

06-2228-cv

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

RACHEL EHRENFELD,

Plaintiff-Appellant,

v.

KHALID SALIM A BIN MAHFOUZ,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF OF *AMICI CURIAE*

**AMAZON.COM, AMERICAN SOCIETY OF NEWSPAPER EDITORS,
ASSOCIATION OF AMERICAN PUBLISHERS, INC., AUTHORS GUILD, INC.,
ELECTRONIC FRONTIER FOUNDATION, EUROPEAN PUBLISHERS
COUNCIL, FORBES INC., JOHN FAIRFAX HOLDINGS, LTD.,
MEDIA/PROFESSIONAL INSURANCE, MEDIA INSTITUTE, NEWSPAPER
ASSOCIATION OF AMERICA, ONLINE NEWS ASSOCIATION, RADIO-
TELEVISION NEWS DIRECTORS ASSOCIATION, REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS, AND WORLD PRESS FREEDOM COMMITTEE**

**IN SUPPORT OF PLAINTIFF-APPELLANT
FOR REVERSAL OF THE DISTRICT COURT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* state as follows:

Association of American Publishers, Inc., American Society of Newspaper Editors, Authors Guild, Inc., Electronic Frontier Foundation, European Publishers Council, Media Institute, Newspaper Association of America, Online News Association, Radio-Television News Directors Association, Reporters Committee for Freedom of the Press, and World Press Freedom Committee each states that it is a not-for-profit organization, that it has no parent corporation, and that there is no publicly traded corporation that owns 10% or more of its stock.

Amazon.com states that it is a publicly held corporation, that it has no parent corporation, and that 10 percent or more of its stock is owned by Legg Mason, Inc., a publicly held corporation.

Forbes Inc. states that it is a privately held corporation, that it has no parent corporation, and that there is no publicly traded corporation that owns 10% or more of its stock.

John Fairfax Holdings, Ltd. states that it is a publicly held corporation, and that 10 percent or more of its stock is held by National

Nominees Limited, J.P. Morgan Nominees Australia Limited, and Westpac
Custodian Nominees Limited.

Media/Professional Insurance states that it is a privately held
corporation and that it is a wholly owned subsidiary of Aon Corporation, a
publicly held corporation.

Dated: New York, New York
July 12, 2006

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TABLE OF CONTENTS

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF THE <i>AMICI CURIAE</i> | 1 |
| ARGUMENT | 10 |
| REFUSING TO GRANT JURISDICTION IN THIS ACTION WOULD ALLOW THE IMPERMISSIBLE CHILLING OF PROTECTED SPEECH. | 10 |
| A. Existing Case Law Supports Judicial Intervention To Prevent the Chilling Effect of a Foreign Judgment, Even When No Attempt Has Been Made To Enforce That Judgment. | 10 |
| B. The Outstanding Judgment Will Continue To Have a Powerful Chilling Effect on Dr. Ehrenfeld in Particular, and on the Media in General. | 14 |
| CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

CASES

| | |
|---------------------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Abdullah v. Sheridan Square Press, Inc.</i> , No. 93 Civ. 2515 (LLS), 1994 WL 419847 (S.D.N.Y. May 4, 1994)..... | 12 |
| <i>Ackerman v. Levine</i> , 788 F.2d 830 (2d Cir. 1988)..... | 11 |
| <i>Association Union des Etudiants Juifs de France v. Yahoo! Inc.</i> , T.G.I. Paris, Nov. 20, 2000, 6 ILR (P&F) 434 (France)..... | 18 |
| <i>Bachchan v. India Abroad Publications, Inc.</i> , 154 Misc. 2d 228 (N.Y. Sup. Ct. 1992) | 11 |
| <i>Bangoura v. The Washington Post</i> , 258 D.L.R. (4th) 341 (Sept. 16, 2005) (Canada) | 18 |
| Corte di Cassazione, closed sez., 27 Dec. 2000, n.4741, V (Italy) | 18 |
| <i>DeRoburt v. Gannett Co., Inc.</i> , 83 F.R.D. 574 (D. Haw. 1979)..... | 12 |
| <i>Desai v. Hersh</i> , 719 F. Supp. 670 (N.D. Ill. 1989)..... | 11, 12 |
| <i>Dow Jones & Co. v. Gutnick</i> (2002) HCA 56 (Australia)..... | 18 |
| <i>Dow Jones & Co. v. Harrods, Ltd.</i> , 237 F. Supp. 2d 394 (S.D.N.Y. 2002), <i>aff'd</i> , 346 F.3d 357 (2d Cir. 2003)..... | 13 |
| <i>Ellis v. Time, Inc.</i> , 1997 WL 863267 (D.D.C.)..... | 11 |
| <i>Hilton v. Guyot</i> , 159 U.S. 113 (1895)..... | 10 |
| <i>Loutchansky v. Times Newspapers, Ltd.</i> , 2001 E.W.C.A. Civ. 1805, 2002 Q.B. 783 (England) | 18 |
| <i>Matusevitch v. Telnikoff</i> , 877 F. Supp. 1 (D.D.C. 1995) | 11 |
| <i>Sarl Louis Feraud Int'l v. Viewfinder, Inc.</i> , 406 F. Supp. 2d 274 (S.D.N.Y. 2005) | 11 |
| <i>Telnikoff v. Matusevitch</i> , 702 A.2d 230 (Md. 1997)..... | 12 |

Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme,
 169 F. Supp. 2d 1181, 1194 (N.D. Cal. 2001), *rev'd on other grounds*,
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 Defamation*, 18 TEMP. INT'L & COMP. L.J. 199, 226 (2004)..... 18

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 June 17, 2002..... 17

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 July 10, 2006)..... 13

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 (April 2004)*..... 18

Robyn Weisman, *Germany Bans Foreign Websites for Nazi Content*,
www.newsfactor.com/perl/story/6063.html
 (last accessed July 10, 2006)..... 17

INTEREST OF THE *AMICI CURIAE*

The First Amendment guards the credibility of journalists and authors of nonfiction, shielding writers from groundless attacks on their credibility and professionalism. In recent years, however, authors and publishers have faced the growing and dangerous threat of “libel tourism” – the cynical and aggressive use of claimant-friendly libel laws in foreign jurisdictions with no legitimate connection to the challenged publication. When a wealthy litigant successfully cherry-picks a strategically chosen foreign forum with plaintiff-friendly libel laws to cleanse his reputation by attacking the credibility of an American investigative author and her work, the damage to that author is direct and immediate. Such an action also sends an unmistakable message to other writers and publishers that scrutinizing the activities of that litigant, and others of similar wealth and combativeness, is a perilous legal, professional and financial course. American authors must have a means to affirmatively counter such attacks and relieve themselves of the stigma and the financial threat posed by such judgments.

The need for remedies in United States courts against such judgments is particularly urgent today, when our national security depends, in part, on the efforts, courage and credibility of journalists investigating the causes, participants and funding of international terrorism. Rarely in the

history of the United States have the principles underlying our First Amendment – the need for vigorous, open debate and a free flow of information on matters of vital public interest such as the funding of terrorism – been more important. Libel actions brought in foreign jurisdictions against United States authors and publishers pose a substantial threat to the vigorous exercise of the constitutional right to report on such matters – a threat that is magnified by the increasing availability of United States publications around the world via the Internet.

Amici are an Australian newspaper publisher; associations representing the United States publishing, newspaper and broadcast journalism industries and European publishers; one of the Internet's foremost online retailers; the publisher of America's leading business publication; associations representing Internet journalists and advocating freedom of expression on the Internet; a worldwide leader in media insurance coverage; and organizations in the United States and Europe that assist journalists and publishers and advocate for freedom of expression in virtually every country on the globe. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a). *Amici* are uniquely suited to assist the Court in the resolution of these issues.

Amazon.com is one of the world's largest and best known online retailers. Amazon.com, a Fortune 500 company based in Seattle, opened on the World Wide Web in July 1995. Amazon.com seeks to be the Earth's most customer-centric company, where customers can find and discover anything they might want to buy online, and endeavors to offer its customers the lowest possible prices. Amazon.com and other sellers offer millions of unique new, refurbished and used items in categories such as beauty, health and personal care, jewelry and watches, gourmet food, sports and outdoors, apparel and accessories, books, music, DVDs, electronics and office, toys and baby, and home and garden. Amazon.com operates seven websites: www.amazon.com, www.amazon.co.uk, www.amazon.de, www.amazon.fr, www.amazon.co.jp, www.amazon.ca and www.joyo.com.

The American Society of Newspaper Editors is a nonprofit organization founded in 1922. It has a nationwide membership of approximately 800 persons who hold positions as directing editors of daily newspapers throughout the United States, with members recently being added in Canada and other countries in the Americas. The purposes of the Society include assisting journalists and providing an unfettered and effective press in the service of the American people.

The Association of American Publishers, Inc. (“AAP”) is the national trade association of the U.S. book publishing industry. AAP’s members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field; educational materials for the elementary, secondary, postsecondary and professional markets; computer software; and electronic products and services. AAP represents an industry whose very existence depends upon freedom of expression and a free press.

The Authors Guild, Inc., founded in 1912, is the nation's oldest and largest organization of published, professional authors of all genres. Its more than 8,000 members include journalists, historians, biographers, novelists, poets and other authors of fiction and nonfiction. Members include winners of Pulitzer and Nobel Prizes, PEN/Faulkner and National Book Awards, Caldecott and Newbery Medals, MacArthur and Guggenheim Fellowships and numerous other accolades and awards in the worlds of literature and entertainment. The Authors Guild works to promote authors’ rights and interests in various areas of law and business. As such, the Guild advocates for the protection of writers’ First Amendment rights in freedom of expression and anti-censorship initiatives. Since the early 1990s,

the Authors Guild has employed a staff of attorneys to advise authors on the scope of their free speech and intellectual property rights. In the last seven years, the Authors Guild Legal Department has addressed more than 7,000 separate matters for its members, many of which involved First Amendment issues. The Authors Guild views this case as bearing directly on the ability of authors to carry on their business of writing as a livelihood.

The Electronic Frontier Foundation (“EFF”) is a nonprofit, civil liberties organization working to protect rights in the digital world. Founded in 1990, EFF has more than 12,000 members. EFF actively encourages and challenges industry and government to support free expression, privacy and openness in the information society. EFF’s website (<http://www.eff.org>) receives more than 1.5 million hits per day – more than 45 million hits per month – and is one of the most linked-to websites in the world. EFF estimates that its website receives approximately 3.15 million unique visitors every month. In addition, EFF generates a weekly e-mail newsletter that has more than 52,000 subscribers worldwide.

The European Publishers Council (“EPC”) is a high level group of chairmen and chief executives of 29 leading European media corporations whose interests span newspaper, magazine and online database publishing as well as interests in private broadcasting. The EPC was

founded in January 1991 with the express purpose of reviewing the impact of proposed European legislation on the press, and then expressing an agreed opinion to the initiators of the legislation, politicians and opinion-formers.

Forbes Inc. is a privately held publishing and new media company. Its flagship publication is *Forbes*, oldest of the nation's major business magazines, which will celebrate its 90th anniversary in 2007 and remains the leading American business publication. *Forbes*, *Forbes Asia*, and the company's eight local-language editions together reach a worldwide audience of over five million readers. In an industry increasingly dominated by public conglomerates, Forbes Inc. continues to be one of the largest and most successful family businesses of its kind. In recent years the company has expanded to include Forbes.com, Forbes Conference Group, Forbes Custom Media, and American Heritage.

John Fairfax Holdings Ltd. ("Fairfax") is Australia's largest newspaper publishing group. Its mastheads include *The Sydney Morning Herald*, *The Age*, *The Australian Financial Review*, *BRW* and *The Sun-Herald* in Australia and *The Dominion Post* and *The Press* in New Zealand. In addition, Fairfax publishes regional and community newspapers, financial and consumer magazines, and provides online, interactive and e-commerce services through f2 Network, its wholly owned Internet subsidiary. f2

Network is visited by more than 3 million unique users monthly in two principal areas: news and classifieds. On an average day, f2 Network has visitors from 187 different countries.

The Media Institute (“Institute”) is an independent, nonprofit research foundation in Arlington, Virginia, specializing in issues of communications policy and freedom of speech. The Institute advocates and promotes three principles: First Amendment freedoms for all media; the development of a dynamic communications industry based on competition rather than regulation; and excellence in journalism. The Institute has participated in United States federal regulatory proceedings and in select cases before federal courts of appeal and the Supreme Court of the United States. The Institute also conducts research projects and conferences, and sponsors publications relating to the First Amendment and other communications policy issues.

Media/Professional Insurance (“M/PI”) is the worldwide leader in media, Internet and miscellaneous E&O coverage. Founded in 1979, M/PI offers innovative solutions, exceptional service, and responsive claims handling for all sizes and classes of risk with media content, Internet-related exposures and a wide range of service-oriented businesses. All M/PI programs are backed by top-rated insurance carriers.

The Newspaper Association of America (“NAA”) is a nonprofit organization representing the interests of more than 2,000 newspapers in the United States and Canada, of which more than 1,500 have news websites. NAA members account for 87 percent of the United States daily newspaper circulation and a wide range of non-daily newspapers. One of NAA’s key strategic priorities is to advance newspapers’ First Amendment interests, including the ability to gather and report the news.

The Online News Association (“ONA”) is the premier United States-based organization of online journalists. ONA’s members include reporters, news writers, editors, producers, designers, photographers and others who produce news for distribution over the Internet and through other digital media, as well as academics and others interested in the development of online journalism. In partnership with the Annenberg School for Communication at the University of Southern California, ONA administers the prestigious Online Journalism Awards. ONA is dedicated to advancing the interests of online journalists and the public, generally, by encouraging editorial integrity, editorial independence, journalistic excellence, freedom of expression and freedom of access.

The Radio-Television News Directors Association (“RTNDA”), based in Washington, D.C., is the world’s largest and only

professional organization devoted exclusively to electronic journalism. RTNDA represents local and network news executives, as well as educators and students, in radio, television, cable, the Internet and other electronic media in more than 30 countries. Founded as a grassroots organization in 1946, RTNDA's purpose was to set standards of news gathering and reporting. Although news techniques and technologies have changed since the early years of its founding, RTNDA's commitment to encouraging excellence in the electronic journalism industry, preserving journalists' ability to gather the news and upholding First Amendment freedoms remains the same.

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and freedom of information litigation in state, federal and international courts since 1970.

The World Press Freedom Committee ("WPFC") is an international coordination organization that includes 45 journalistic groups – print and broadcast, labor and management, journalists, editors, publishers and owners on six continents – united in the defense and promotion of press

freedom. Its goal is to strengthen and secure a global environment in which the news media can be free and independent. To this end, it works to reduce the ways and occasions in which governments, intergovernmental organizations or others try to legitimize restrictions on the press. Serving as a watchdog for free news media, the WPFC emphasizes its roles of monitoring press freedom issues and of coordinating of responses to press freedom threats or restrictions.

ARGUMENT

REFUSING TO GRANT JURISDICTION IN THIS ACTION WOULD ALLOW THE IMPERMISSIBLE CHILLING OF PROTECTED SPEECH.

A. Existing Case Law Supports Judicial Intervention To Prevent the Chilling Effect of a Foreign Judgment, Even When No Attempt Has Been Made To Enforce That Judgment.

Common law precedent strongly suggests that United States courts have both the power and duty to intervene to prevent an outstanding, unenforced foreign judgment from inhibiting the exercise of First Amendment rights in the United States. The Supreme Court long ago made clear that comity ““does not require, but rather forbids”” recognizing foreign laws and judgments when such recognition would be against public policy. *Hilton v. Guyot*, 159 U.S. 113, 155 (1895). This Court has succinctly

explained that a judgment is against public policy if it is “repugnant to fundamental notions of what is decent and just in the State where enforcement is sought.” *Ackerman v. Levine*, 788 F.2d 830, 841 (2d Cir. 1988) (quoting *Tahan v. Hodgson*, 662 F.2d 862, 864 (D.C. Cir. 1981)).

Many courts, including courts in New York, have applied this basic principle in refusing to apply foreign libel laws or to enforce foreign libel judgments that would chill protected speech within the United States. For example, in *Matusевич v. Telnikoff*, the court declined to enforce a British libel judgment because doing so would have deprived the plaintiff of his First Amendment rights, and thus was “repugnant to the public policies” of Maryland and the United States. 877 F. Supp. 1, 2, 4 (D.D.C. 1995). In *Bachchan v. India Abroad Publications, Inc.*, the court reached a parallel conclusion, refusing to enforce a British libel judgment due to the “‘chilling’ effect” that would result from applying speech standards “antithetical to the protections afforded the press by the U.S. Constitution.” 154 Misc. 2d 228, 234-35 (N.Y. Sup. Ct. 1992). Similarly, in *Desai v. Hersh*, the court dismissed a claim under Indian libel law, which is much like that of Britain,

so as not to chill protected domestic speech. 719 F. Supp. 670, 676-79 (N.D. Ill. 1989).¹

This line of cases relies not only on a chilling effect's impact on individual liberty, but also on its potentially devastating implications for the crucial spread of information and ideas of public interest. For example, the *Desai* court grounded its decision, at least in part, on the public's need for the "uninhibited, robust, and wide-open' debate necessary to insure the free flow of information to the American people about matters concerning the United States." 719 F. Supp. at 677-78. Similarly, in *Telnikoff v. Matusevitch*, the court explicitly held that "the importance of [the] free flow of ideas and opinions on matters of public concern" precluded recognition of the English libel judgment at issue. 702 A.2d 230, 251 (Md. 1997).

¹ See also *Sarl Louis Feraud Int'l v. Viewfinder, Inc.*, 406 F. Supp. 2d 274, 285 (S.D.N.Y. 2005) (refusing to enforce a French libel judgment that was "incompatible" with the First Amendment because doing so would have been "repugnant to the public policy of [New York]"); *Ellis v. Time, Inc.*, 1997 WL 863267, 13 (D.D.C.) (prohibiting application of British libel law, because it would have chilled protected speech and violated the First Amendment); *Abdullah v. Sheridan Square Press, Inc.*, No. 93 Civ. 2515 (LLS), 1994 WL 419847, 1 (S.D.N.Y. May 4, 1994) (refusing to apply British law "since establishment of a claim under the British law of defamation would be antithetical to the First Amendment protections accorded the defendants"); *DeRoburt v. Gannett Co., Inc.*, 83 F.R.D. 574, 580 (D. Haw. 1979) (finding that "the public policy of the United States requires the application of the First Amendment to libel cases brought in the courts of this country").

Though all of these cases involve efforts to enforce foreign laws or judgments, the chilling effect of an outstanding, unenforced foreign judgment at odds with the First Amendment can be just as powerful—its impact on personal liberty and the public dissemination of ideas and information just as great. Thus, there seems to be an equally strong basis for a court to intervene in the latter type of situation. In *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*, the court did just that, issuing a declaratory judgment against the enforcement of a French judicial order that Yahoo! remove certain protected content from the web. 169 F. Supp. 2d 1181, 1194 (N.D. Cal. 2001), *rev’d on other grounds*, 433 F.3d 1199 (9th Cir. 2006), *cert. denied*, 126 S. Ct. 2332 (2006). Despite the fact that the defendant had made no effort to enforce the judgment in the United States, the court intervened because “the ongoing possibility of its enforcement in the United States chill[ed] Yahoo!’s First Amendment rights.” *Id.*

Dow Jones & Co. v. Harrods, Ltd., is not to the contrary. 237 F. Supp. 2d 394 (S.D.N.Y. 2002), *aff’d*, 346 F.3d 357 (2d Cir. 2003).

Though the court did deny the declaratory relief requested by the plaintiff, it did so in large part because there was no judgment yet in the English defamation proceeding at issue. *Id.* at 408. In sharp contrast to *Yahoo!*, the

court in *Dow Jones* found the complaint to be “grounded on a string of apprehensions and conjectures.” *Id.*

B. The Outstanding Judgment Will Continue To Have a Powerful Chilling Effect on Dr. Ehrenfeld in Particular, and on the Media in General.

Appellant Rachel Ehrenfeld, a United States citizen and the director of the United States-based American Center for Democracy, wrote *Funding Evil: How Terrorism is Financed and How to Stop It*. The book was published in 2003 by Bonus Books, a United States publisher, solely in the United States. The book alleges that defendant Khalid Salim a Bin Mahfouz, a subject of Saudi Arabia, financially supported Al Qaeda in the years preceding the September 11, 2001, terrorist attacks on New York and Washington, D.C.

Mr. Bin Mahfouz alleges that Dr. Ehrenfeld’s statements concerning him in *Funding Evil* are false and defamatory. In order to vindicate his reputation, he brought a libel action against Dr. Ehrenfeld. He did not, however, bring it in the United States, where Dr. Ehrenfeld works and lives and where *Funding Evil* was published. Instead, he sued Dr. Ehrenfeld in England. Why did Mr. Bin Mahfouz choose to sue in England? It was surely not because jurisdiction properly lay there – only 23 copies of the book seem to have been purchased by English citizens from Internet

sites. Nor was it because he is an English citizen – he is not. Rather, it was to avoid the application of United States libel law and the protections that the First Amendment provides to libel defendants.

By avoiding the First Amendment, and thereby not having to prove falsity or actual malice, Mr. Bin Mahfouz was able to obtain “substantial damages,” as he has described it on his website,² against Dr. Ehrenfeld, an injunction against the publication of *Funding Evil* in the United Kingdom, and even an extraordinary “declaration of falsity” in which the court determined (without the benefit of the views of Dr. Ehrenfeld, Bonus Books or any other witnesses) that *Funding Evil* is false and defamatory. This default judgment might never be executed against Dr. Ehrenfeld, particularly given Mr. Bin Mahfouz’s apparent efforts to avoid the jurisdiction of United States courts.³ But the judgment’s value to Mr. Bin Mahfouz’s campaign against Dr. Ehrenfeld and other journalists who have also linked him to the funding of terrorism is obvious.

The English default judgment, as well as the English court’s “declaration of falsity” and its injunction against publication, has chilled and

² See http://www.binmahfouz.info/news_20050503.html (last accessed July 10, 2006).

³ See Def. Mem. at 15-18. Mr. Bin Mahfouz also is a named defendant in 11 suits pending in this Circuit arising from the terrorist attacks on September 11, 2001. See Compl. at 16-17.

will continue to chill Dr. Ehrenfeld's exercise of her First Amendment rights for two main reasons. First, it likely compromises her ability to find publishers, which obviously limits her ability to publicize her research. Publishers, who carry insurance policies imposing obligations to review the liability risks of works they consider for publication, may well shy away from an author subject to such a judgment. In fact, some already have. After Mr. Bin Mahfouz posted his account of the English judgment on his website, two publications that regularly featured Dr. Ehrenfeld's work rejected a well-researched and referenced piece of hers about a Saudi-owned company. JA 61.

Second, regardless of the willingness of publishers to publish her work, in subjecting Dr. Ehrenfeld to liability based on the content of her publication, the English judgment deters her from making any future statements about Mr. Bin Mahfouz, or any other subjects of her research, that might be alleged to be defamatory under English law. After all, even if it remains unenforced, an outstanding British default judgment – especially one that includes a “declaration of falsity” – harms Dr. Ehrenfeld's reputation as an American author and researcher. Further, such a situation causes her financial harm, creating the ongoing risk of domestic enforcement proceedings and potentially compromising her ability to borrow funds and

acquire property, even in the United States. Thus, Dr. Ehrenfeld has already begun to tailor her writing to the more restrictive British libel standards, choosing not to publish everything that her research has revealed, in order to avoid any more suits like Mr. Bin Mahfouz's. JA 2.

But the chilling effect of the libel tourism tactic will not be limited to Dr. Ehrenfeld. Increasingly, publishers are being subjected, based on *de minimis* availability of their works abroad, to the jurisdiction of foreign courts that apply laws that do not comport with the United States Constitution or United States public policy, at the behest of libel tourists such as Mr. Bin Mahfouz. Mr. Bin Mahfouz alone has sought to silence his critics by threatening to sue or by actually suing for defamation at least 29 times in the United Kingdom, *see* Compl. ¶¶ 23-24, effectively chilling all speech that might be critical of him. Such behavior is especially troubling where, as here, the expressive activity in question occurred solely in the United States, where the First Amendment requires libel plaintiffs to meet a much more demanding burden of proof.

Those with assets abroad are particularly vulnerable. But even smaller publishers, newspapers and online media outlets operating entirely in the United States seeking funding for their expressive activities are likely to be handicapped in their day-to-day business activities when subjected to

potentially crippling foreign judgments. Individual investigative journalists and authors will be even more chilled.

This broad chilling effect, of course, not only jeopardizes the individual rights of members of the media, but also stunts the crucial free flow of information and ideas to the American public on matters of public concern. Litigation against U.S. publications and authors in foreign countries constitutes a clear threat to the ability of the U.S. press to vigorously investigate and publish news and information about the most crucial issues before the U.S. public – including, as in this case, the funding and sources of terrorism. The English judgment provides compelling evidence of the ease with which the subjects of critical investigative journalism are able to punish U.S. authors by using the courts of another country to avoid the protections of the First Amendment.

Internet publication and distribution of newspapers, books and other media has led to litigation in which the courts of Australia, Canada, England, France, Germany, Italy and Zimbabwe, among others, have ignored the laws under which publications have been produced and applied local laws to determine the liability of publishers and authors.⁴ If publishers

⁴ See, e.g., *Dow Jones & Co. v. Gutnick* (2002) HCA 56 (Australia); *Bangoura v. The Washington Post*, 258 D.L.R. (4th) 341 (Sept. 16, 2005) (Canada); *Loutchansky v. Times Newspapers, Ltd.*, 2001 E.W.C.A. Civ.

may be sued in any country in which a handful of citizens have accessed or purchased their works over the Internet, the media will lose the important ability to predict the law that will apply to their publications. This trend, if unrestrained, inexorably will lead to publishers curtailing speech that would be protected in their home country out of legitimate concern that a more restrictive legal system will define their liabilities after publication.⁵ The principle that such judgments would be unenforceable to the extent they do

1805, 2002 Q.B. 783 (England); *Association Union des Etudiants Juifs de France v. Yahoo! Inc.*, T.G.I. Paris, Nov. 20, 2000, 6 ILR (P&F) 434 (France); Robyn Weisman, *Germany Bans Foreign Websites for Nazi Content*, www.newsfactor.com/perl/story/6063.html (last accessed July 10, 2006) (discussing German *Tobin* case); Corte di Cassazione, closed sez., 27 Dec. 2000, n.4741, V (Italy); Geoffrey Robertson, *Mugabe Versus the Internet*, THE GUARDIAN, June 17, 2002, at www.guardian.co.uk/Archive/Article/0,4273,4435071,00.html (last accessed July 10, 2006) (Zimbabwe). See generally Kurt Wimmer, *International Liability for Internet Content: Publish Locally, Defend Globally*, in A. Thierer & W. Crews (ed.), WHO RULES THE NET? INTERNET GOVERNANCE AND JURISDICTION at 239-247 (2003).

⁵ Indeed, this process already has begun. The International Chamber of Commerce and the American Bar Association reported, in a survey of hundreds of companies in 45 countries, that more than half of all media respondents have adjusted their business operations to account for Internet jurisdiction risk, most commonly by reducing business activity in “high risk jurisdictions.” Michael Geist, *Global Internet Jurisdiction: The ABA/ICC Survey* (April 2004); see also Bryan P. Werley, *Aussie Rules: University Jurisdiction Over Internet Defamation*, 18 TEMP. INT’L & COMP. L.J. 199, 226 (2004) (such a rule “forces [publishers] to choose between catering to the most oppressive, least free journalistic standard, or completely cutting off the stream of information to countries that maintain stringent libel standards”).

not comport with the laws of the country in which the work was published would protect free expression and enable publishers, whether in the United States, Europe or Australia, to retain the full benefit of their countries' laws in an Internet-enabled publication marketplace.

This Court and the district court should provide an essential counterweight for United States authors and publishers, like Dr. Ehrenfeld and Bonus Books, who increasingly are under attack by opportunistic litigants in the United Kingdom and elsewhere. The common law provides strong support for judicial intervention, and the failure to intervene would allow a powerful and impermissible chilling effect on protected speech of public concern to continue indefinitely.

CONCLUSION

For these reasons, *amici curiae* respectfully request that this Court reverse the decision of the district court and remand this action for consideration on the merits.

Dated: New York, New York
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**CERTIFICATION OF COMPLIANCE WITH RULE 32(a)
OF THE FEDERAL RULES OF APPELLATE PROCEDURE**

1. This brief complies with the type-volume limitation of Fed R. App. P. 32(a)(7)(B), as amended by Circuit Rule 32, because it contains 4,261 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2006, I caused two true and correct copies of the foregoing **Brief of *Amici Curiae***, dated July 12, 2006, to be served on the following counsel of record to the within action (06-2228-cv) in the manner so indicated in accordance with Rule 25 of the Federal Rules of Appellate Procedure, on this 12th day of July, 2006:

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