

**SEAVER  
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 - :  
 :  
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  
RICHARD SEAVER**

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

1. I am the president and editor in chief of Arcade Publishing (“Arcade”), an independent book publisher based in New York, New York that publishes fiction and nonfiction by authors from throughout the world. Arcade is a plaintiff in this action.

2. I submit this declaration in support of the plaintiffs’ application for declaratory and injunctive relief from the enforcement of certain regulations administered by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). The regulations (the “OFAC Information Regulations”) restrict and, in many cases, prohibit the publication in the United States of works by authors in countries subject to U.S. trade sanctions, including Cuba, Iran and Sudan.

3. The OFAC Information Regulations prohibit Americans from asking authors in the affected countries to create any new works and from paying advances or helping them create new works in any way. Importing works that already exist is allowed, but, according to the regulations, whether the works are new or already in existence, publishers may not do anything to promote or market them and may not make substantive or artistic alterations or enhancements to them. The activities prohibited by the regulations are part of the standard process of publishing books.

4. Arcade has joined this action because Arcade believes it should not be subject to the penalties of the OFAC Information Regulations for publishing activities that the law (as enacted by Congress) and the Constitution protect. The regulations directly affect Arcade because Arcade would like to publish works by authors in the affected countries, and publishing ordinarily entails each of the activities the regulations forbid.

5. Arcade is most immediately affected by the OFAC Information Regulations because Arcade plans to publish *The PEN Anthology of Contemporary Iranian Literature*, which will contain translations of works by authors in Iran, an extensive interpretive essay, and other materials intended to help readers in the United States learn about literature and society in Iran. Publishing the *PEN Anthology* entails making substantive and artistic alterations and enhancing the original Iranian works, as well as marketing and promoting the book, just as Arcade markets all its books. The OFAC Information Regulations appear to prohibit activities that cannot be separated from Arcade's publication of the book.

#### **Translation is Alteration**

6. I understand that OFAC has indicated, in recent correspondence with the Institute of Electrical and Electronics Engineers ("IEEE"), the American Society of Newspaper Editors

and an unnamed "U.S. person" that may fund translation of a work but "do[es] not fund publishing or marketing of the work," that the OFAC Information Regulations permit "both literal and idiomatic translation" of works from sanctioned countries. However, the regulations state that "substantive or artistic alteration or enhancement of the information or informational materials" is prohibited, and publishing a translation does alter and ordinarily enhance the original work.

7. Published translations enhance and alter original works in two ways. First, the translators transform the text and substantively alter the works being translated, as translation is never a mechanical process. Second, publishers add material to enhance readers' understanding of the works and the historical context in which they arise.

8. I have been editing and publishing translations into English since the 1950s, for magazines and for several book publishers, including Grove Press, where I was editor in chief; Henry Holt and Company, where I was president of the trade books division; Viking/Penguin, where my wife and I started our own publishing imprint, Seaver Books, and where I later became editor in chief of Penguin America; Little, Brown and Company, where we founded Arcade; and now Arcade, which became an independent company in 1992.

9. I have edited and published English translations of the works of Samuel Beckett (winner of the Nobel Prize for Literature), Octavio Paz (also a Nobel Prize winner), Jean Genet, Eugène Ionesco, Marguerite Duras, Alain Robbe-Grillet, Ingmar Bergman, Frantz Fanon, Bertolt Brecht, Ismail Kadare and many other authors, from original works written in French, German, Spanish, Russian, Italian, Polish, Norwegian, Swedish, Albanian and Chinese.

10. I have personally translated some fifty books of fiction and nonfiction from French into English, including works by Beckett, Ionesco, Duras, Françoise Sagan, former

French president François Mitterand, and the poet and painter Henri Michaux. My co-translation (with Helen R. Lane) of André Breton's *Manifestoes of Surrealism* was nominated for a National Book Award.

11. OFAC's letter to IEEE reflects a misunderstanding of the process of translation and of the work that is published as a result.

12. A "literal" translation of almost any work, in any language, would be unreadable and useless to publish. An "idiomatic" translation, by which I assume OFAC means a translation that attempts to make each sentence intelligible to readers in English, may not be effective, either. Although English is a famously flexible language capable of great precision, it does not have direct equivalents for every idea that can be expressed in every language. A translation may render Russian sentences into readable English, for instance, but still may not convey anything like the full meaning the author intended. Explanation and creative approximation must often be employed.

13. An effective translation remains faithful to the meaning and spirit of the original without following its sentence structure and without necessarily directly translating its words. Some ideas depend for their meaning and resonance on a reader's lifelong familiarity with the culture in which the work is written – its customs, legends, history, jokes, common metaphors, habits of mind, and modes of argument. Conveying exactly the same idea to an audience in a different language may not be possible, but, through research and creative thought, translators work to achieve the approximation they think best from among the myriad approaches they could pursue to share as much of the author's meaning as they can.

14. The artistic impressions created by a work in its original language are even more notoriously difficult to imitate, and impossible to reproduce. A translator tries instead to convey

an impression of the author's voice and style throughout a work and works hard to convey the effects of particular passages.

15. Often, this means creating new structures or new sets of images and making significant changes in form. For instance, C.K. Scott Moncrieff, the renowned Edwardian translator of Proust into English, modified Proust's original sentences, which can run for entire pages, to make more sense to readers of English. At the same time, he struggled to convey the effect that Proust's original, endless sentences evoked, of the wandering movements and reveries of the narrator's mind.

16. There can be no one right way to convey impressions of voice and style in a different language. Each translator's artistic imagination contributes to the translation, which becomes a new work based on one that already exists. Moncrieff's translation of Proust is appreciated as a remarkable literary achievement. Gabriel García Márquez has modestly described Gregory Rabassa's English translation of *One Hundred Years of Solitude* as a "rewriting" of the original that improved on it. As the German literary critic, Walter Benjamin, once wrote, "No translation would be possible if in its ultimate essence it strove for likeness to the original."

17. It is for these reasons that new translations of important works continue to be produced. Sometimes new translations reflect new research into the original text and its social context. Sometimes they reflect changing social mores or artistic attitudes. Sometimes they reflect different artistic or philosophical choices. Recent examples include new translations of Homer by Robert Fagles, who is a poet himself and a Professor of Comparative Literature at Princeton University (and winner of the PEN/Ralph Manheim Medal for Translation), and a new translation of Tolstoy's *Anna Karenina* by Richard Pevear and Larissa Volokhonsky which has

been praised for beautifully conveying Tolstoy's robust, vigorous voice, which previous translations may have softened.

18. If there are widely different translations of the same works, translation must substantively and artistically alter the original. If translations differ so much from one another, they must differ from the original, as well.

### **Translation Often Entails Collaboration**

19. I understand that OFAC has warned publishers that collaborative interaction with an author in a sanctioned country may violate the regulations.

20. When authors are available, translators often consult them to help shape the translations of their works. Authors and translators discuss issues ranging from the overall themes and tone of a work to the intended meaning of particular phrases and different ways to try to convey it. If an author has excellent knowledge of English, drafts of the translation may be exchanged for the author's input.

21. Living authors often help select the translators for their works, which makes the process of translation collaborative from the start. Translators like Gregory Rabassa are sought out by publishers for the talent and ideas they can add to a translation.

22. I have been fortunate to have the opportunity to translate works by living authors. Choices I have made in my own work as a translator have been profoundly influenced by my exchanges with the authors, not so much for "accuracy" as for their insight and reactions to imaginative ideas for the new works that result.

23. Authors like García Márquez give credit to translators for what their work adds to the original, but authors often deserve credit, too, for what they add to the translation, over and

above the original work. Collaboration on a translation is a two-way exchange, and it can rise to the level of co-authorship.

24. Arcade is proud to publish works by Mo Yan, a Chinese novelist who defies censorship in the People's Republic, translated by his longtime collaborator, Howard Goldblatt, a professor at the University of Notre Dame who is perhaps the most eminent translator of contemporary Chinese literature into English. Mo Yan's novels include *The Republic of Wine* and *Red Sorghum*, which was made into a movie that won the Academy Award for best foreign-language film.

25. When Professor Goldblatt translates Mo Yan's novels, he makes suggestions for revising and restructuring the novels as they are being created in English. He sends each chapter to the author for comment and suggestions as he is working on it, and the stories and their meanings are reworked by the two men together.

26. Mo Yan's latest novel illustrates the nature of their collaboration. It is an epic that spans virtually the entire twentieth century. The protagonist spends sixteen years in a prison camp, and the Chinese original leaves his time in the camp undescribed. Professor Goldblatt asked Mo to write about that gap because American readers would crave specific details about the imprisonment and how it changed him. Significant new passages were added, which Professor Goldblatt helped craft.

27. Mo Yan and Professor Goldblatt view their collaboration as co-authorship. They share the royalties on all the translations they have prepared.

#### **Publishers Add New Material to Translations**

28. Publishers seldom publish translations without adding elements to the translated text that enhance its value.



29. Nearly every book that is translated for publication in this country gets a newly designed cover, with new artwork, graphic design and cover notes to introduce the work to American readers. Different illustrations may also be added.

30. Publishers of translations often add extensive notes and introductory essays that explain events, people and places that may be unfamiliar to readers, and otherwise illuminate the social or historical context of the original work. Biographical information about the author or authors is ordinarily added. Often, a publisher will ask a prominent figure to contribute a preface that provides personal reflections on the meaning and significance of the translated text. These additions all make the work more accessible and more valuable to the interested public.

31. Arcade's translation of Mo Yan's latest novel illustrates the need for these sorts of enhancements, as well. In a literary tradition that dates back thousands of years, fiction in China has often been used to comment in an artful, coded fashion on current political and social concerns. Mo Yan's new novel is a complex, epic work that is enhanced by an understanding of the actual events that have shaped modern China. We have asked Professor Goldblatt to provide a timeline and an introductory essay on the history of China in the twentieth century that will help American readers understand and appreciate Mo Yan's many-layered fiction. The depth of the novel's meaning would not be likely to reach many readers without explanatory and interpretive materials.

32. Additions like these go beyond translation of the text and substantively enhance the translation itself.

### **The PEN Anthology**

33. As mentioned above, Arcade is also preparing to publish *The PEN Anthology of Contemporary Iranian Literature*. The editor, Nahid Mozaffari, has worked directly with

authors in Iran and translators to assemble a rich, varied collection of works to reflect developments in Iranian literature since the Iranian revolution of 1979 cut off cultural exchange between our countries. The selections from more than 50 Iranian writers from three generations reflect in varying ways the severe difficulties writers in Iran have encountered through 25 years of social, political and economic upheaval, war, repression and censorship, and illustrate how writers and others in Iran have managed to contribute to a cultural renewal despite the turmoil and risks.

34. Several different translators have contributed to the anthology. Some of them have had the opportunity to work collaboratively with living authors. Their work has necessarily added to the value of the original work, in all the ways I described above.

35. Ms. Mozaffari has also written an introductory essay that provides a historical overview of Persian literature and politics, an analytical appreciation of the genres and themes of the writers selected for the anthology, an assessment of the current state of literature and freedom in Iran, and an explanation of the process of selection for the anthology and the aims of the publishing project.

36. The anthology will also include biographical sketches of each of the authors represented in the collection. The biographies will provide further personal and historical context for each of the selections.

37. PEN American Center is sponsoring *The PEN Anthology of Contemporary Iranian Literature* in the hope of increasing international understanding through the exchange of information and ideas embodied in the poems, stories and extracts in the anthology.

38. As Ms. Mozaffari writes in her introductory essay, "being a writer in Iran has been a dangerous business." Her essay describes ways in which how some of the literature

chosen for the *PEN Anthology* gives evidence of “the treacherous alleys of censorship that writers have to maneuver through in order to be allowed to publish.” One of the stories actually concerns an imaginary visit by a writer to the Ministry of Culture and Islamic Guidance for a meeting with the director in charge of censorship to discuss a novel that had been held for review for more than a year.

39. Censorship in Iran is truly that overt and pervasive. The Ministry of Culture and Islamic Guidance is not imaginary. Government censors instruct writers and publishers on what they can print and punish them for publishing material the government does not approve.

40. One of the reasons Arcade wanted to publish the *PEN Anthology* was to allow writers whose voices are constrained in their own country to be heard in the United States. I learned of the anthology project through the International Freedom to Publish Committee of the Association of American Publishers. American publishers have taken justifiable pride in disseminating the works of authors silenced in their own lands, such as Alexander Solzhenitsyn before he escaped the former Soviet Union, Reinaldo Arenas before he escaped Cuba, and Aung San Suu Kyi, the Nobel Peace Prize winner who remains under house arrest in Burma.

41. When Arcade agreed to publish the *PEN Anthology*, we were not aware of the OFAC Information Regulations. The regulations appear to prohibit publication of the *PEN Anthology* because the works of the Iranian authors in it are being substantively and artistically altered and enhanced through translation and through the addition of Ms. Mozaffari’s thoughtful essay, the biographies of the authors, and the design and presentation of the book.

42. We are also planning to market and promote the *PEN Anthology*, which the regulations also prohibit, just as we market and promote all our books.

43. A promotion campaign is the only way to make the public aware that a book is available. We include a write-up on each book we publish in our catalogue, which is sent twice a year to every bookstore. Our sales force contacts large buyers individually about each book. We send copies of each book to newspapers and magazines for reviews. We organize interviews for our authors on television and radio and with print journalists. We also organize book tours and book-signing sessions in bookstores. We advertise our books in *Booksense*, which is distributed monthly to independent bookstores. We plan additional outreach and advertising for particular books. We plan to do the same for the *PEN Anthology*.

44. Promotion is an integral part of the publishing process. Our right to publish would have no real value if we could not effectively communicate with the public to inform readers of the works we publish.

#### **Other Books**

45. Arcade would like to publish other works by authors from the sanctioned countries. What is happening not only in Iran, but also in Cuba and Sudan, is of vital interest to readers in the United States.

46. We understand that we may have to pay an advance to an author in one of those countries to enable the author to devote the time and energy that would be needed to write a book that it may not be possible to publish in his or her home country. Paying advances is an ordinary and essential part of trade publishing. Like marketing and promotion, it makes the enterprise of publishing possible; it generates the material that can be edited and made available to the public. The OFAC Information Regulations, which prohibit commissioning new works and paying advances, would stand directly in the way of publishing.

47. Substantive editing, which the OFAC Information Regulations also forbid, is also an integral part of the publishing process. Before a manuscript even exists, editors often help authors develop the themes and ideas for their works, focus their presentation, and plan their structure. Once a manuscript is prepared, editors continue to work with authors, suggesting deletions, revisions and amplifications for the sake of clarity, artistry or reader interest, sometimes asking for entire chapters to be added or dropped. Editors may also work with authors on shaping and honing the text line by line, exchanging drafts with suggested modifications.

48. From my decades of experience as an editor, I can attest that virtually every manuscript is edited substantively. A regulation that forbids substantive editing largely prohibits publishing that is worthwhile.

49. The OFAC Information Regulations discourage publishers from pursuing projects with authors in the affected countries not only because of what we know is forbidden -- bringing new works into existence, paying advances, conducting marketing and promotion -- but also because of what we do not know exactly, such as how much editing OFAC would view as "substantive or artistic alteration." I know what I mean by "substantive or artistic alteration," and I cannot publish without it. But OFAC's interpretations -- which I have read -- have been inconsistent and contradictory, leaving publishers unsure how to proceed.

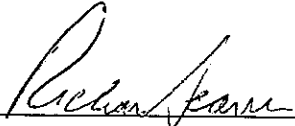
50. I have been advised that OFAC's letters do not serve as binding precedents in any event, and that OFAC may withdraw its interpretive rulings and licenses at any time. We have all read about OFAC's enforcement actions against musicians and vaccine suppliers who have done business with Cuba. Few publishers would want to make the substantial investment necessary to publish a book if they risk being fined or imprisoned and having their books

confiscated if they publish in accordance with their ordinary high standards, which entail many activities the OFAC Information Regulations forbid.

**Applying for Permission to Publish**

51. I have been informed that publishers may apply to OFAC for permission to conduct activities that appear to be prohibited by the OFAC Information Regulations, through a process that may take many months. Arcade has not applied to OFAC for permission. We believe that no American publisher should have to seek government permission to publish. The United States does not have a Ministry of Culture and Islamic Guidance. Our Department of the Treasury should not be making decisions about what American publishers may publish and what the American public may read. Through its Information Regulations, OFAC has created a system that bears a frightening resemblance to systems Americans abhor.

Dated: September 22, 2004

  
Richard Seaver