

**DAVIS  
DECLARATION**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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;  
R. RICHARD NEWCOMB, DIRECTOR,  
OFFICE OF FOREIGN ASSETS CONTROL, in  
his official capacity,

Defendants.

**DECLARATION OF  
EDWARD J. DAVIS**

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

1. I am a member of the firm of Davis Wright Tremaine LLP (“DWT”), attorneys for the plaintiffs in this action. I submit this declaration in support of plaintiffs’ application for preliminary and permanent injunctions against the enforcement of regulations and rulings of the Office of Foreign Assets Control of the United States Department of the Treasury (“OFAC”) that restrict and, in many cases, prohibit the publication of works from countries subject to United States trade sanctions, including Cuba, Iran and Sudan, despite Congress’s instructions, in the Berman Amendment and the Free Trade in Ideas Amendment, that trade sanctions may not be applied to “information and informational materials,” which the First Amendment protects.

2. The primary purpose of this declaration is to submit the following exhibits.

**Legislative History of the Berman and Free Trade in Ideas Amendments**

3. Annexed hereto as Exhibit A is an excerpt of the conference committee report for the legislation which included the Berman Amendment, H.R. Conf. Rep. No. 576, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess., *reprinted in* 1988 U.S.C.C.A.N. 1547, 1872.

4. Annexed hereto as Exhibit B is an excerpt of the House Foreign Affairs Committee's report discussing the Berman Amendment, H.R. Rep. No. 4, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess., pt. 3, at 113 (1987).

5. Annexed hereto as Exhibit C is an excerpt of remarks made on the Senate floor by Senator Charles Mathias concerning a predecessor bill to the Berman Amendment, 132 Cong. Rec. S3707-04 (1986).

6. Annexed hereto as Exhibit D is a copy of remarks made by Congressman Howard Berman upon his introduction of the Free Trade in Ideas Act, including a summary of that legislation, 138 Cong. Rec. E1856-04.

7. Annexed hereto as Exhibit E is a copy of letter from Secretary of State Warren Christopher to Congressman Howard Berman concerning the Free Trade in Ideas Act, 140 Cong. Rec. S15462-02, S15466.

8. Annexed hereto as Exhibit F is an excerpt of the conference committee report for the legislation which included the Free Trade in Ideas Amendment, H.R. Conf. Rep. No. 482, 103<sup>rd</sup> Cong., 2<sup>nd</sup> Sess., *reprinted in* 1994 U.S.C.C.A.N. 398, 483.

**Brief Submitted by Defendants in *Capital Cities/ABC, Inc. v. Nicholas F. Brady, et al.***

9. Annexed hereto as Exhibit G is a copy of Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of

Defendants' Cross-Motion for Summary Judgment in *Capital Cities/ABC, Inc. v. Nicholas F. Brady, et al.*, 740 F.Supp. 1007 (S.D.N.Y. 1990).

**Congressman Howard Berman's Letter to OFAC following OFAC's IEEE Ruling**

10. Annexed hereto as Exhibit H is a copy of Congressman Howard Berman's March 3, 2004 letter to OFAC Director R. Richard Newcomb concerning the agency's misinterpretation of the Berman and Free Trade in Ideas Amendments indicated by its September 30, 2003 ruling to the Institute of Electrical and Electronics Engineers ("IEEE").

**Plaintiffs' Scheduling Request**

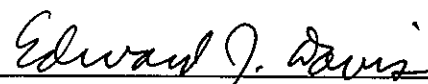
11. A copy of the Complaint in this action is annexed hereto as Exhibit I.

12. As explained in the Complaint and in the declarations of publishers, editors and writers submitted herewith, numerous publishing projects have been cancelled or suspended because of OFAC's misapplication of trade sanctions to information and informational materials protected by statute and by the Constitution. As explained in the accompanying Memorandum of Law, in these circumstances irreparable harm may be presumed.

13. Plaintiffs do not seek interim relief but do request that a briefing schedule be set to permit the argument and resolution of their motion at the earliest reasonable date, and further request that the Court consider consolidating the determination of this motion with the resolution of this action on the merits.

14. Plaintiffs have made no previous request for the relief sought herein in this or any other court.

Dated: September 24, 2004

  
Edward J. Davis