

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**Judge Casey**

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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.,

Civ. No. \_\_\_\_\_

Plaintiffs,

**04 CV 7604**

- 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.

**DECLARATIONS IN SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY AND PERMANENT INJUNCTIONS**

**(VOLUME 1 OF 2)**

- DECLARATION OF MARC H. BRODSKY**
- DECLARATION OF PETER GIVLER**
- DECLARATION OF DANIEL J.J. ROSS**
- DECLARATION OF E. EDWIN SHARP**
- DECLARATION OF JOHN G. ACKERMAN**
- DECLARATION OF SCOTT MAHLER**
- DECLARATION OF WILLIAM BREICHNER**
- DECLARATION OF JANET M. FRANZENDESE**

**BRODSKY  
DECLARATION**

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 - :  
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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. :  
----- X

**DECLARATION OF  
MARC H. BRODSKY**

Pursuant to 28 U.S.C. § 1746, I, Marc H. Brodsky, hereby declare under penalty of perjury that the following is true, to the best of my information and belief:

1. I am the elected Chair of the Executive Council of the Professional/Scholarly Publishing Division of the Association of American Publishers (“PSP”), a plaintiff in this action.
2. The members of PSP publish, in print and electronic form, the vast majority of materials produced and used by scholars and professionals in the United States in science, medicine, technology, business, law and the humanities, in the form of books, journals, computer software, databases and CD-ROMs.
3. PSP itself works to protect and advance the interests of professional and scholarly publishers. PSP presents educational workshops and seminars on many subjects pertaining to

professional and scholarly publishing, sponsors a prestigious annual awards program for professional and scholarly publications, and acts as an advocate for the interests of its members.

4. The publications and publishing processes of members of PSP, which are described below, form an integral part of worldwide research in science, technology, medicine, social science, law, business and the humanities. Because of America's predominance in research and academic publishing, a great many of the most important works are published here, and researchers and authors in many countries, including countries subject to United States trade restrictions, are necessarily involved. The historical openness of the United States to new ideas and information has contributed to American primacy in scholarly and professional publishing.

5. PSP joins in bringing this action because trade restrictions are being applied to restrict the flow of valuable information into the United States, compromising the ability of American publishers to make their own contributions to the worldwide exchange of information and ideas and potentially impairing United States research capabilities. Regulations administered by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury (the "OFAC Information Regulations") restrict the publication of work by authors in countries such as Iran, Cuba and Sudan by forbidding certain activities that are essential to publishing: commissioning new works by authors in those countries, paying advances to them, promoting or marketing their works, and making substantive or artistic enhancements to their works. The regulations do allow Americans to import works that already exist in final form, but they cannot be substantively or artistically altered or enhanced, and they cannot be promoted or marketed.

6. OFAC vigorously enforces United States trade embargoes, and heavy fines have been assessed for violations of the regulations quite recently. Other criminal penalties, including imprisonment, may be imposed.

7. The regulations make ordinary, necessary publishing activities violations of the law and exert an inhibiting effect on all publishers, including members of PSP. They drive works of potential value toward foreign publishers, to the detriment of American publishers and the disadvantage of United States researchers and members of the public who need access to current findings. They penalize American publishers for attempting to apply rigorous standards of substantive editing and quality control to any works with authors in Cuba, Iran or Sudan, although they would permit publishers, paradoxically, to reprint works from those countries (and pay for them) as long as the works are not materially improved.

8. The work of authors in the affected countries is of more than theoretical interest to publishers and researchers in the United States. The scientific research community in Iran, for instance, is particularly sophisticated for a country that some consider part of the developing world. Iranian researchers are making notable contributions to the study of earthquakes and seismology, among other fields. Medical research in Cuba is also sophisticated and generates valuable information on the treatment and prevention of diseases such as meningitis B, retinitis pigmentosa, neck and breast cancer, and heart disease. Cuba's work in infectious diseases and vaccination programs has been of particular interest to researchers in public health. Researchers in Sudan are obviously on the front lines observing the effects of civil strife, religious conflict, land degradation, famine, and international relief efforts. The history and archaeology of each of the countries can often be illuminated in unique ways by scholars there. Political and social developments in each of them are of significant concern to the United States. PSP members

have a strong interest in bringing ideas and information that authors in those countries can provide to research communities and the broader public.

9. This declaration is submitted to describe the editorial and publishing processes of professional and scholarly publishers and illustrate the ways in which the prohibitions of the OFAC Information Regulations conflict with the activities of professional and scholarly publishers in our country.

10. I have personal knowledge of the matters described herein. I was elected Chair of the Executive Council of PSP for 2004-2006 after more than 35 years in science and scientific publishing. In my career as a physicist and electronic engineer, I have authored or co-authored more than 90 published technical papers, edited a book on amorphous semiconductors, and co-edited another. For the past 12 years, I have been the Executive Director and CEO of the American Institute of Physics, a nonprofit member corporation of ten scientific societies with a combined membership of 125,000 physicists, astronomers, engineers and students. The Institute is a significant scientific publisher itself, publishing scholarly journals, magazines, and conference proceedings and also providing publishing and online platform services for 114 journals from 18 other publishers.

#### **Professional and Scholarly Publishing**

11. Professional and scholarly works are published by commercial, for-profit companies, by non-profit scholarly and scientific societies, and by non-profit university presses. While such publishing is international in scope, the publishers represented by PSP produce a majority of the important primary research journals and other professional and scholarly publications in the world.

12. The members of PSP publish an enormous variety of books, academic and professional journals, databases and other publications, including continuing series of reference publications used in almost every field. Their content is developed, prepared for publication and distributed in a wide variety of ways.

13. The variations begin with how particular projects are initiated. Some works are solicited for publication by editors, others are commissioned based on proposals from authors and then developed into complete works, and still others are submitted as manuscripts that are very close to complete.

14. The processes of pre-publication review and editing also vary across a broad spectrum, depending on the nature of the publication and the nature and quality of the work. Some works may be reviewed and approved for publication with minimal changes from their original state. Others may be developed extensively through close, collaborative exchanges among authors, editors and outside referees.

15. All published works are marketed and promoted in some way.

16. To be meaningful, the right to publish must include the right to bring new works into existence, the right to substantively edit and enhance new works and works that already exist, the right to pay for works (including paying advances on royalties), and the right to market and promote them. Some of the practices of PSP members that the OFAC regulations affect are described below.

### **The Role of Publishing in the Research Process**

17. All the publications of scholarly and professional publishers disseminate information and ideas that support the work of scientists, scholars and professionals. The publications may be reference works or treatises for law, medicine or languages; regularly

updated series on pharmacology, gene splicing techniques, or tax policy; individual works on particular subjects, such as archaeology in the Sahara or economic change in China; and regularly published journals for scholars and professionals in every field.

18. Among the many types of products and services PSP members provide to support academic and professional researchers, especially in science, technology and medicine, are primary research journals, which publish articles that report the results of original research, usually after the articles have been subjected by the publisher to critical review by other scholars. Primary research journals illustrate most clearly the crucial role of publishing in research.

19. Articles in primary research journals are ordinarily written by the scientists and other researchers themselves, who are also the readers of the publications and are likely to use what they learn from their colleagues' articles in the development of their own research, in academic, medical or commercial institutions.

20. Publication of the results of original research is an integral part of the research process itself. Publication serves to validate the research claims through the quality control of peer review and to communicate research results to the interested community, which can respond and build upon them. Publication also registers the author's work, establishing priority and authorship, and creates a permanent record for reference in the scientific literature.

21. Scientists and scholars in the research community are the starting and ending point of the research/publishing cycle. The scientist-author (more typically a group of co-authors, often from different institutions), the editorial board of the journal (made up of experts in the field), the peer reviewers or referees (who are experts in the topic of the article), and the publisher all contribute to the final product, which is distributed by the publisher on behalf of researchers, for researchers and interested members of the public, the ultimate end-users.



22. The authors, editorial board members, referees and readers of the journal are all colleagues -- fellow researchers or academics -- which is why the process of critical pre-publication review is often known as peer review.

23. Research ordinarily begins as a private process, during which researchers, typically in teams, make observations and formulate theories. Research teams may involve collaborators from multiple institutions, sometimes in a number of countries. Typically, as theories are developed in discussions with colleagues, an initial draft of a talk or manuscript is prepared. As the draft moves outward for comment, a wider audience may be involved, leading to informal discussions at conferences and (in some fields) the posting of the article on a pre-print server.

24. The next stage in the research communication process is the publication of an article in a peer-reviewed (primary research) journal. This publication lies at the core of the research process. Only after peer review and the formal, public announcement of the results in a journal can the now documented, definitive conclusions be tested more broadly and subjected to further formal criticism, and can others build on the announced results in their own research.

25. Other types of professional and scholarly publications, such as books, treatises, formularies, research bulletins and encyclopedias, also provide the foundation for further research, and many of them are also written by researchers themselves, with the input of expert scholars and scientists acting as editors and referees.

### **How New Works Come Into Being**

26. Professional and scholarly publications are generated in a variety of ways. Scholars and researchers may generate the ideas and manuscripts for new works on their own,

but in many instances publishers themselves initiate the creation of new works. Generating ideas for new works is one of the primary functions of professional and scholarly publishers.

27. For peer-reviewed, primary research journals, scholars often submit full manuscripts of articles for consideration. For “focus” issues of journals, however – issues that present a collection of papers on closely related topics – editors often ask particular experts in the field to write new articles. Review journals, which are among the most frequently cited, synthesize and discuss the latest developments in scientific research and also solicit articles from qualified authors.

28. Decisions about which articles to publish and whether to commission articles are generally made by the editors, in consultation with the editorial boards of journals. The editorial boards are composed of scholars or scientists who are highly knowledgeable in the sub-disciplines covered by the journal, selected by one or more editor(s) in chief and the publisher. The editorial board members are typically not employed by publishers but are independent experts in academic or other research settings. Board members often serve as peer reviewers or referees or help coordinate peer review in consultation with the editors. Editors themselves are also generally independent academics, but some primary research journals employ editors directly. In the case of journals owned by professional or scholarly societies, the societies may hire the journals’ editors, who work with the publisher to prepare and distribute the societies’ journals.

29. The editorial boards or the editors employed by professional and scholarly publishers monitor developments in their fields and are therefore well qualified to commission books, articles and other publications from those working in the field or from authors chosen for their expertise and ability to communicate. Editors suggest ideas to potential authors they

believe can contribute to advancing understanding about particular topics. Editors are especially likely to seek out authors, and not wait for submissions, for publications that are frequently updated or that seek to present comprehensive information for a field. Authors also present proposals for new publications, which the publisher may then help develop. Whether the idea comes from the publisher or the author, however, in many cases a new work is created only when a publisher commissions it.

### **How Works Are Developed, Edited and Enhanced**

30. Even when a complete manuscript is submitted, as often happens for primary research journals, substantive work is carried out on it before it is accepted for publication. The editor(s) initially assess whether the article would be suitable for publication in the journal, considering whether the article fits the aims and scope of the journal and whether the article and the underlying research appear to be of sufficient quality. Subsequently, the editor submits the article to one or more peer reviewers or referees, selected by the editor, who perform a deeper assessment. Like editorial board members, referees are also scientists or scholars who participate in this process in addition to their other academic functions. If necessary, referees contact the author, usually anonymously, with the editors acting as intermediaries, to clarify key points and issues, raise questions about the existence of other research that could be relevant for discussion or citation, and consider whether the results reported appear to be valid and consistent with the state of the art in the particular discipline. They also make suggestions to improve the presentation of the results in the paper.

31. Most researchers and experts on the research process regard the peer review process for primary journals not solely as a publishing procedure but as a method of ensuring the high quality and reliability of research results. The methods of communication and editing

involved can vary enormously depending on the authors' level of sophistication and conventions in science writing, and the importance of the underlying research. The aim is not only to ensure that the article reads well but that the evidence, reasoning and conclusions are fully understandable and convincing enough to make a useful contribution to the field and to be testable by others seeking to reproduce the results.

32. Sometimes the peer review process or the editor(s)' review does not lead to publication. Articles may be rejected, but the rejection often comes with substantive advice on how the research or article could be redesigned or revised for the future. Editors and editorial boards consider that sort of substantive feedback, even though it does not lead directly to publication, to be part of the process through which research is improved and its results validated.

33. The peer review process described above illustrates a common method by which professional and scholarly publishers, through their editors and editorial boards, substantively alter and enhance the works they publish. But the editorial process for primary research journals does not end with the peer review process. Editing often continues for peer review journals, as described below, and publishers develop and edit works in many other ways for the myriad information products they produce.

34. Whether for books, journals, treatises, encyclopedias or other products, many professional and scholarly publishers have separate staffs of developmental editors and scientific editors, especially for their publications other than peer review journals. Editors of both kinds are ordinarily highly qualified in the substantive fields of the publications for which they are responsible. They often have master's or doctoral degrees and professional experience in the

relevant areas – whether it be as lawyers, librarians, laboratory scientists, language teachers or other specialists.

35. Developmental editors acquire and assign new works and help authors develop their ideas for new works. They communicate with authors to help develop the themes, ideas and organization of the work in progress, and they may help the authors plan their research. If the work is to be part of a series, the developmental editor will provide guidance on the format of the final work and the topics to be covered. Preliminary drafts may be exchanged for comment, and the complete draft will be reviewed for substance as well as style and clarity. A developmental editor may request that certain additional topics be addressed or certain topics omitted. Questions may be raised about the validity of reported results or the strength of arguments. Further research may be requested. The editor may rework the manuscript, moving or altering sections of the text to make it more useful or understandable to readers. Diagrams or illustrations may be added or requested. References may be added. The manuscript is almost always substantively and/or artistically altered and enhanced as a result.

36. For many publishers, there is in addition a separate step called copy editing or scientific copy editing. Once a manuscript is completed and edited by the developmental editor, it is subjected to a rigorous review for accuracy and consistency. For a scientific publication, the scientific copy editor will check statements that could affect the validity of the results reported or ensure that the work is useful for other scientists. Facts ranging from the DNA sequence for an amino acid to the proper incubation or storage conditions for a medical culture may be verified. For non-scientific publications, similar processes are often followed. Historical facts, bibliographic citations, foreign words and phrases, and many other items may be checked. For

all publications, copy editors work with authors to improve the consistency and readability of their work. The substance of the work is often altered, and its usefulness is definitely enhanced.

37. There are endless variations in the editorial processes of professional and scholarly publishers. Editors, editorial boards and outside referees play different roles for different publications. Editing may be more or less extensive. But collaboration in the process is the rule, not the exception. Editors, referees and authors communicate and agree on the final form of the work. The enhancements attributable to the editors and publishers often do amount to substantive or artistic alterations, and they add value to the works published.

38. Many publications are now produced in electronic form as well as on paper or are available exclusively on line. This development adds additional opportunities for publishers to enhance the works of authors. Electronic files may be enhanced with links to references and underlying data and other supplemental information relevant to the research and the article. Some information products that are available electronically have computer research capabilities that make the information easier to use. Such additions do enhance the value of the products for researchers and thereby add to the value publishers create.

### **How Works Are Promoted**

39. Professional and scholarly publishers actively market and promote the works they publish. Books are customarily described in illustrated catalogues that are distributed to wholesalers, retailers and editors. Advance copies are sent to journals and potential reviewers in the hope of generating attention through published reviews. Books are also displayed and sold at academic and professional conferences, which editors and authors often attend to promote their works. Brochures and flyers are distributed. Many books are also marketed through direct mail to the members of relevant professional organizations or other lists of potential readers.

Publishers' sales forces often market works specifically for academic use in college and postgraduate classrooms.

40. Many of the same techniques are employed to market other kinds of publications. While journals are most often promoted for subscription sales, individual articles are sometimes promoted through newspapers and magazines for general or specialized audiences. That technique has proved especially effective for medical journals, whose articles are often reported on by the media. The public relations departments of professional and scholarly publishers work to interest the media in particular articles that they expect to be of broad interest. The individual articles are generally available for purchase online or as reprints.

41. Publishers also make marketing and bibliographic information about individual works available online for electronic access. Searchable databases and indices make works accessible to the public and have become an effective form of marketing.

42. If publishers could not market and promote their works, publication would be pointless, because there would be no way to inform the public or the relevant profession that the works are available. A vital link in the research process would be lost.

### **How Works Are Paid For**

43. Professional and scholarly publishers may pay authors for their work. Many scholars and researchers have publishing contracts that provide for advances to be paid against the royalties their books will earn. Treatises, encyclopedias, many reference works and other publications could not be created if their authors were not paid because the authors would not devote the hundreds or thousands of hours necessary to create them without compensation.

44. Many journals do not pay the authors of articles because the exposure they receive for their work is a form of compensation, but others do. Authors often receive honoraria

(usually in the hundreds of dollars), and they may also (or instead) receive free subscriptions, which may be more valuable than the honoraria.

45. Authors of books and other publications are much more likely to be paid for their work.

46. Paying authors enables publishers to bring new works into existence or to update existing works, creating and expanding valuable resources for researchers and the public. If publishers could not pay authors, a vast portion of what is published would never exist.

#### **Applying For Permission to Publish**

47. I have been informed that publishers may apply to OFAC for licenses to publish works that would violate the regulations or for guidance on the limits of permissible editorial activity. I am not aware of any guidelines or rules that govern the discretion of OFAC in granting such licenses. In any event, seeking permission to publish would interfere with the research and publication process, delaying improvements in science and other aspects of our understanding of the world. Moreover, it would endanger the principles of free expression that have made the United States an engine of progress for the world and a beacon of hope for scholars and scientists everywhere.

48. I have reviewed several letters issued by OFAC within the past year to publishers who have inquired about editorial activities that may be permitted under the regulations. In an interpretive ruling dated September 15, 2003, OFAC ruled that an American entity could not enter into a licensing agreement with an Iranian publisher for publication of books in Iran, where the Iranian publisher would translate the works into Farsi, prepare the text and artwork for printing, and promote and sell the books. OFAC ruled that, "The engagement of a publisher in Iran to perform the services described in the license agreement, including but not limited to



preparing artwork for publishing, and promoting the works in Iran, would constitute substantive or artistic alteration or enhancement of the materials being exported and the provision of marketing services.... It would be contrary to current licensing policy to authorize such transactions.”<sup>1</sup>

49. In an interpretive ruling dated September 26, 2003, responding to questions about works originating in Iran, OFAC stated that engaging Iranian authors to create new works is prohibited, that publishing a book on behalf of a person in Iran is prohibited, and that “[i]nherent in the publication of a book are marketing, distribution, artistic, advertising and other services” which may not be provided.<sup>2</sup> All those “services,” are activities that professional and scholarly publishers engage in as a necessary part of publishing.

50. OFAC also ruled that essential editorial practices are prohibited:

[Y]our assistance in editing and preparation for publication of manuscripts... including activities such as reordering of paragraphs or sentences, correction of syntax, grammar, [sic] and replacement of inappropriate words would result in a substantively altered or enhanced product, and is therefore prohibited ... unless specifically licensed.

Professional and scholarly publishers routinely engage in such practices and must do so to ensure that the publishing process is worthwhile.

51. In response an inquiry from the Institute of Electrical and Electronics Engineers (“IEEE”), an organization that publishes several scholarly journals, OFAC subsequently confirmed that “collaborating on and editing manuscripts submitted by persons in Iran . . . may result in a substantively altered or enhanced product, and is therefore prohibited . . . unless specifically licensed.” OFAC’s interpretive ruling for IEEE, dated September 30, 2003, listed

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<sup>1</sup> A copy of the letter dated September 15, 2003 is annexed hereto as Exhibit A.

<sup>2</sup> A copy of the letter dated September 26, 2003, is annexed hereto as Exhibit B.

the same examples of prohibited editorial practices (reordering paragraphs or sentences, etc.) and stated specifically that IEEE's facilitation of a peer review process, including the selection of reviewers for the purpose of working with Iranian authors in a way that substantively enhances manuscripts, is prohibited: "U.S. persons may not provide the Iranian author substantive or artistic alterations or enhancements, and [IEEE] may not facilitate the provision of such alterations or enhancements." OFAC's letter noted that a U.S. publisher "would not be prohibited from accepting camera-ready copies of manuscripts from persons in Iran for its journal," but, as explained above, publishing "camera-ready copy" is not what scholarly and professional publishers do.<sup>3</sup>

52. IEEE submitted additional information to OFAC, and OFAC later ruled, in a letter dated April 2, 2004, that IEEE could engage in a limited peer review process described in IEEE's submissions, but only because the process started with completed manuscripts -- not new or commissioned material -- and involved only "general guidance and suggestions" from reviewers and editors, which OFAC deemed not to result in "substantive[ ] re-writ[ing] or revis[ion of] the manuscript" or "a collaborative interaction . . . resulting in co-authorship or the equivalent thereof." OFAC further stated that routine copy editing, such as correcting grammar, changing font sizes, and repositioning illustrations, could be permitted.<sup>4</sup>

53. OFAC's April 2 letter is inconsistent with its regulations and cannot be squared with the reality of professional and scholarly publishing. Even the peer review publication process described by IEEE, which OFAC approved, results in "the substantive or artistic alteration or enhancement" of the work, which the OFAC Information Regulations forbid.

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<sup>3</sup> A copy of the letter dated September 30, 2003, is annexed hereto as Exhibit C.

<sup>4</sup> A copy of the letter dated April 2, 2004, is annexed hereto as Exhibit D.

54. Moreover, the peer review processes of most scholarly and professional publishers go beyond the very limited processes described in OFAC's letter to IEEE, especially in the degree of collaborative interaction that takes place among the peer reviewers, editors and author(s) of a work, which OFAC prohibits. Further, as described above, the editorial work of professional and scholarly publishers is not limited to the peer review of complete manuscripts submitted to publishers, as the process described by OFAC is. Although the degree varies depending on the publication, publishing often involves the solicitation of manuscripts and close collaboration on developing ideas into publishable works, which the regulations and letters would forbid.

55. On July 6, 2004, OFAC issued an interpretive ruling stating that it would be permissible for a U.S. entity to fund the translation of already published literary works from Iran. Works not yet published were not addressed, but OFAC reiterated that substantially altering or enhancing such works would not be allowed.<sup>5</sup>

56. Most recently, on July 19, 2004, OFAC issued a letter in response to an inquiry from the American Society of Newspaper Editors, indicating that newspapers may edit a work from a country subject to sanctions by deleting superfluous text; correcting grammar, syntax or spelling errors; and substantively editing it "to make the work more understandable to the newspaper's readers and to make the work conform to the newspaper's editorial standards." OFAC declared that such "substantive editing" "would not constitute substantive or artistic alteration or enhancement of the article or commentary," which the regulations prohibit.<sup>6</sup>

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<sup>5</sup> A copy of the letter dated July 6, 2004, is annexed hereto as Exhibit E.

<sup>6</sup> A copy of the letter dated July 19, 2004, is annexed hereto as Exhibit F.

OFAC's letter does not explain why "substantive editing" does not constitute "substantive alteration or enhancement."

57. Publishers cannot rely on the shifting, self-contradictory and ultimately nonsensical interpretive rulings OFAC has issued regarding editorial alterations. Taken together, the regulations and the recent interpretive rulings do not adequately or reliably inform publishers which activities (if any) the regulations permit. The OFAC Information Regulations prohibit "substantive or artistic alteration or enhancement" of new works or works already created, and interpretive rulings that appear to exempt some limited editing activities do not bind OFAC and may be withdrawn at any time. Many other activities do not fall within the narrow bounds OFAC has at times approved, and OFAC's approvals are inconsistent with the regulations in any event.

58. Moreover, the OFAC Information Regulations specifically prohibit bringing new works by authors in the affected countries into being, paying the authors for those works, and marketing or promoting those works. I am aware of no statements issued by OFAC indicating otherwise.

59. In addition to their own interests in publishing works from the affected countries (and editing and promoting them), members of PSP share the interests of their American authors who want to collaborate with authors in the affected countries. One thing OFAC has consistently maintained is its position that "collaborative interaction" that qualifies as "co-authorship" is prohibited. That prohibition affects PSP members directly. OFAC has indicated that "camera-ready copy" from authors in the affected countries may be published, but no copy may ever come into being if co-authorship with American authors is not allowed.

60. Co-authorship is very common, especially in scientific, technical and medical publishing. Books and articles frequently have multiple authors who may be grouped into categories, with senior authors distinguished from junior authors on the basis of their contributions to the analysis and writing as well as the underlying research.

61. The OFAC Information Regulations prohibit American authors from choosing the best collaborators in the world for their publications. American authors are thus denied the opportunity to learn from colleagues in the affected countries who could help them develop theories and arguments through the process of ordinary scholarly and scientific exchange. The regulations interfere with American authors' rights to express themselves to the best of their ability, and the public and the research community are impoverished as a result.

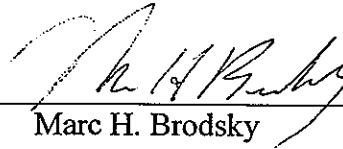
62. The OFAC Information Regulations and OFAC's letters have generated significant uncertainty and tension in the scholarly and professional publishing community. Some publishers have delayed publication to seek OFAC's guidance or have abandoned publishing projects altogether for fear of prosecution for violating the regulations. *Mathematical Geology*, for instance, withdrew an article by Iranian geologists from its February 2004 issue, as explained in the Declaration of W. Edwin Sharp, its Editor in Chief. *The Journal of Democracy* recently sought approval to publish letters from a Cuban dissident, and *Technology and Culture* is currently considering whether or not to publish an article about technology and culture by a scholar in Iran, as explained in the Declaration of William Breichner, Journals Publisher of the Johns Hopkins University Press, which publishes both journals.

63. The prospect of having to seek government approval for particular publishing projects is anathema to professional and scholarly publishers. It is made even worse by the absence of consistent, discernable standards for decision and the delay that any government

involvement necessary entails. OFAC's letter dated September 26, 2003, responded to a request dated April 18, 2002. (See Exhibit B.) IEEE's communications with OFAC spanned more than a year. Publishers cannot wait so long -- and should not have to wait at all -- to publish scholarly and professional works for researchers and the public.

64. It is PSP's view that all the activities described above are essential to the publishing process and that they must all be permitted so that PSP members, who lead the world in professional and scholarly publishing, may exercise their freedom of expression and fulfill their mission to contribute to research and the growth of knowledge.

Dated: September 22, 2004



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Marc H. Brodsky



030915-FACRL-IA-09  
September 15, 2003

**FAC No. [ text deleted ]**

[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]

Dear [ text deleted ]

This responds to your letter of [ text deleted ], on behalf of [ First U.S Entity ] and [ Second U.S. Entity ] to the Office of Foreign Assets Control ("OFAC"). [ First U.S. Entity ] and [ Second U.S. Entity ] request concurrence that no license is needed for [ Second U.S. Entity ] to enter into a license agreement with a publisher in Iran to publish and distribute certain works of [ text deleted ] in Iran. Pursuant to the proposed license agreement, the Iranian publisher would translate the works into Farsi, prepare text and artwork for printing, submit galley and page proofs together with all artwork, photographs and related captions to [ Second U.S. Entity ] for approval, print, publish, promote and sell the works. In the event that OFAC determines a license is necessary to perform the described transactions, [ First U.S. Entity ] and [ Second U.S. Entity ] request that such a license be granted.

The Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITR"), prohibit the exportation, reexportation, sale or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, technology or services to Iran or the Government of Iran. ITR, § 560.204. The ITR also prohibit the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran. ITR, § 560.201. Section 560.206 of the ITR prohibits U.S. persons, wherever located, from engaging in any transaction or dealing in or related to goods or services of Iranian origin or owned or controlled by the Government of Iran, or goods, technology or services for exportation, reexportation, sale or supply, directly or indirectly, to Iran or the Government of Iran.

As noted in your letter, the importation from any country and the exportation to any country of information and informational materials, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of the ITR. ITR, § 560.210(c). However, this exemption does not encompass transactions related to information and informational materials not fully created and in existence at the date of the transactions, any substantive or artistic alteration or enhancement of informational materials, or the provision of marketing and business consulting services. Transactions that are prohibited notwithstanding the exemption include payment of advances for materials not yet created and completed, and provision of services to market, produce or co-produce, create or assist in the creation of information and informational materials. ITR, § 560.210(c).

The engagement of a publisher in Iran to perform the services described in the license agreement, including but not limited to preparing artwork for publishing, and promoting the works in Iran,



Page 2 of 2

would constitute substantive or artistic alteration or enhancement of the materials being exported and the provision of marketing services. Accordingly, the § 560.210(c) exemption does not extend to the transactions proposed in your letter. Instead, these transactions entail a prohibited importation of Iranian-origin services pursuant to ITR § 560.201, and a dealing in Iranian-origin services, pursuant to ITR § 560.206. It would be contrary to current licensing policy to authorize such transactions.



R. Richard Newcomb  
Director  
Office of Foreign Assets Control

Exhibit B

031014-FACRL-IA-10  
September 26, 2003

**Exchange of informational material with Iranian author.**

FAC No. [text deleted]

[text deleted]  
[text deleted]  
[text deleted]

Dear [text deleted]:

This is in response to your letter of April 18, 2002 to the Department of the Treasury's Office of Foreign Assets Control ("OFAC"). In your letter you requested guidance regarding the application of the Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITR"), to your proposed publication arrangement with an Iranian author. As we understand the facts, you are an author of [text deleted] books who has exchanged texts and books with an Iranian author. You provided these texts and books to the Iranian author in order to have them published in Iran. In addition, you propose to convert one of the Iranian author's texts to a [text deleted] book and to assist with its publication in the United States.

Section 560.201 of the ITR prohibits the importation into the United States of any goods or services of Iranian origin. Section 560.204 of the ITR prohibits, *inter alia*, the direct or indirect exportation of U.S.-origin goods, technology, or services to Iran or the Government of Iran. Further, § 560.206 of the ITR prohibits any transactions or dealing in or related to: 1) Goods or services of Iranian origin or owned or controlled by the Government of Iran; or 2) Goods, technology, or services for exportation, reexportation, sale or supply, directly or indirectly, to Iran or the Government of Iran.

The prohibitions contained in these provisions of the ITR do not apply to the importation from any country or the exportation to any country of information and informational materials. 31 C.F.R. §§ 560.210(c); 560.315 (copies enclosed). The exemption in the ITR for information and informational materials authorizes the exportation to Iran and the importation from Iran of most books and other printed materials. See § 560.315(b). The exemption does not apply, however, to transactions related to information and informational materials not fully created and in existence at the date of the transactions, to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. § 560.210(c)(2).

Consequently, although the exemption for information and informational materials authorizes the sale or trade of a book or a completed manuscript, it does not authorize U.S. persons to create new works at the behest of persons in Iran or to engage persons in Iran to create new works. Nor does it authorize direct or indirect transactions between U.S. persons and persons in Iran relating to the importation

FAC No. [text deleted]  
of 2

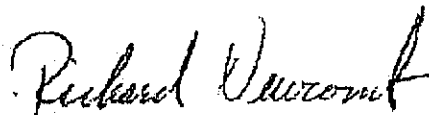
Page 2

into or exportation from the United States of services relating to the substantive or artistic alteration or enhancement of a manuscript. Accordingly, the creation of illustrations for a person in Iran is not permitted as it constitutes a prohibited exportation of services. Likewise, your assistance to the Iranian author in editing and preparation for publication of manuscripts or such services by a person in Iran for a U.S. person, including activities such as reordering of paragraphs or sentences, correction of syntax, grammar, and replacement of inappropriate words, would result in a substantively altered or enhanced product, and is therefore prohibited under the ITR unless specifically licensed.

Similarly, the exemption for information and informational materials does not authorize the provision of marketing or business consulting services, including without limitation services to market, produce or co-produce, create, or assist in the creation of information or informational materials. Inherent in the publication of a book are marketing, distribution, artistic, advertising and other services not exempt from the prohibitions of §§ 560.201, 560.204, and 560.206. Thus, you may not publish books in the United States on behalf of a person in Iran, nor may a person in Iran publish books on your behalf.

A summary of the ITR is enclosed. If you have any additional questions about the economic sanctions programs administered by OFAC, you may refer to our web site at [www.treas.gov/ofac](http://www.treas.gov/ofac) or call our office at (202)622-2480.

Sincerely,



R. Richard Newcomb  
Director  
Office of Foreign Assets Control

Enclosures

Exhibit C

031002-FACRL-IA-11  
September 30, 2003

FAC No. [ text deleted ]

[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]

Dear [ text deleted ]:

This responds to your letters of [ text deleted ], on behalf of [ text deleted ] (the "U.S. Entity"), to the Office of Foreign Assets Control ("OFAC"), concerning certain publishing activities that involve manuscripts from authors in Iran. We understand from your letter that the U.S. Entity receives a small number of manuscripts each year from authors in Iran for possible acceptance and publication. It is a condition of publication by the U.S. Entity that an author must transfer the copyright of a paper to the U.S. Entity before the U.S. Entity will publish it. The U.S. Entity requests concurrence that no license is needed for its member volunteers to ask questions or provide comments to authors in Iran concerning the manuscripts submitted to the U.S. Entity, and for its member volunteers to prepare the manuscript for publication, including translation, reordering of paragraphs or sentences, correction of syntax, grammar, spelling and punctuation, replacement of inappropriate words, and preparing the text for printing. In the event that OFAC determines a license is necessary to perform such transactions, the U.S. Entity requests that such a license be granted.

As you know, the importation from any country and the exportation to any country of information and informational materials, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the Iranian Transactions Regulations, 31 C.F.R. Part 560 (the ITR). ITR, § 560.210(c). The term *information and informational materials* includes publications, films, posters, phonographs, microfilms, microfiche, tapes, compact disks, CD ROMS, artworks, and wire feeds. § 560.315(a)(1). This exemption does not encompass transactions related to information and informational

materials not fully created and in existence at the date of the transactions, any substantive or artistic alteration or enhancement of informational materials, or the provision of marketing and business consulting services. ITR § 560.210(c).

No license is required for the U.S. Entity to submit the manuscript to selected member volunteers, for its member volunteers to communicate with Iranian authors any questions or comments pertaining to the manuscripts, or for the U.S. Entity to facilitate such communications between its member volunteers and the Iranian authors. Such activities fall within the scope of the information and informational materials exemption. However, U.S. persons may not provide the Iranian author substantive or artistic alterations or enhancements of the manuscript and the U.S. Entity may not facilitate the provision of such alterations or enhancements.

Other activities described in your letter would also be permitted. The U.S. Entity would not be prohibited from accepting camera-ready copies of manuscripts from persons in Iran for publication in its journal. The transfer of the copyright from an Iranian national to a U.S. person, which you identify as a condition of publication, is considered incidental to the importation and necessary to give effect thereto, provided that it is standard practice in your field. In addition, although the provision of marketing or business consulting services is generally not permitted as incidental to the importation and exportation of informational materials, in the context of publication of an article in an established academic journal, efforts by the U.S. Entity to market its academic journal would be permitted as incidental to the importation and exportation of the information and informational materials contained therein where such marketing services are not provided to or on behalf of individual contributors and are independent of the individual submissions such as that at issue here.

Nevertheless, certain activities described in your letter would fall outside of the information and informational materials exemption. The collaboration on and editing of manuscripts submitted by persons in Iran, including activities such as the reordering of paragraphs or sentences, correction of syntax, grammar, and replacement of inappropriate words by U.S. persons, prior to publication, may result in a substantively altered or

enhanced product, and is therefore prohibited under ITR § 560.204 unless specifically licensed. Such activity would constitute the provision of prohibited services to Iran, regardless of the fact that such transactions are part of the U.S. Entity's normal publishing activities. Similarly, while the U.S. Entity may select members to review Iranian manuscripts and to communicate with Iranian authors, the U.S. Entity's selection of reviewers and its facilitation of a review by its members, wherever located, for the purpose of collaborating with Iranian authors on manuscripts resulting in substantive enhancements or alterations to the manuscript, would be prohibited.

OFAC will consider licensing U.S. persons to engage in certain non-exempt activities related to the publication of [ text deleted ], academic articles or studies. In order to consider such a request, we require additional specific information beyond that already provided as to the precise nature of the non-exempt transactions for which the U.S. Entity seeks authorization, e.g., at precisely what time does the copyright transfer and what types of editorial services are provided prior to that period. We invite you to submit such information to OFAC in accordance with 31 C.F.R. 501.801.

Sincerely,



R. Richard Newcomb  
Director  
Office of Foreign Assets Control







DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

APR 2 2004

FAC No. IA-209747-a

Nelson G. Dong, Esq.  
Dorsey & Whitney LLP  
U.S. Bank Center  
1420 Fifth Ave. suite 3400  
Seattle, WA 98101-4010

Dear Mr. Dong:

This responds to the letter of October 6, 2003 (Re: IA-209747 – Supplemental Submission No. 4), providing additional information in response to the request made in our letter of September 30, 2003, your letters of January 9, 2004 (Re: IA-209747 – Supplemental Submission No.5) and March 24, 2004 (Re: IA-209747 – Supplemental Submission No. 6), as well as the letter from Dr. Lightner dated February 20, 2004, regarding the peer review and scholarly publication by your client, The Institute of Electrical and Electronic Engineers, Incorporated (“IEEE”), of papers submitted by authors located in countries subject to economic sanctions administered by the Office of Foreign Assets Control (“OFAC”). In your October 6, 2003 letter, you expanded the scope of your inquiry with regard to such activity beyond the Iran program to include other OFAC sanctions programs, specifically Cuba, Libya and Sudan (collectively with Iran, the “Sanctioned Countries”).

We very much appreciate the approach taken by you and your client to comply with federal law in this matter, and to work with us in good faith to arrive at a resolution of these issues. Our meeting with you and representatives of your client in our offices on March 18, 2004, was very informative and useful in achieving a greater understanding of how the regulatory standards we administer apply in the context of the peer review and scholarly publication process. These standards, which have been communicated to you previously, pertain primarily to the implementation of section 1702(b)(3) of the International Emergency Economic Powers Act and section 5(b)(4) of the Trading With the Enemy Act, which read in pertinent part as follows:

The authority granted to the President . . . does not include the authority to regulate or prohibit, directly or indirectly . . . the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, and news wire feeds. . . . (hereinafter referred to as the “Berman Amendment”)

As stated in our letter of September 30, 2003, the Berman Amendment does not apply to transactions (including the exportation of services) with respect to "informational materials not fully created and in existence at the date of the transactions," or to the "substantive or artistic alteration or enhancement of the information or informational materials." See: Cuban Assets Control Regulations, 31 CFR §§ 515.206(a), 515.332 and 515.545 (for purposes of this letter, the term *persons subject to the jurisdiction of the United States* as set forth in § 515.313 and applicable in the Cuba program is hereinafter incorporated in the term *U.S. persons*); the Sudanese Sanctions Regulations, 31 CFR §§ 538.211(c) and 538.306; and the Iranian Transactions Regulations, 31 CFR §§ 560.210(c), 560.315 and 560.523. The Berman Amendment also does not pertain to transactions with respect to information and informational materials restricted under regulations administered by other federal agencies, as further discussed below.

We will convey our conclusions to you first with respect to the editorial process entailed in the peer review of articles submitted to IEEE for publication, and second with respect to the style and copy editorial process conducted after the article has been accepted by IEEE for publication. We understand that the ultimate objective of this process with respect to papers submitted and accepted for publication is to ensure that they are credible, understandable and contribute to the literature of the subject matter area. We also understand that IEEE publishes not only in printed hard copy but also in digital media and in other formats.

Peer Review: As we understand your description of the peer review process generally, the central purpose of "peer review" by an academic, scholarly or professional journal is to determine whether a given paper merits publication in accordance with a specific publication's editorial standards. Peer review questions and comments are the usual and customary scholarly questions and comments about a paper's clarity, logic, language, context or content in relation to a given publication's editorial standards and criteria. With respect to IEEE specifically, we understand that a manuscript submitted for publication is sent to up to three IEEE volunteers, both in the United States and in third countries, who review it for technical and scientific value. The volunteers are generally persons who practice in the same technical field.

Comments from IEEE peer reviewers are collected on a standard form on which the reviewer indicates a recommendation as to whether to publish as is, accept for publication with revisions, or reject. The form also has space where the reviewer can place comments or questions for the author and additionally can pass on private comments to the Editor. You further state that while this is IEEE's practice, the mode of delivering questions or comments from peer reviewers to authors may vary considerably from journal to journal, in some cases involving a web-based form, e-mail, or the manual mark-up of a manuscript and shipment of that mark-up via photocopy, fax or pdf file.

Comments from the IEEE peer reviewers are relayed back to the editorial team, which consists of an Editor-in-Chief and Associate Editors, who make the final decision based upon peer comments whether the manuscript should be accepted for publication, rejected or needs further work from the author in order to be published. You state that it is

common practice in almost all scholarly journals for peer comments to be addressed in the first instance solely to the editorial staff of the journal and not to the author. If the editorial staff decides that an article is publishable with revisions recommended by the peer reviewers, such recommendations are forwarded to the author, who is usually unaware of the identities of the peer reviewers.

You characterize the peer review process as one primarily intended to secure a worthwhile paper for publication, not to assist any given author. Typical comments may refer an author to existing literature to show an author how a paper is supposed to be written so that it can conform to the editorial standards and criteria of that specific journal or other similar journals in the field. Other types of revisions proposed in this process might suggest further elaboration or clarification of certain points, or an observation that a paper is too lengthy or contains flaws. They might also include the need to gather more data to support conclusions, make minor corrections in the scientific theory or mathematics to equations and references (including the completion or correction of citations), modify the analysis, and improve the style or "expression of the work" (grammar and spelling). The authors may be advised to expand their approach, delete sections of the manuscript, or otherwise generally improve it. If the revisions made by the author so warrant, the article may be sent out for a second peer review.

As we stated to you in our letter of September 30, 2003, no license from OFAC is required for IEEE to conduct the kind of editorial activity engaged in during the peer review process, provided such activity does not result in the reviewers' substantive or artistic alterations or enhancements of the manuscript. For purposes of clarifying the application of that regulatory standard in this context, we would consider a prohibited exportation of services to occur when a collaborative interaction takes place between an author in a Sanctioned Country and one or more U.S. scholars resulting in co-authorship or the equivalent thereof.

Based upon our understanding of the peer review process as set forth above, we conclude that IEEE's publication of articles or studies does not entail the prohibited exportation of services to Iran or another Sanctioned Country resulting in substantive alterations or enhancements of informational material by U.S. persons prior to its final importation into the United States for publication. In the peer review process as described, peer reviewers may spot problems in a submitted paper and may advise the paper's author of the nature and extent of those problems, but neither the publisher nor its reviewers substantively re-write or revise the manuscript for the author to remedy those problems. The choice of whether to act on any given question or comment from a reviewer remains up to the author, who may then alter or enhance his or her manuscript – substantively or not – as he or she sees fit prior to its final importation for publication. Such activity is based upon general guidance and suggestions provided by the peer reviewers and endorsed by the editorial staff, neither of which is substituting their own work product for that of the author. This conclusion applies to the format used by IEEE to convey comments, as well as to the alternative means of conveying comments – such as e-mail, manual mark-ups, or pdf file – discussed above.

Please note, however, the Berman amendment does not pertain to exportations of information, including software and technical data, subject to licensing requirements under the Export Administration Regulations (EAR). These licensing requirements cover not just the exportation of information controlled on Commerce Control List, 15 C.F.R. part 744, but also the exportation of any information subject to the EAR where a U.S. person knows or has reason to know that the information will be used directly or indirectly with respect to certain nuclear, missile, chemical and biological weapons, and nuclear-maritime end-uses. In addition, U.S. persons are precluded from exporting any information subject to the EAR to certain restricted end-users. The Commerce Department's end-user and end-use based controls are set forth at 15 C.F.R. 744. In addition, you should also consult the International Traffic in Arms Regulations, 22 C.F.R. 120-130, to determine whether any of the information to be exchanged may be controlled under the Arms Export Control Act. Finally, certain exchanges of information may also be governed by the Department of Energy and other government agencies.

*Style and Copy Editing:* In our letter of September 30, 2003, we stated that the collaboration on and editing of manuscripts submitted by person in Iran, including activities properly described as style and copy editing, may result in the reviewers' substantive or artistic alterations or enhancements of the manuscript (emphasis added). In your January 9, 2004 letter, you characterized such style/copy editing as:

- Labeling units of measurements with standard abbreviations;
- Correcting grammar and spelling to conform to standard American English;
- Changing the size of type or the weight of lines in illustrations so that the diagrams remain legible when reduced in size for publication;
- Labeling illustration captions and formatting references to conform to the IEEE style manual;
- Sizing and positioning illustrations to fit on the page appropriately and in proper proximity to references in the text;
- Formatting mathematical equations to fit on the page appropriately and to avoid breakage between two lines in a way that is unclear;
- Ensuring that the author has supplied a biography and photo; and
- Adding page folios with publication titles and page numbers.

In your January 9 and March 24, 2004 letters, you provided additional information in support of IEEE's position that any editing of a paper after its copyright has been assigned to IEEE should be considered "exempt" activity under the Berman Amendment. We conclude that style and copy editing, as described in your submissions and set forth above, falls within the scope of the Berman Amendment – regardless of whether the copyright has transferred - because such activity as described does not constitute substantive or artistic alteration or enhancement of the informational material and is intrinsically related to and necessary for its dissemination through publication.

Style and copy editing would thus fall within the same category of exempt transactions that includes transactions relating to informational materials that are reproduced,

subtitled, translated (including both literal and idiomatic translation) or dubbed by U.S. persons for dissemination within the United States. Where copyright is retained by an author, royalties may be paid to the author with regard to informational material modified in the United States through these activities.

In conclusion, IEEE is therefore not constrained by OFAC's regulatory programs pertaining to the Sanctioned Countries from conducting its peer review process, including the facilitation of review by peers located in third countries, and from making any of the style and copy editorial changes described above for purposes of publishing articles imported from a Sanctioned Country or from an author with whom transactions are otherwise prohibited.

Sincerely,



R. Richard Newcomb

Director

Office of Foreign Assets Control



040706-FARCL-IA-16  
July 06, 2004

Case No. [ text deleted ]

[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]

Dear [ text deleted ]:

This responds to your letter of [ text deleted ], requesting guidance regarding the awarding of funding by the [ U.S. person ], to individuals for translation projects, in light of a February 28, 2004 article in *The New York Times* concerning editing by American publishers of manuscripts from persons in Iran. As described in your letter, the [ U.S. person ] [ text deleted ] provides funding to translate published literary material from any language into English only, to encourage translations of writers and of works which are insufficiently represented in English translation. [ text deleted ] grants are awarded for creative translations of published literary material into English, with priority given to projects that involve work that has not yet been translated into English. The work to be translated must be completed and published in its original language. An [ text deleted ] applicant must verify to the U.S. person that he or she has secured the rights to translate the work. No financial remuneration is provided to the copyright holder when the right to translate is secured by the applicant. You also explain that [ text deleted ] grants fund the translation of the work into English and do not fund the publishing or marketing of the work.

The Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITR"), prohibit the exportation, reexportation, sale or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, technology or services to Iran or the Government of Iran. This prohibition also applies to the exportation, reexportation, sale or supply of goods, technology or services to a person in a third country undertaken with knowledge or reason to know that such goods, technology or services are intended specifically for supply, transshipment or reexportation, directly or indirectly, to Iran or the Government of Iran. ITR, § 560.204. Section 560.201 of the ITR prohibits the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran.

The prohibitions in ITR §§ 560.204 and 560.201 on exports to and from Iran or the Government of Iran do not apply to the exportation to any country of information and informational materials. ITR, § 560.210(c). The term *information and informational materials* is defined in ITR § 560.315 to include publications, films, posters, phonograph records, photographs, microfilm, microfiche, tapes, compact disks, CD ROMs, artworks,



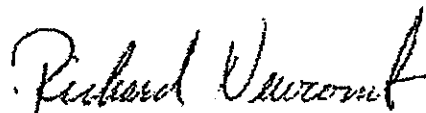
and news wire feeds. The term information and informational materials does not include items that were, as of April 30, 1994, or that thereafter become controlled for export pursuant to § 5 of the Export Administration Act of 1979, 50 U.S.C. App. §§ 2401-2420 (the "EAA"), or by § 6 of the EAA to the extent that such controls promote the non-proliferation or antiterrorism policies of the United States.

In addition, § 560.210(c)(2) of the ITR provides that the informational materials exemption does not apply to transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services.

Attached please find a redacted copy of Interpretive Ruling 040405-FARCL-IA-15 issued by the Office of Foreign Assets Control ("OFAC") on April 2, 2004 that deals extensively with the peer review and editorial processes for scholarly papers submitted by authors from Cuba, Iran, Iraq, Libya and Sudan to scientific journals. The April Interpretive Ruling clarifies that transactions relating to informational materials that are reproduced, translated (including both literal and idiomatic translation) or dubbed by U.S. persons for dissemination within the United States are exempt transactions.

In your letter you describe the following three scenarios involving [ U.S. person ] funding for translations of: 1) the work of a [ text deleted ] with verification that the material to be translated is in the public domain; 2) the work of a [ text deleted ], with verification that the person who has the rights to the work has consented to the translation; and 3) the work of a [ text deleted ], also with verification that the person who has the rights to the work has consented to the translation. Please be advised that these activities would constitute exempt transactions pursuant to ITR 560.210(c). Accordingly, no further authorization from the OFAC is required for the [ U.S. person ] to fund the [ text deleted ] as described in your letter.

Sincerely,



R. Richard Newcomb  
Director  
Office of Foreign Assets Control

Enclosure

Exhibit F

040719-FACRL-GN-01  
July 19, 2004

Case No. [ text deleted ]

[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]  
[ text deleted ]

Dear [ text deleted ]:

This responds to your letter of April 16, 2004, on behalf of [ text deleted ], requesting clarification of the rules that are applied to certain publishing activities as described in letter rulings issued by the Office of Foreign Assets Control on September 30, 2003 and April 2, 2004. These rulings deal extensively with the peer review and editorial processes for scholarly papers submitted by authors from Cuba, Iran, Libya<sup>1</sup> and Sudan (the "Sanctioned Countries") to scientific journals. You explain that the newspaper industry and its editors must decide whether and how to publish articles and commentary, often in the form of "op-eds" authored by persons in the Sanctioned Countries. You express concern that the April 2 letter is narrowly tailored to scientific works with regard to style and copy editing, and does not address the editorial process followed by newspapers.

As you know, the prohibitions contained the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "CACR"), the Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITR") and the Sudanese Sanctions Regulations, 31 C.F.R. Part 538 (the "SSR") do not apply to the exportation to or importation from any country of information and informational materials. *See* CACR § 515.206(a), ITR, § 560.210(c) and SSR § 538.211(c). The informational materials exemption does not, however, apply to transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. The informational materials exemption also does not apply to transactions with respect to information and informational materials restricted under regulations administered by other federal agencies.

You ask for guidance as to whether certain specific transactions performed by U.S. newspapers involving their editorial process would be prohibited under the CACR, the ITR and the SSR (collectively, the "Regulations"). It is our understanding that the goal of the editorial activities described in your letter is to add clarity to the work to be published in the newspapers, [ text deleted ].

---

<sup>1</sup> Effective April 29, 2004, § 550.575 of the Libyan Sanctions Regulations, 31 C.F.R. Part 550 (the "LSR"), authorizes U.S. persons to engage in most transactions previously prohibited by the LSR, including the provision of services by U.S. persons to Libya or the Government of Libya.

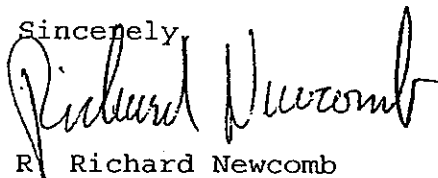
First, you ask if it would be prohibited for a U.S. newspaper to translate a work in its entirety, into English, from a writer or publication in one of the Sanctioned Countries [ in another language ]. The translation into English by a U.S. person of an article or commentary from an individual or publication in one of the Sanctioned Countries for dissemination in a U.S. newspaper would be exempt from the Regulations.

Second, you ask if it would be prohibited for a U.S. newspaper, presented with a work from a writer or publication in one of the Sanctioned Countries, to edit the work for space by deleting what it considers to be superfluous text while offering no substantive changes, additions or rearranging of text. You enclose a copy of a series of articles recently published in [ text deleted ], including an editorial by the Iran News that had been edited for space to clarify its message. The deletion by a U.S. newspaper of unnecessary text, such as words, sentences or paragraphs, from an article or commentary from a writer or publication located in one of the Sanctioned Countries for publication in that newspaper would not constitute substantive or artistic alteration or enhancement of that work and thus is covered by the information and informational materials exemption described above.

Third, you ask if a U.S. newspaper would be prohibited from editing the work from a writer or publication in one of the Sanctioned Countries solely to correct grammar, syntax or spelling errors. As was the case with the previous question, such editing activity by a U.S. newspaper to prepare an article or commentary from a writer or publication in one of the Sanctioned Countries for publication in that newspaper would not constitute substantive or artistic alteration or enhancement of that work and is exempt from the Regulations.

Finally, you ask if a U.S. newspaper presented with a work from a writer or publication in one of the Sanctioned Countries would be prohibited from offering substantive edits to the work's content to make the work more cohesive, efficient, argumentative or effective, in the same manner that it would for one of its own writers. The editing of an article or commentary from a writer or publication in one of the Sanctioned Countries by a U.S. newspaper for publication in that newspaper to make the work more understandable to the newspaper's readers and to make the work conform to the newspaper's editorial standards would not constitute substantive or artistic alteration or enhancement of the article or commentary. Accordingly, we do not consider these or any of the editorial activities performed by U.S. newspapers that are described in your letter to be prohibited by the Regulations.

Sincerely



R. Richard Newcomb  
Director

Office of Foreign Assets Control