

(II) before the motion picture is completed and—

(aa) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

(bb) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

(b) SCOPE OF EXCLUSION OF TRANSFERS OF PUBLIC PERFORMANCE RIGHTS.—For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

(c) EXCLUSION FOR GRANTS OF SECURITY INTERESTS.—Subsection (a) shall not apply to—

(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party's rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

(d) DEFERRAL PENDING RESOLUTION OF BONA FIDE DISPUTE.—A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

(e) SCOPE OF OBLIGATIONS DETERMINED BY PRIVATE AGREEMENT.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

(f) FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution

of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

(g) DETERMINATION OF DISPUTES AND CLAIMS.—Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

(h) STUDY.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.

(Added Pub. L. 105-304, title IV, § 406(a), Oct. 28, 1998, 112 Stat. 2903.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subs. (a) and (h), is Oct. 28, 1998. See Effective Date of 1998 Amendment note set out under section 108 of Title 17, Copyrights.

CHAPTER 181—FOREIGN JUDGMENTS

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§ 4101. Definitions

In this chapter:

(1) DEFAMATION.—The term “defamation” means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

(2) DOMESTIC COURT.—The term “domestic court” means a Federal court or a court of any State.

(3) FOREIGN COURT.—The term “foreign court” means a court, administrative body, or other tribunal of a foreign country.

(4) FOREIGN JUDGMENT.—The term “foreign judgment” means a final judgment rendered by a foreign court.

(5) STATE.—The term “State” means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(6) UNITED STATES PERSON.—The term “United States person” means—

(A) a United States citizen;

(B) an alien lawfully admitted for permanent residence to the United States;

(C) an alien lawfully residing in the United States at the time that the speech that is

¹ So in original. Does not conform to section catchline.

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the subject of the foreign defamation action was researched, prepared, or disseminated; or

(D) a business entity incorporated in, or with its primary location or place of operation in, the United States.

(Added Pub. L. 111-223, §3(a), Aug. 10, 2010, 124 Stat. 2381.)

FINDINGS

Pub. L. 111-223, §2, Aug. 10, 2010, 124 Stat. 2380, provided that: “Congress finds the following:

“(1) The freedom of speech and the press is enshrined in the first amendment to the Constitution, and is necessary to promote the vigorous dialogue necessary to shape public policy in a representative democracy.

“(2) Some persons are obstructing the free expression rights of United States authors and publishers, and in turn chilling the first amendment to the Constitution of the United States interest of the citizenry in receiving information on matters of importance, by seeking out foreign jurisdictions that do not provide the full extent of free-speech protections to authors and publishers that are available in the United States, and suing a United States author or publisher in that foreign jurisdiction.

“(3) These foreign defamation lawsuits not only suppress the free speech rights of the defendants to the suit, but inhibit other written speech that might otherwise have been written or published but for the fear of a foreign lawsuit.

“(4) The threat of the libel laws of some foreign countries is so dramatic that the United Nations Human Rights Committee examined the issue and indicated that in some instances the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work. The advent of the internet and the international distribution of foreign media also create the danger that one country’s unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest.

“(5) Governments and courts of foreign countries scattered around the world have failed to curtail this practice of permitting libel lawsuits against United States persons within their courts, and foreign libel judgments inconsistent with United States first amendment protections are increasingly common.”

§ 4102. Recognition of foreign defamation judgments

(a) FIRST AMENDMENT CONSIDERATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that—

(A) the defamation law applied in the foreign court’s adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located; or

(B) even if the defamation law applied in the foreign court’s adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement

of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located.

(2) BURDEN OF ESTABLISHING APPLICATION OF DEFAMATION LAWS.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showings required under subparagraph (A) or (B).

(b) JURISDICTIONAL CONSIDERATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the exercise of personal jurisdiction by the foreign court comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

(2) BURDEN OF ESTABLISHING EXERCISE OF JURISDICTION.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of making the showing that the foreign court’s exercise of personal jurisdiction comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

(c) JUDGMENT AGAINST PROVIDER OF INTERACTIVE COMPUTER SERVICE.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230) unless the domestic court determines that the judgment would be consistent with section 230 if the information that is the subject of such judgment had been provided in the United States.

(2) BURDEN OF ESTABLISHING CONSISTENCY OF JUDGMENT.—The party seeking recognition or enforcement of the foreign judgment shall bear the burden of establishing that the judgment is consistent with section 230.

(d) APPEARANCES NOT A BAR.—An appearance by a party in a foreign court rendering a foreign judgment to which this section applies shall not deprive such party of the right to oppose the recognition or enforcement of the judgment under this section, or represent a waiver of any jurisdictional claims.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) affect the enforceability of any foreign judgment other than a foreign judgment for defamation; or

(2) limit the applicability of section 230 of the Communications Act of 1934 (47 U.S.C. 230) to causes of action for defamation.

(Added Pub. L. 111-223, §3(a), Aug. 10, 2010, 124 Stat. 2381.)

§ 4103. Removal

In addition to removal allowed under section 1441, any action brought in a State domestic

court to enforce a foreign judgment for defamation in which—

- (1) any plaintiff is a citizen of a State different from any defendant;
- (2) any plaintiff is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
- (3) any plaintiff is a citizen of a State and any defendant is a foreign state or citizen or subject of a foreign state,

may be removed by any defendant to the district court of the United States for the district and division embracing the place where such action is pending without regard to the amount in controversy between the parties.

(Added Pub. L. 111-223, §3(a), Aug. 10, 2010, 124 Stat. 2383.)

§ 4104. Declaratory judgments

(a) CAUSE OF ACTION.—

(1) IN GENERAL.—Any United States person against whom a foreign judgment is entered on the basis of the content of any writing, utterance, or other speech by that person that has been published, may bring an action in district court, under section 2201(a), for a declaration that the foreign judgment is repugnant to the Constitution or laws of the United States. For the purposes of this paragraph, a judgment is repugnant to the Constitution or laws of the United States if it would not be enforceable under section 4102(a), (b), or (c).

(2) BURDEN OF ESTABLISHING UNENFORCEABILITY OF JUDGMENT.—The party bringing an action under paragraph (1) shall bear the burden of establishing that the foreign judgment would not be enforceable under section 4102(a), (b), or (c).

(b) NATIONWIDE SERVICE OF PROCESS.—Where an action under this section is brought in a district court of the United States, process may be served in the judicial district where the case is brought or any other judicial district of the United States where the defendant may be found, resides, has an agent, or transacts business.

(Added Pub. L. 111-223, §3(a), Aug. 10, 2010, 124 Stat. 2383.)

§ 4105. Attorneys' fees

In any action brought in a domestic court to enforce a foreign judgment for defamation, including any such action removed from State court to Federal court, the domestic court shall, absent exceptional circumstances, allow the party opposing recognition or enforcement of the judgment a reasonable attorney's fee if such party prevails in the action on a ground specified in section 4102(a), (b), or (c).

(Added Pub. L. 111-223, §3(a), Aug. 10, 2010, 124 Stat. 2383.)