

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ASSOCIATION OF AMERICAN :
UNIVERSITY PRESSES, INC.; THE :
PROFESSIONAL/SCHOLARLY PUBLISHING :
DIVISION OF THE ASSOCIATION OF :
AMERICAN PUBLISHERS, INC.; :
PEN AMERICAN CENTER, INC.; and :
ARCADE PUBLISHING, INC., :
 :
Plaintiffs, :
 :
- against - :
 :
THE OFFICE OF FOREIGN ASSETS :
CONTROL OF THE DEPARTMENT OF THE :
TREASURY; JOHN W. SNOW, SECRETARY :
OF THE TREASURY, in his official capacity; :
and R. RICHARD NEWCOMB, DIRECTOR, :
OFFICE OF FOREIGN ASSETS CONTROL, :
in his official capacity, :
 :
Defendants. :
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**DECLARATION OF
WILLIAM BREICHNER**

1. I am the Journals Publisher of The Johns Hopkins University Press (“JHU Press”). I make this declaration in connection with the application of the plaintiffs in this action for declaratory and injunctive relief from certain regulations administered by the Office of Foreign Assets Control (“OFAC”) of the United States Department of the Treasury (“OFAC Information Regulations”) that restrict and, in many cases, prohibit the publication in the United States of works by authors in certain countries subject to U.S. trade sanctions, including Cuba, Iran and Sudan.

2. The Johns Hopkins University Press has been publishing scholarly works for 126 years. It is the oldest university press in continuing operation in the United States and has nearly 2,500 titles currently in print.

3. In addition to publishing approximately 250 new books each year, the JHU Press publishes 55 journals, many on behalf of leading scholarly societies, primarily in the social sciences and humanities. It is best known for its journals in fields of politics, history and literary criticism.

4. One of the functions of scholarly journals is to enable researchers around the world to learn about and build upon one another's work. The journals published by JHU Press feature works by authors from throughout the world. Many journals published by JHU Press focus directly on international relations and international understanding.

5. Two journals published by JHU Press that are particularly devoted to fostering international exchange are the *Journal of Democracy* and *Technology and Culture*. Both journals' ordinary publishing activities have recently been threatened by the OFAC Information Regulations.

The Journal of Democracy

6. The *Journal of Democracy* is a leading international forum for discussions of the problems and prospects of democracy around the world. Since 1990, it has been publishing articles about democratic developments in every region, "field reports" from democratic activists, reviews of important books on democracy, reports on recent elections, excerpts of speeches by leading democrats and dissidents, and news about the activities of pro-democracy groups in the United States and abroad. Its authors include eminent social scientists and historians, statesmen and leaders of democratic movements, and renowned intellectuals. It is written and edited for general readers as well as policymakers and scholars.

7. The *Journal* is a program of the International Forum for Democratic Studies, whose mission is to link democracy scholars and researchers around the world. The Forum is

part of the National Endowment for Democracy, a private non-profit organization created in 1983 to strengthen democratic institutions around the world through nongovernmental efforts. The *Journal* and a series of books that have grown out of its work (also published by JHU Press) are edited by Larry Diamond of Stanford University and Marc F. Plattner of the International Forum for Democratic Studies.

8. Vaclav Havel, the playwright and democracy advocate who became the president of the Czech Republic, has served on the International Advisory Committee of the *Journal of Democracy*. In January 2004 the *Journal* decided to publish excerpts of his correspondence with the leading pro-democracy activist in Cuba, Oswaldo Payá, about the transition from Communist Party rule to democracy. Payá was awarded the 2002 Sakharov Prize for his courage in promoting freedom in a repressive regime.

9. The letters exchanged by Havel and Payá offer insights into the history of democratic movements and the personal philosophies of two of the most important advocates of democracy in the world today.

10. The correspondence between Havel and Payá was translated and edited for publication in the *Journal of Democracy* in accordance with the *Journal's* ordinary procedures. The editors were preparing to publish the edited correspondence when they learned from JHU Press that OFAC restricts the publication of works by authors in Cuba.

11. JHU Press notified the editors of its journals in the winter of 2004 of interpretive rulings OFAC had issued indicating that the OFAC Information Regulations prohibit, among other things, (i) transactions related to information and informational materials by authors in the affected countries not fully created and in existence at the date of the transaction and (ii) the

substantive or artistic alteration or enhancement of newly created or pre-existing information or informational materials.

12. The editors of the journals often work with authors before a work is “fully created and in existence,” a practice the OFAC Information Regulations ban for authors in the affected countries. The editors of the *Journal of Democracy* may approach those who advocate or study democracy anywhere in the world to ask for articles on particular topics, and they work with authors, as articles are being written, to help define their themes and structure. The editors must be able to have these “transactions” before articles are completed, to determine the content of the material the *Journal* will present.

13. The editors also substantively edit every article the *Journal* publishes – whether it is a new work or a work that already exists. The OFAC Information Regulations prohibit the substantive alteration of works by authors in the sanctioned countries, but substantive editing is essential to ensure that each work meets the standards of the *Journal* and clearly presents the ideas and information that the *Journal* wishes to publish.

14. JHU Press was concerned that the ordinary editing that was necessary to prepare the translated letters of Oswaldo Payá to Vaclav Havel for publication in the *Journal of Democracy* could be viewed as substantive or artistic alteration of information or informational materials from an author in Cuba, which the OFAC Information Regulations forbid. We informed the editors of the *Journal* of our concern.

15. The National Endowment for Democracy has a license from OFAC for activities it carries out in Cuba to support democratic change. The *Journal of Democracy* and JHU Press were advised by the Department of the Treasury that publishing edited letters from Oswaldo

Payá would not be found to violate the OFAC Information Regulations. The edited letters were subsequently published in the April 2004 issue of the *Journal*.

16. The *Journal* was able to publish the correspondence of Havel and Payá, but the editors also want to be able to publish works by dissidents in Iran and by thinkers in Sudan. An important part of the mission of the *Journal of Democracy* is to publish works by leading dissidents in non-democratic nations. The editors do not wish to exclude authors in some of those countries from the field reports and other types of articles the *Journal* ordinarily publishes. They do not believe the *Journal* should have to risk civil and possibly criminal penalties to publish works that highlight the struggle for democracy in countries where democracy is in particular danger today.

17. By forbidding the publication of new works and the substantive editing of works from particular nations, OFAC is restricting the freedom of expression of American publishers and the freedom of American readers to learn from authors throughout the world.

18. The fact that publishers may apply to OFAC for licenses does not alleviate these concerns. In a democratic society, publishers should not have to request government permission. As articles in the *Journal of Democracy* have argued, government control of the media presents a major obstacle to democracy in many nations. The editors of the *Journal* are acutely aware of the censorship and self-censorship that result from vesting a government agency with discretion to determine what may be published and, therefore, what may be read. Who should make the decision? Why should Oswaldo Payá's discussions of democracy and Chinese dissidents' works be published, but Iranian dissidents' not? Publishers and the public, not the government, should decide.

Technology and Society

19. The same sort of dilemma now faces another journal published by JHU Press, *Technology and Culture*, the international journal of the Society for the History of Technology.

20. *Technology and Culture* is an interdisciplinary journal that publishes the work of historians, engineers, scientists, museum curators, archivists, sociologists, anthropologists and others, on the history of technology and its connections to politics, economics, the environment, public policy, business, labor, science and the arts. *Technology and Culture* publishes scholarly articles, critical essays, book reviews and reviews of museum exhibitions, drawing on the work of authors around the world. The journal does not exclude contributions by authors from any particular countries.

21. In early 2004, a professor at the University of Tehran submitted a paper on technology and Islamic theology to *Technology and Culture*. The editor, John M. Staudenmaier, S.J., forwarded the manuscript to outside scholarly referees in accordance with the journal's ordinary practice for evaluating submissions. Father Staudenmaier believes the article will require considerable, substantive work if it is to be published, as many articles do.

22. *Technology and Culture* is committed to presenting diverse and stimulating analyses, but they have no value unless readers understand them fully. The editors and outside peer reviewers therefore devote considerable effort to working with authors to convey their ideas as clearly and convincingly as possible. This often entails re-evaluating ideas and information in light of the questions raised by reviewers, and making substantive changes to the original manuscripts.

23. Knowing that the ordinary process of preparing an article for publication would involve extensive editing in collaboration with the author, which OFAC has described as a

“prohibited export of services,” the board of editors of *Technology and Culture* and JHU Press must soon decide whether to publish the article from Iran. We do not believe we should have to ask OFAC for permission and submit to the delay and standardless discretion the licensing process evidently entails. Publishers should not have to ask – or guess – whether their ordinary activities violate the law, and risk civil or criminal penalties for editing articles.

24. *Technology and Culture* decides whether to publish an article based on the merit of the contribution it can make to thought and scholarship in the field, not the nationality of its author. One of the principles of scholarly publishing, exemplified by *Technology and Culture*, is that ideas and information should flow freely across borders, for the benefit of American readers as well as the development of knowledge and understanding worldwide.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true, to the best of my information and belief.

Dated: September 21, 2004


William Breichner