



D I S T R I C T O F C O L U M B I A B A R  
*Arts, Entertainment, Media and Sports Law Section*

ONE-PAGE SUMMARY

OF

D.C. BAR ARTS, ENTERTAINMENT, MEDIA AND SPORTS LAW SECTION STATEMENT

*In support of the Free Speech Protection Act of 2008(S. 2977)*

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**The views expressed herein represent only those of the Arts, Entertainment, Media and Sports law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.**

The Steering Committee of the Arts, Entertainment, Media and Sports Law Section of the District of Columbia Bar, on behalf of the Section, has voted to support the Free Speech Protection Act of 2008 (S. 2977). The statement of support will also be signed by the Association of American Publishers, American Booksellers for Free Expression, the American Library Association, and other non-profit organizations dedicated to First Amendment principles.

Libel suits filed in foreign countries pose a grave danger to the free speech rights of American authors, journalists, publishers, and readers. S. 2977 provides authors with the weapons they need to protect their right to express themselves freely and ensures that the libel laws of countries that provide less protection for free speech will not undermine American laws or chill protected speech. Increasingly in recent years, individuals who challenge the accuracy of published materials have attempted to strike back at their authors by filing lawsuits in foreign countries, most commonly England. U.S. law requires the party alleging libel to prove that the statements objected to are actually false. To avoid this burden, libel plaintiffs have engaged in forum shopping - filing lawsuits in countries with either different burdens of proof or different definitions of libel. In August 2008 the United Nations Committee on Human Rights issued a report criticizing British libel law for stifling freedom of speech on issues of serious public concern.

In 2007 the New York Court of Appeals cited lack of jurisdiction to grant a declaratory judgment to Dr. Rachel Ehrenfeld, an American expert on terrorism, against enforcement of a default judgment in Britain to pay over \$225,000 to Salim bin Mahfouz. Dr. Ehrenfeld, an American scholar, was sued in British by bin Mahfouz, a Saudi billionaire, over statements in her book, Funding Evil: How Terrorism is Financed and How to Stop It, a book never published in Great Britain, with a mere 23 copies sold there online. In June 2008 the U.S.-based College Art Association paid a \$75,000 settlement and issued an apology to avert a suit in Britain over a book review published in Art Journal. Earlier this year New York passed a law that broadens the jurisdiction of New York courts over such cases to ensure that foreign libel judgments may not be enforced unless they meet New York and U.S. constitutional standards. S. 2977 is modeled on the New York law. It provides that foreign libel judgments can be enjoined in the United States if the speech is not libelous under U.S. law. S. 2977 also authorizes authors to countersue the plaintiffs in the foreign cases if their purpose was to circumvent First Amendment protections.

Passage of the Free Speech Protection Act is essential to protect the right of American authors to investigate and reveal wrongdoing anywhere in the world and to ensure that weaker protections for free speech elsewhere do not undermine First Amendment freedoms at home.



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<sup>1</sup> The Arts, Entertainment, Media and Sports Law ("AEMS") Section of the D.C. Bar represents 669 D.C. Bar members with an interest in arts, entertainment, media and sports law. The Steering Committee of the AEMS Section voted to adopt this Public Statement by a vote of 6 in favor, 2 recusals by government attorneys, and 1 abstention. The principal drafter of this Public Statement was Section Arts and Cultural Law Committee Chair John Davis Malloy.



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Respectfully Submitted,

Karl Wm. Means  
Co-Chair, D.C Bar Arts, Entertainment, Media and Sports Law Section

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Co-Chair, D.C Bar Arts, Entertainment, Media and Sports Law Section

October 22, 2008