

(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 rec-

ognition 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.

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§ 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