



**BILL:** S.220 – An Act Relating to Vermont’s Public Libraries

**COMMITTEE:** Senate Committee on Education

**HEARING DATE:** January 31, 2024

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

**POSITION:** Oppose in Part (Section 2)

The News/Media Alliance (the “Alliance”) respectfully submits the following testimony in opposition to Section 2 of bill S.220, which we believe is ill-informed, unnecessary, preempted, and unconstitutional. We do not have a position or express views on the rest of the broader bill and strongly urge the Committee to remove Section 2 from it.

The News/Media Alliance is a nonprofit organization headquartered in Washington, D.C., representing the newspaper, magazine, and digital media industries, and empowering members to succeed in today’s fast-moving media environment. The Alliance represents over 2,200 diverse publishers in the United States and internationally, ranging from the largest news and magazine publishers to small, hyperlocal newspapers, and from digital-only and digital-first outlets to print papers and magazines. In total, the Alliance’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, nearly 100 magazine media companies with over 500 individual magazine brands, and dozens of digital-only properties.

Section 2 of the bill 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 Section 2 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, Section 2 of S.220 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, Section 2 of S.220 impinges on the exclusive rights created by the Copyright Act and is therefore preempted under it.

Bills in other states with similar language to Section 2 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, last year, Virginia’s Senate Committee on General Laws and Technology decided unanimously to reject a similar proposal in a 15-0 vote. And earlier this month, the Municipal and County Government

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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 Oct. 27, 2023).



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>5</sup>

While Section 2 of S.220 also raises other questions and concerns – many of which have been highlighted by other stakeholders – 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, the Alliance respectfully opposes Section 2 of S.220 and strongly urges the Committee to remove it from the bill.

We appreciate the opportunity to present these views to the Committee.

Respectfully submitted,

A handwritten signature in black ink that reads "Regan Smith". The signature is written in a cursive, flowing style.

Regan Smith  
Senior Vice President & General Counsel  
News/Media Alliance

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<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-v senate/> (last accessed on Oct. 27, 2023); 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).

