The SPEECH Act: The Federal Response to "Libel Tourism"

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England is not the only country with plaintiff-friendly libel laws, English courts have been an especially popular venue for defamation suits against U.S. nationals.[8]

Because obtaining a judgment and actually receiving the money awarded constitute two separate components of a successful lawsuit, winning a judgment in a foreign court does not end the discussion. If a defendant chooses not to appear in a foreign court, the court will typically award a default judgment against the defendant. In such circumstances, plaintiffs in foreign libel suits might involve U.S. courts when they seek to enforce judgments against U.S. defendants because foreign courts typically lack jurisdiction over assets located in the United States. Thus, the U.S. response to libel tourism has focused primarily on subsequent actions to recognize or enforce foreign court judgments in U.S. courts. For example, the first federal law on point, the Securing the Protection of our Enduring and Established Constitutional Heritage Act (SPEECH Act), bars U.S. courts, both state and federal, from recognizing or enforcing a foreign judgment for defamation unless certain requirements, including consistency with the U.S. Constitution and section 230 of the Communications Act of 1934 (47 U.S.C. § 230), are satisfied.

Obtaining Defamation Judgments Overseas

Distinctions Between U.S. and English Libel Laws[9]

U.S. and English defamation laws derive from a common origin, but the latter have evolved into a comparatively plaintiff-friendly approach to defamation that has made England a common destination for libel tourists. Traditionally, at common law, defamation liability under both U.S. and English law was strict, meaning that a defendant did not have to be aware of the false or defamatory nature of the statement, or even be negligent in failing to ascertain that character. Instead, a plaintiff had to prove only that a statement (1) was defamatory; (2) referred to the claimant; and (3) was communicated to a third party. However, this common law liability evolved differently under U.S. and English jurisprudence. Today, the differences between the U.S. and English defamation law is primarily attributable to the U.S. Supreme Court's interpretation of the First Amendment to the U.S. Constitution.[10] Today, U.S. defamation law places the burden of proof on plaintiffs, making it more difficult for them to win.

The U.S. Supreme Court first established a federal constitutional privilege in defamation law in *New York Times v. Sullivan*, a landmark First Amendment case.[11] The Court held that a public official is prohibited from recovering damages for a defamatory falsehood relating to his official conduct unless he or she can prove with "convincing clarity" that the statement in question was made with "actual malice," defined by the Court as "with knowledge that it was false or with reckless disregard of whether it was false or not."[12] The Court derived this constitutional restriction from the text of the First Amendment, which prohibits any law "abridging freedom of

[8] London has been called the "libel capital" of the world. *See, e.g., Be Reasonable*, London Times (May 19, 2005) at 19 (noting that London has become a libel tourism destination because British laws are "uniquely stacked in [the] favor" of foreign libel plaintiffs).

[9] This section of the report was prepared by Vivian Chu, Legislative Attorney, 7-4576.

[10] U.S. Const. amend. I ("Congress shall make no law ... abridging the freedom of speech, or of the press....").

[11] 376 U.S. 253 (1964).

[12] *Id.* at 279-80.

related to the conduct of individuals in public life, should be covered by a qualified privilege. Thus, while Members of Parliament or other public officials need only prove the traditional common law elements of defamation, they may be barred from recovery if the defendants are members of the media who can show that the publication in question falls under the *Reynolds* privilege.

The *Reynolds* privilege, however, has limited application. First, it does not appear to be available to authors or others who publish outside the realm of journalism, and, second, the judge decides whether the statement at issue was privileged (i.e., in the public interest), a decision that determines whether the Privilege will apply to the defendant. Defendants in libel tourism suits brought in England have typically not been able to invoke the *Reynolds* privilege because they either do not qualify as media or the judge has not deemed their statements privileged.

In reporting the SPEECH Act out of committee in 2009, the House Committee on the Judiciary noted that British libel law has become more protective of free speech after the House of Lords issued a decision expanding the scope of Britain's *Reynolds* privilege.[21] However, this may have little effect on the majority of libel cases brought against U.S. persons in Britain.[22] Nevertheless, the U.S. response to libel tourism may motivate a re-examination of English libel law,[23] and, indeed, some proposals to reform libel laws in England have already garnered attention.[24] Among the changes that have been recommended are shifting the burden of proof in some cases and creating a one-year statute of limitations for libel cases arising from Internet speech,[25] however future changes cannot be predicted.

Key Cases and the Rationale for Legislative Action

A prominent example of libel tourism[26] is the suit brought by a Saudi billionaire, Sheikh Khalid Bin Mahfouz, against a New York author, Rachel Ehrenfeld, whose book documented his alleged role in financing terrorism.[27] Although the book was published in the United States, an English

[21] H.Rept. 111-154, at 7 (2009) (referring to Jameel v. Wall St. J. Europe S.P.R.L. [2006] UKHL 44, [2007] 1 A.C. 359 (appeal taken from Britain) (H.L.))

[22] *See id.* ("[T]he Lords' decision is not as speech-protective as *New York Times v. Sullivan* ...").

[23] Culture, Media, and Sport Committee, *Press Standards, Privacy and Libel*, 2009-10, H.C. 362-I, II, at ¶ 205, http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcumeds/362/36202.htm. *See id.* at paragraph 205 ("[W]e believe that it is more than an embarrassment to our system that legislators in the [United States] should feel the need to take retaliatory steps to protect freedom of speech from what they view as unreasonable attack by judgments in UK courts. The Bills presented in Congress ... clearly demonstrated the depth of hostility to how UK courts are treating 'libel tourism.' It is very regrettable, therefore, that the Government has not sought to discuss the situation with their US counterparts in Washington....").

[24] *See* Tim Shipman, *MPs: Curb the 'Chilling' Laws Threatening Press Freedom*, DAILY MAIL at 18 (Feb. 24, 2010); Howard Gensler, *Some Brit Lawmakers Want Change in Libel Laws*, Phil. Daily News at 36 (Feb. 25, 2010); Sarah Lyall, *Britain, Long A Libel Mecca, Reviews Laws*, N.Y. TIMES at A1 (Dec. 11, 2009).

[25] Culture, Media, and Sport Committee, *supra* note 23.

[26] *See, e.g.*, 155 Cong. Rec. S2342 (daily ed. Feb. 13, 2009) (statement of Sen. Specter); Editorial, *Attack of Libel Tourists*, Wash. Post, Feb. 22, 2009 at A22. *See also Libel Tourism: Are English courts stifling free speech around the world?*, Economist (Jan. 8, 2009) ("The best-known [libel tourism] case is that of Rachel Ehrenfeld").

[27] *Bin Mahfouz v. Ehrenfeld*, [2005] EWHC 1156 (QB) (Eng.). Ehrenfeld directs the Center for American Democracy and has written several books documenting links between money streams and terrorist activity. The book at issue was published in 2003 and is entitled "Funding Evil: How Terrorism is Financed and How to Stop It." In testimony before the House Judiciary Committee, Ehrenfeld characterized Bin Mahfouz as a "wealthy and corrupt terror financier." *Hearing on Libel Tourism Before the Subcomm. on Comm. and Admin. Law of the H. Comm. on the Judiciary*, 111th (continued...)

Recognition of Foreign Judgments in U.S. Courts

Principles Governing Domestic Recognition of Foreign Judgments

Except where preempted by federal law, state law governs the recognition and enforcement of foreign judgments in U.S. courts. No federal law provides uniform rules, nor is the United States a party to any international agreement regarding treatment of such judgments.[37] Although states generally must recognize judgments from sister states under the Full Faith and Credit Clause of the U.S. Constitution, that requirement does not apply to judgments from foreign courts.[38] For that reason, even if one state enacts a law prohibiting its courts from enforcing foreign libel judgments, the judgment might be enforceable in another state where a defendant has assets.

Nonetheless, many states' recognition statutes share identical language, because most are based on one of a few common sources—namely, rules articulated in *Hilton v. Guyot*,[39] a 19th-century U.S. Supreme Court case, or one of two uniform state acts, which in turn draw from *Hilton*. Principles of international comity (i.e., "friendly dealing between nations at peace"[40]) undergird all of these sources. Comity need not be applied reciprocally, and reciprocity has been disregarded as a basis for recognition in some recent U.S. cases.[41] In contrast, countries such as England have adopted a reciprocity-based approach to recognition of foreign judgments.[42] Such countries will generally decline to recognize U.S. judgments if U.S. courts would not recognize a similar judgment rendered by its courts.

In *Hilton*, the Supreme Court explained that international comity is "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, on the other."[43] Rather, "it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens[.]"[44] Under this principle, a foreign judgment should be recognized "where there has been opportunity for a full and fair trial ... under a system of jurisprudence likely

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[37] In January 2009, the United States became a signatory to a the Hague Convention on Choice of Court Agreements, which requires its parties to recognize, with some exceptions, judgments rendered by a court in another signatory country that was designated in a choice of court agreement between litigants. Hague Convention on Choice of Court Agreements, June 30, 2005, 44 I.L.M. 1294, *available at* http://www.hcch.net/index_en.php?act=conventions.pdf&cid=98. Although 29 countries, including the United Kingdom under the auspices of the European Union, had signed the Convention as of August 17, 2010, the Convention will not enter force until at least two countries deposit instruments of ratification or accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the designated depositary of the Convention. *Id.* at Arts. 27, 31. To see a list of parties and signatories as of August 17, 2010, visit http://www.hcch.net/upload/statmtrx_e.pdf.

[38] U.S. Const. art. IV, § 1 ("Full faith and credit shall be given in each *state* to the public acts, records, and judicial proceedings of every other *state*") (emphasis added).

[39] *Hilton v. Guyot*, 159 U.S. 113 (1895).

[40] *Id.* at 162.

[41] *See* De la Mata v. Am. Life Ins. Co., 771 F. Supp. 1375, 1382 (D. Del. 1991) ("Courts and commentators have almost universally rejected or ignored the doctrine that reciprocity should be required as a precondition to the recognition and enforcement of a foreign country's judgment."). *See also* RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 481 note 1 ("[T]he great majority of courts in the United States have rejected the requirement of reciprocity ...").

[42] United Kingdom, Foreign Judgments (Reciprocal Enforcement) Act 1933, Chap. 13 23_and_24_Geo_5, pt. 1, § 1.

[43] *Hilton*, 159 U.S. at 163-64.

[44] *Id.*

exception, it appears that the change merely incorporates the trend among state courts to interpret the 1962 provision to include judgments, rather than only causes of action, and to include policies of the country as a whole rather than only of the states.[55]

These public policy exceptions have been raised as grounds for nonrecognition in the small number of actions brought in U.S. courts to enforce foreign libel judgments. Even prior to the enactment of the SPEECH Act, courts in such cases generally declined to enforce foreign libel judgments on the basis of the public policy exceptions, concluding that the foreign libel laws upon which the judgments were based are repugnant to the U.S. Constitution.[56]

Nonrecognition Provisions in State Libel Tourism Laws

Although state courts have generally declined to enforce foreign libel judgments, some states enacted statutes addressing the libel tourism phenomenon. The first was New York's Libel Terrorism Protection Act,[57] which makes foreign defamation judgments unenforceable in New York state courts unless a court finds that the foreign country's defamation law provides "at least as much protection for freedom of speech and press" as U.S. law provides.[58] The other state statutes include similar "at least as much protection" language. For example, under the Illinois and Florida statutes, courts "need not [recognize]" a foreign defamation judgment unless the court "first determines that the defamation law applied in the foreign jurisdiction provides at least as much protection for freedom of speech and the press as provided for by both the United States and [Illinois or Florida] Constitutions."[59] In general, these statutes appear to codify, and perhaps expand, the public policy exceptions as applied to libel suits under the states' foreign judgment recognition statutes. Although courts applying state law before the statutes were enacted might have rejected enforcement under the states' existing public policy exceptions,[60] these libel-specific nonrecognition provisions made it more likely that courts in these states would decline to enforce foreign libel judgments.

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[55] *See id.* at § 4, cmt. 8.

[56] *See, e.g., Telnikoff v. Matusevitch*, 702 A.2d 230, 251 (Md. 1997) (refusing to recognize an English libel judgment because it conflicted with Maryland's public policy concerning freedom of the press and defamation actions); *Bachchan v. India Abroad Pubs., Inc.*, 585 N.Y.S.2d 661 (Sup. Ct. N.Y. Cty. 1992) (refusing to recognize a British libel judgment under the public policy exception in New York's foreign judgment recognition statute on ground that British libel law did not accord the protection to free speech and press embodied in U.S. and state constitutions); *Yahoo!, Inc. v. La Ligue Contre le Racisme et L'Anti-semitisme*, 169 F. Supp.2d 1181 (N.D.Cal. 2001) (refusing to enforce an order of a French court, which required an Internet service provider (ISP) to block French citizens' access to Nazi material displayed or offered for sale on the ISP's U.S. site on ground that order's content and viewpoint-based regulation "clearly" would be inconsistent with First Amendment), *rev'd and remanded with instructions to dismiss*, 433 F.3d 1199 (9th Cir. 2006), *cert. denied*, 126 S.Ct. 2332 (2006).

[57] 2008 N.Y. Laws 66.

[58] N.Y. CPLR § 5304(b)(8).

[59] 735 ILCS 5/12-621(b)(7); Fla. Stat. § 55.605(2)(h). A very similar provision in California provides that a court in that state "is not required to recognize" foreign defamation judgments "unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions." Cal. Civ. Pro. Code § 1716(c)(9).

[60] All of the states' foreign judgment recognition statutes—reflecting provisions in the uniform acts—had already provided that foreign judgments need not be recognized if "the cause of action on which the judgment is based is repugnant to the public policy" of the state. 735 ILCS 5/12-621(b)(3); N.Y. CPLR § 5304(b)(4); Cal. Civ. Pro. Code § 1716(c)(3); Fla. Stat. § 555.605(2)(c).

The Federal SPEECH Act

The 111th Congress considered several proposals to address libel tourism,[67] and ultimately passed the Securing the Protection of our Enduring and Established Constitutional Heritage Act (or the "SPEECH Act"),[68] which was signed into law on August 10, 2010.

The SPEECH Act avoided the constitutional questions that accompanied some of the other proposals. For example, S. 449 and H.R. 1304, which were collectively referred to as the Free Speech Protection Act, would have authorized counter-suits and a basis for exercising personal jurisdiction over a person who served documents related to a foreign defamation lawsuit on a U.S. person.[69] Had this approach been adopted, it may have been viewed as authorizing federal courts to exercise personal jurisdiction beyond the boundaries permitted by due process, which requires the defendants to have "minimum contacts" in the judicial forum, such that the court's assertion of jurisdiction over them conforms with traditional notions of fairness.[70] For these reasons, as well as concern for international comity, the House Committee on the Judiciary indicated that this approach would be too aggressive.[71]

Accordingly, the SPEECH Act does not authorize counter-suits against plaintiffs in foreign libel cases. Instead, the SPEECH Act bars U.S. courts from recognizing or enforcing a foreign judgment for defamation unless certain requirements are satisfied.[72] However, advocates of a federal cause of action have argued that, without the threat of a counter-suit, bars on enforcement like the one created by the SPEECH Act are insufficient to prevent a chilling effect on the speech of U.S. persons.[73]

The SPEECH Act prohibits domestic courts from recognizing or enforcing foreign judgments for defamation in any one of three circumstances:

1. When the party opposing recognition or enforcement claims that the judgment is inconsistent with the First Amendment to the Constitution, until and unless the

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[67] *E.g.*, Free Speech Protection Act of 2009, S. 449 and H.R. 1304, 111th Cong. 1st Sess.; Securing the Protection of our Enduring and Established Constitutional Heritage Act (SPEECH Act), S. 3518 and H.R. 2764, 111th Cong., 1st Sess.

[68] P.L. 111-223 *codified at* 28 U.S.C. §§ 4101-4105.

[69] S. 449, § 3(a), (b); H.R. 1304, § 3(a), (b).

[70] *See* H.Rept. 111-154, at 6 (2009) (characterizing the constitutional effects of this approach). *See also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *supra* note 64 and accompanying discussion.

[71] H.Rept. 111-154, at 6 (2009). *But see id.* at 10 (stating the additional views of Senator Jon Kyl that "Congress needs to pass broader measures that permit U.S. citizens accused of libel in foreign courts to force their accusers to pay for legal fees incurred abroad and, in certain cases, additional damages...."). The Committee also wrote that principles of international comity suggested that these counter-suits might represent too great an intrusion into the legal systems of other countries. *Id.*

[72] 28 U.S.C. § 4102.

[73] *See, e.g., Are Foreign Libel Lawsuits Chilling Americans' First Amendment Rights?: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. (Feb. 23, 2010) (written testimony of Kurt Wimmer, Partner, Covington & Burling), http://judiciary.senate.gov/hearings/testimony.cfm?id=4414&wit_id=9121 (asserting that because "the very act of rendering a foreign judgment has immediate and damaging effects on [a] publisher or author," a lack of enforcement is insufficient to prevent a chilling effect). *See also* S.Rept. 111-224, at 10 (2010) (stating the additional views of Senator Jon Kyl that "Congress needs to pass broader measures that permit U.S. citizens accused of libel in foreign courts to force their accusers to pay for legal fees incurred abroad and, in certain cases, additional damages ... We support this bill as a good first step toward addressing an important problem, but there is more that can, and should, be done.").

where the scope of the statute indicates that Congress intended to occupy the field exclusively.[78] The Court has identified two forms of implied conflict preemption: situations in which it is impossible for private parties to comply with both state and federal requirements and situations in which the state law frustrates the purpose of Congress.[79] However, these categories should not be interpreted formalistically[80] because the ultimate touchstone of the preemption analysis is whether, and to what extent, Congress intended, explicitly or implicitly, for the federal law to preempt relevant state law.[81] Like many other federal statutes, the SPEECH Act does not contain an express preemption provision, but its language and legislative history strongly suggest that Congress intended to preempt state laws that conflict with the accomplishment of its purpose.[82]

The primary evidence of Congress's preemptive intent is the explicit language of the SPEECH Act itself. The statute states that its provisions are applicable in all "domestic" courts and defines a "domestic court" to include both state and federal courts, "notwithstanding any other provision of [f]ederal or [s]tate law."[83] In addition, House and the Senate Judiciary Committee reports indicate that Congress believed the SPEECH Act would preempt "[s]tate laws related to foreign judgments."[84] Finally, the importance of ensuring a uniform approach towards foreign libel judgments is also likely to weigh in favor of preemption.[85]

Congressional intent aside, the preemptive effect of the Supremacy Clause can be constrained by other constitutional principles, notably federalism[86] and separation of powers,[87] leading courts to apply a presumption against preemption when the federal law in question appears to interfere

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[78] *See* Spreitsma v. Mercury Marine, 537 U.S. 51, 64-65 (2002) (quoting Freightliner Corp. v. Myrick, 514 U.S. 280, 287 (1995)); Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977).

[79] Spreitsma, 537 U.S. at 64-65 (quoting Freightliner Corp. v. Myrick, 514 U.S. 280, 287 (1995));

[80] *See* Geier v. Honda Motor Co., 529 U.S. 861, 873 (2000) ("The Court has not previously driven a legal wedge—only a terminological one—between 'conflicts' that prevent or frustrate the accomplishment of a federal objective and 'conflicts' that make it 'impossible' for private parties to comply with both state and federal law ... it has assumed that Congress would not want either kind of conflict.").

[81] *See* David A. Dana, *Democratizing the Law of Federal Preemption*, 102 Nw. U. L. Rev. 507, 510 (2008). *E.g.*, Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 747 (1985) (stating that congressional intent is the "ultimate touchstone" of preemption analysis).

[82] *See* Dana, *supra* note 81, at 509. *See, e.g.*, Cipollone v. Liggett Grp., 505 U.S. 504, 518-520 (1992) (indicating that the express language of the statute and its legislative history would support a finding of preemption of state statutes).

[83] 28 U.S.C. § 4101(2) ("The term 'domestic court' means a [f]ederal court or a court of any [s]tate."); 28 U.S.C. § 4102 ("Notwithstanding any other provision of [f]ederal or [s]tate law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless ..." certain criteria are met.). *See Gregory*, 501 U.S. at 466-67 (stating that it can be sufficiently plain to anyone reading a federal law that it preempts conflicting state law even in the absence of explicit language).

[84] S.Rept. 111-224, at 7 (2010); H.Rept. 111-154, at 9 (2009).

[85] *See* Mary J. Davis, *Unmasking the Presumption in Favor of Preemption*, 53 S. C. L. Rev. 967, 1016 (2002) ("The perceived need for uniformity of standards is, and has always been, a critical factor to the Court in evaluating whether a state law stands as an obstacle to the accomplishment of federal objectives."). *E.g.*, Geier, 529 U.S. at 871-71 (identifying that the need for uniformity in safety standards was a concern behind the legislation and favored preemption of state safety standards); Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 234-35 (1947) (indicating that the need for national harmonization of warehouse regulations supported preemption).

[86] Viet D. Dinh, *Reassessing the Law of Preemption*, 88 Geo. L. J. 2085, 2086 (2000). *See* Gregory, 501 U.S. at 460-61.

[87] *See* U.S. Const. art. I, § 8 (enumerating Congress's legislative powers). *See also* Dinh, *supra* note 86, at 2091 ("Preemption is not a substantive power of Congress, but rather a method of regulation in furtherance of some other substantive congressional authority. The power to preempt, therefore, is necessarily pendant on some enumerated power to regulate under Article I, Section 8.").

Conclusion

Prior to the enactment of the Securing the Protection of our Enduring and Established Constitutional Heritage Act (SPEECH Act), concern existed over the effect the threat of foreign libel suits was having on the exercise of Americans' freedom of speech rights. Although the U.S. Constitution provides relatively strong freedom of speech protections, it did not prevent courts in countries with a less protective view of speech from entering libel judgments against U.S. persons. The SPEECH Act is intended to address this libel tourism phenomenon and reduce or eliminate the potential "chilling effect" foreign libel suits may have on speech protected by the First Amendment to the U.S. Constitution.

Accordingly, the SPEECH Act prohibits domestic courts from recognizing or enforcing foreign judgments for defamation that are inconsistent with the First Amendment of the Constitution, that were entered by a court that exercised personal jurisdiction in contravention of the due process requirements imposed on U.S. courts by the Constitution, or that were inconsistent with section 230 of the Communications of 1934. Some have argued, however, that, without the threat of a counter-suit, this bar on enforcement will prove insufficient to prevent a chilling effect on the speech of U.S. persons.

There are several state libel tourism laws that predate the enactment of the SPEECH Act; however, the SPEECH Act appears to preempt state lawmaking in this area. Although the SPEECH Act lacks an explicit preemption provision, it applies to all "domestic" courts and defines a "domestic court" to include both state and federal courts, notwithstanding any other provision of state law. Furthermore, the legislative history of the act indicates that Congress believed, one, that the SPEECH Act would preempt state laws related to foreign judgments, and, two, that a uniform national approach towards foreign libel judgments was necessary.

The passage of the SPEECH Act may have implications for international comity. A decision by a state or federal court in the United States not to enforce particular foreign libel judgments could have negative repercussions on the enforcement of U.S. libel or other judgments in foreign courts. This will be particularly true in those countries that condition recognition of foreign judgments on the foreign country's reciprocal recognition of judgments of the same type. Similarly, in some areas, U.S. law is perceived as plaintiff-friendly, and the United States may find its diplomatic efforts to ensure that foreign countries recognize judgments pursuant to these plaintiff-friendly laws are opposed by countries' whose libel judgments are negatively affected by the SPEECH Act.

(...continued)

Agreement Relating to Cooperation on Antitrust Matters, Art. 5, U.S.-Aus., June 29, 1982, 34 UST 388. *See also* Roger P. Alford, *The Extraterritorial Application of Antitrust Laws: The United States and European Community Approaches*, 33 VA. J. INT'L L. 1, 47 n. 225 (1992) (identifying several bilateral consultation agreements between the United States and foreign countries); Harold G. Maier, *Interest Balancing and Extraterritorial Jurisdiction*, 31 AM. J. COMP. L. 578, 587 (1983) (describing the United States-Australian antitrust agreement's effect on Australia's blocking statute). The United States also has a history of opposing international initiatives to harmonize antitrust law. Spencer Weber Waller, *National Laws and International Markets: Strategies of Cooperation and Harmonization in the Enforcement of Competition Law*, 18 CARDOZO L. REV. 1111, 1118 (1996).