobooks equal to eBooks would be reasonable.

Since library print pricing depends on both publisher and distributor, we are happy to provide publishers with estimates on what Maryland libraries typically spend on physical materials. A rough idea of print-equivalent licensing could be gathered by looking at cost divided by number of circs. Since library pricing depends on both publisher and distributor, however, we invite publishers and distributors to discuss with us individually, or at least to propose individually, the best ways to determine print-equivalent licensing for digital content.

Time-based Vs. Circulation-based licensing

We are aware that many publishers choose eBook licenses that expire after a certain time period, such as 12 or 24 months. Time-based licenses are reasonable if the number of circulations that can occur within a given period could provide print-equivalent costs. As with print pricing, we invite publishers to work with us to determine average circulation on time-based eBooks and eAudiobooks.

Time-based licenses, however, incentivize library selectors to purchase books by only established authors, so as to ensure they are continuously checked out and thereby maximizing the value of that license. Libraries assist readers in discovering new authors and build fan bases. Because of this, we strongly recommend that publishers use a circulation-base formula to determine the limits of digital licenses rather than a time-based limit.

Special License Terms

Some eBook and eAudiobooks are currently offered by some publishers under other terms that libraries value:

- **Perpetual Use:** libraries own the license for as long as it is available from the publisher and distributor. The licenses do not expire after a given time period or certain number of circulations. Such licenses enable libraries to archive and preserve our culture, one of our mandates.
- **Concurrent Use:** libraries are allowed to loan an item to more than one patron at a time.

While it could be argued that a print copy could last indefinitely and so perpetual use is already a print-equivalent, most heavily-used print books do wear out. It is reasonable for prices on perpetual use to exceed those of metered licenses, and we encourage publishers to negotiate individually to offer perpetual licenses at appropriate costs. We hope to work with publishers to explore concurrent use in new ways to build readership on fair terms.

Multiple Models per Title

Some publishers offer a perpetual use license at a higher price point as well as various metered-access or pay-per-use licenses. This choice allows libraries to invest in the books they know they will want in the collection for years to come as well as to “take risks” on unknown authors. Therefore, we recognize the good faith of publishers who offer multiple license models per title.

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