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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

YAHOO! INC., a Delaware Corporation Plaintiff, v. LA LIGUE CONTRE LE RACISME ET L'ANTISEMITISME, a French Association, *et al.*, Defendants,	Case No. C00-21275 JF APPLICATION OF *AMICI CURIAE* FOR LEAVE TO FILE BRIEF IN SUPPORT OF YAHOO! INC.'S MOTION FOR SUMMARY JUDGMENT Hearing Date: Not yet set Time: Place: Courtroom 3 Judge: Hon. Jeremy Fogel Date of Filing: April 6, 2001 Trial Date: Not yet set

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Introduction

Pursuant to Civil L.R. 7.11(c), of the Local Rules of the U.S. District Court for the Northern District of California, the Center for Democracy and Technology, the American Civil Liberties Union, the American Civil Liberties Union of Northern California, the American Booksellers Foundation For Free Expression, the Association of American Publishers, Computer Professionals for Social Responsibility, Digital Freedom Network, the DKT Liberty Project, the Electronic Frontier Foundation, Feminists for Free Expression, the First Amendment Project, the Freedom to Read Foundation, Human Rights Watch, Human Rights in China, Lin Hai, the Media Institute, the National Coalition Against Censorship, People for the American Way Foundation, Publishers' Marketing Association, the Society of Professional Journalists, and VIP Reference respectfully request leave to file the attached Brief *Amici Curiae* in Support of Plaintiff's Motion for Summary Judgment.

This case raises issues of extraordinary importance to the maintenance of free expression on the Internet. Its outcome is of moment not simply to Yahoo! Inc. but to all U.S.-based Internet speakers who, like *amici*, use the Internet to communicate opinions and information that may run afoul of the laws of another nation. The purpose of this brief is to give the Court a more complete understanding of the widespread nature of such speech-repressive laws. The brief also discusses the legal principle that prohibits the enforcement of foreign judgments that are contrary to the public policy of the forum, such as the First Amendment to the United States Constitution and Section 230 of the Communications Act of 1934, as amended. In addition, it provides the Court with a

discussion of California's strong public policy favoring the protection of free expression found in the Liberty of Speech Clause of article I, section (2)(a) of the California Constitution.

Unlike the unwavering commitment to the preservation of freedom of expression embodied in the First Amendment and the California Constitution, the laws of other nations prohibit access to entire areas of discussion and information. These laws make taboo the uncensored distribution of news, the criticism of official government policy, and the voicing of controversial opinions on issues as varied as politics, religion, culture, and morality. If speakers in the United States who provide content on the Internet must fear the domestic enforcement of judgments obtained against them in foreign lands based on such foreign laws, the First Amendment's protection of freedom of expression on the Internet will quickly become a hollow promise.

Interest of Amici

This brief *amici curiae* is submitted on behalf of various public interest organizations, trade associations and individuals, described below, that engage in online speech and share a deep commitment to ensuring that the Internet achieves its full promise as a revolutionary medium of communication. The French judgment before this Court represents a direct attempt by a foreign nation to apply its law extraterritorially to restrict the freedom of expression of U.S.-based online speakers who are protected by the First Amendment. Accordingly, *amici* have a direct stake in the outcome of this case.

Center for Democracy and Technology ("CDT") is a non-profit public interest and Internet policy organization. CDT represents the public's interest in an open,

decentralized Internet reflecting constitutional and democratic values of free expression, privacy, and individual liberty. CDT's staff have conducted extensive policy research, published academic papers and analyses, and testified before Congress on the impact of national and international policy on the growth and development of the Internet, and continue to work both domestically and abroad to promote responsible technology policy.

American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution. The protection of principles of freedom of expression as guaranteed by the First Amendment is an area of special concern to the ACLU. In this connection, the ACLU has been at the forefront in numerous state and federal cases involving freedom of expression on the Internet. The American Civil Liberties Union of Northern California is the regional affiliate of the American Civil Liberties Union. Like the national ACLU, the ACLU-NC frequently litigates cases raising issues of freedom of expression on the Internet.

American Booksellers Foundation For Free Expression ("ABFFE") was organized as a not-for-profit organization by the American Booksellers Association in 1990 to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials. ABFFE has hundreds of bookseller members who are located from coast to coast, many of whom use the Internet and electronic communications to obtain information and excerpts of books from publishers. Some member bookstores also have their own Web pages that discuss the

contents of books sold in stores. In addition to their overriding interest in the protection of freedom of expression, ABFFE members' right to learn about, acquire, and distribute First Amendment protected books and other materials will be seriously infringed and chilled if they must be concerned about the application of the laws of every country in the world to their United States-centered Internet communications.

Association of American Publishers ("AAP") is the national trade association of the U.S. book publishing industry. AAP's approximately 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, post-secondary and professional markets and computer software and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

Computer Professionals for Social Responsibility ("CPSR") is a public interest alliance of information technology professionals and others concerned about the impact of computer technology on society (www.cpsr.org). Founded in 1981, with over 1,200 members and 23 chapters worldwide, CPSR has played an active role on a variety of public policy issues related to the Internet, including First Amendment and jurisdictional matters. CSPR has participated in matters related to these issues in Congress, the courts and federal agencies.

Digital Freedom Network ("DFN") is a non-profit organization that promotes human rights around the world by developing new methods of activism with Internet technology and by providing an online voice to those attacked simply for expressing themselves. Based in New Jersey, DFN regularly publishes updated material by and about human rights activists on its Web site (www.DFN.org), along with alerts that enable people to take action online. DFN is concerned that foreign court decisions will stifle human rights organizations by forcing them to comply with the speech restrictions of the world's most repressive countries.

The DKT Liberty Project was founded in 1997 to promote individual liberty against encroachment by all levels of government. This not-for-profit organization advocates vigilance over regulation of all kinds, especially restrictions of individual civil liberties, such as the right to free speech, because such restrictions threaten the reservation of power to the citizenry that underlies our constitutional system. This case presents the possibility that not only our own, but other governments may attempt to restrict these liberties. Because of The Liberty Project's strong interest in protecting citizens from any government overreaching and in defending the constitutional rights of citizens from global efforts to deny them, it is well situated to provide this Court with additional insight into the issues presented in this case.

The Electronic Frontier Foundation ("EFF") is a non-profit, civil liberties organization working to protect rights in the digital world. EFF actively encourages and challenges industry and government to support free expression, privacy, and openness in the information society. Founded in 1990, EFF is based in San Francisco, with a satellite

office in Washington, D.C. EFF has members all over the United States and maintains one of the most-linked-to Web sites (www.eff.org) in the world. EFF believes that free speech is a fundamental human right, that free expression is vital to society. The vast web of electronic media that now connects us is heralding a new age of communications, a new way to convey speech. New digital networks offer a tremendous potential to empower individuals in an ever over-powering world. While EFF is mindful of the serious issues that may arise when information flows free, EFF is dedicated to addressing such matters constructively while ensuring that fundamental rights are protected.

Feminists for Free Expression ("FFE") is a national, not-for-profit organization of diverse women and men who share a commitment both to gender equality and to preserving the individual's right and responsibility to read, view, or produce expressive materials of her or his choice free from government intervention. In opposition to the misapprehension that censorship is in the interest of women and others who feel unequally treated by society, FFE believes that the goal of equality is inextricably linked to the values enshrined in our Constitution's free speech clause.

The First Amendment Project ("FAP") is a nonprofit, public interest law firm and advocacy organization dedicated to protecting and promoting freedom of information, expression, and petition. FAP provides advice, educational materials, and legal representation to its core constituency of activists, journalists, and artists in service of these fundamental liberties.

The Freedom to Read Foundation ("FTRF") is a non-profit membership organization established in 1969 by the American Library Association to promote and

defend First Amendment rights; to foster libraries as institutions fulfilling the promise of the First Amendment for every citizen; to support the rights of libraries to include in their collections and make available to the public any work they may legally acquire; and to set legal precedent for the freedom to read on behalf of all citizens.

Human Rights Watch is a non-profit organization that investigates and reports on violations of fundamental human rights in over 70 countries worldwide with the goal of securing the respect of these rights for all persons. It is the largest international human rights organization based in the United States. Since its inception, it has taken special interest in issues pertaining to the freedom of expression. Human Rights Watch has researched and documented violations of the right to free expression in many countries, including the United States.

Human Rights in China ("HRIC") is an international non-governmental organization headquartered in New York City that monitors and advocates the implementation of international human rights standards in the People's Republic of China. As part of these efforts, HRIC posted on its own site a pro-democracy webpage that had been shutdown by Chinese authorities; it also distributes a quarterly journal (China Rights Forum), available online, to thousands of readers worldwide.

Lin Hai is believed to be the first person to be jailed by the Chinese authorities for his Internet free speech activities. He was sentenced to two years in prison for providing email addresses to fellow *amicus* VIP Reference. Seeking more freedom, Lin has now fled to New York City. In the meantime, the Chinese "Net police" have

blocked his website FreeChina.com (which is hosted in the United States) from mainland Chinese Internet users.

The Media Institute is an independent, nonprofit research foundation in Washington, D.C., specializing in issues of communications policy. The Institute advocates and promotes three principles: First Amendment freedoms for both new and traditional media; the development of a dynamic communications industry based on competition rather than regulation; and excellence in journalism. The Institute has participated in regulatory proceedings and in select cases before federal courts of appeal and the Supreme Court of the United States. The Institute also conducts research projects and sponsors publications relating to the First Amendment and other communications issues. The Institute's interest in this case is based on its deep and abiding commitment to the values of free speech and free press and its support for full protection under the First Amendment for all print and electronic media.

National Coalition Against Censorship ("NCAC"), founded in 1974, is an alliance of 51 national nonprofit organizations, including religious, educational, professional, artistic, labor and civil rights groups, united in the conviction that freedom of thought, inquiry and expression are indispensable to a healthy democracy. NCAC educates the public and policy-makers about threats to free expression and works to create a more hospitable environment for laws, decisions, and policies protective of free speech and democratic values. The positions advocated by NCAC in this brief do not necessarily reflect the positions of each of its participating organizations.

People For the American Way Foundation ("People For") is a nonpartisan, education-oriented citizens' organization established to promote and protect constitutional liberties and civil rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has over 300,000 members nationwide. People For has represented parties and filed *amicus curiae* briefs in leading federal and state cases involving the application of First Amendment principles and freedoms to the Internet. People For has joined in filing this *amicus* brief because of the important legal principles at stake in this case, including the ability of Americans and their families to send and receive otherwise public and constitutionally protected information. As an organization dedicated to the fundamental values of tolerance and diversity, People For abhors Nazism and its adherents, whose philosophy includes indoctrination, censorship and hateful persecution of people of different races, religions and views. People For believes the First Amendment provides both the foundation for an open and tolerant society and a critical tool for countering hate, discrimination and division through education, organization and policy actions.

Publishers' Marketing Association ("PMA") is a nonprofit trade association representing more than 2,000 publishers, predominantly of non-fiction, across the United States and Canada. Although PMA's members' business is primarily based on print publishing, some of the books (or portions thereof) are now or soon will be published in electronic formats available to the public on the Internet. PMA's members' right to distribute their First Amendment protected publications will be seriously

infringed and chilled if they must be concerned about the application of the laws of every country in the world to their United States-centered Internet communications.

The Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry; works to inspire and educate the next generation of journalists; and protects First Amendment guarantees of freedom of speech and press.

VIP Reference (also known as "Dacankao") is the leading Chinese pro-democracy electronic newsletter. Based in Washington D.C., it is edited by Richard Long, and is read by countless online recipients in mainland China and elsewhere. VIP Reference (which is available via www.bigNEWS.org) is concerned that if foreign countries are allowed to extend their legal power to the United States, the governments of various repressive nations (especially mainland China) will use these powers to suppress online free speech and persecute dissidents.

Request for Leave to File Brief *Amici Curae*

For the reasons stated above, counsel respectfully requests leave of this Court to file the attached brief *amici curiae* in support of plaintiff's motion for summary judgment. Counsel for *amici* contacted counsel for the parties to ask their consent to the

filing of a friend of the court brief. Counsel for plaintiff has given their consent. Counsel for defendants, however, opposes the filing of this motion.

Respectfully submitted,

By: _____

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Dated: April 6, 2001

ORDER

It is so ordered.

Dated:_____ _____

Jeremy Fogel
United States District Judge

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UNITED STATES DISTRICT COURT
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SAN JOSE DIVISION

YAHOO! INC., a Delaware Corporation Plaintiff, v. LA LIGUE CONTRE LE RACISME ET L'ANTISEMITISME, a French Association, *et al.*, Defendants,	Case No. C00-21275 JF BRIEF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Hearing Date: Time: Place: Courtroom 3 Judge: Hon. Jeremy Fogel Date of Filing: April 6, 2001 Trial Date: Not yet set

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PRELIMINARY STATEMENT

Freedom of expression has a long and cherished history in this nation. Words and ideas, even those that challenge our most treasured values, enjoy a measure of protection under our Constitution that is almost unheard of elsewhere. The French judgment before this Court places our tradition of free expression in jeopardy. It represents a direct attempt by a foreign nation to apply its law extraterritorially to restrict the freedom of expression of U.S.-based online speakers who are protected by the First Amendment. It does so because the Plaintiff, Yahoo! Inc. ("Yahoo!"), has chosen the Internet as its means of communication.

The order of the County Court of Paris in *La Ligue Contre Le Racisme Et L'Antisemitisme v. Yahoo! Inc.*, No. RG: 00/05308 (Nov. 20, 2000 ("November 20 Order") requires Yahoo! to "take all necessary measures to dissuade and make impossible any access via Yahoo.com to the auction service for Nazi merchandise as well *as to any other site or service that may be construed as an apology for Nazism or contesting the reality of Nazi crimes.*" November 20 Order at 2 (emphasis added). 1/ The French court held that "the simple act of displaying [Nazi artifacts] in France violates Article R645-1 of the Penal Code and therefore [is] a threat to *internal* public order." *Id*. at 4 (emphasis added). It described the mere availability of such information to be "a connecting link with France, which renders our jurisdiction perfectly competent to rule in this matter." *Id*.

This order is but one example of the sort of judgment that this and other American courts can expect to see with increasing frequency as Internet use increases throughout the world. It is a predictable consequence of the global character of the Internet and the conflicts

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1/ A copy of an English translation of the November 20 Order is attached as Appendix 1.

that will inevitably arise concerning speech protected by the U.S. Constitution but forbidden by repressive laws elsewhere. The November 20 Order runs contrary to overwhelming judicial authority in the United States regarding Internet censorship. To prevent a significant erosion of this body of precedent, it is vital for this Court to make certain that the seeds of foreign censorship not be planted on U.S. soil. As Justice Robert Jackson warned, "the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943).

Quite obviously, the United States may not say what the laws of another nation may be. It is one thing, however, to acknowledge a foreign nation's use of its authority to silence or regulate speakers within its borders. It is quite another for an American court to become complicit in such censorship by giving effect to foreign laws in the United States through the enforcement of a foreign judgment that would silence speech hosted by a United States corporation via computer servers located entirely within this country. To open the door to foreign restrictions on U.S. speakers even the slightest crack would allow numerous restrictions on speech that would never be permitted if initiated in this country and would undermine First Amendment protections for Internet speech. This door must be kept closed, and closed tightly.2/ Accordingly, *amici* respectfully submit this brief in support of Plaintiff Yahoo! Inc.'s motion for summary judgment.3/

2/ *Amici* do not contend that foreign judicial resolution of issues that are subject to international treaties and conventions, such as disputes over intellectual property ownership arising out of the Internet, would not be enforceable in United States courts in a proper case. Such disputes raise substantially different issues than those raised by the case at bar and this brief does not address those issues.

3/ *Amici* include the Center for Democracy and Technology, the American Civil Liberties Union, the American Civil Liberties Union of Northern California, the American Booksellers

ARGUMENT

I. ENFORCEMENT OF THE FRENCH COURT ORDER IN THE UNITED STATES WOULD FUNDAMENTALLY CHANGE THE NATURE OF THE INTERNET AS A MEDIUM OF FREE EXPRESSION

A. American Courts Have Recognized the Importance of the Internet as a Unique New Medium of Communication

In the five short years between 1996 and the present, U.S. courts have been presented with a number of significant cases involving attempts to restrict information available on the Internet and World Wide Web. 4/ This growing body of law required courts to devote significant attention to the nature of the Internet as a medium of communication and to assess its importance to the American system of free expression. As a result of this review, every federal judge that has been asked to rule on direct censorship of protected expression on the Internet has held that such restrictions violate either the First Amendment to the United States Constitution, the Commerce Clause, or both. This list includes 28 federal judges, including all nine Supreme Court Justices. 5/

Foundation For Free Expression, the Association of American Publishers, Computer Professionals for Social Responsibility, Digital Freedom Network, the DKT Liberty Project, the Electronic Frontier Foundation, Feminists for Free Expression, the First Amendment Project, the Freedom to Read Foundation, Human Rights Watch, Human Rights in China, Lin Hai, the Media Institute, the National Coalition Against Censorship, People for the American Way Foundation, Publishers' Marketing Association, the Society of Professional Journalists, and VIP Reference. A brief description of each organization and its statement of interest in this case is set forth in the Application of *Amici Curiae* For Leave to File Brief in Support of Yahoo! Inc.'s Motion for Summary Judgment.

4/ The Internet is a decentralized, self-maintained networking system that links computers and computer networks around the world, while the World Wide Web is a publishing forum consisting of millions of individual web sites that may contain text, images, illustrations, video or animation. While recognizing that they are distinct entities, *Amici* will refer to the Web and the Internet collectively as the "Internet" for the sake of simplicity.

5/ *Reno v. ACLU*, 521 U.S. 844 (1997), *aff'g*, 929 F. Supp. 824 (E.D. Pa. 1996) (Sloviter, Dalzell and Buckwalter. J.J. ("*Reno I*"); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d

The consensus thus far is that this new medium fulfills the promise of the First Amendment and should receive the highest level of constitutional protection. The Supreme Court found that the information available on the Internet is as "'diverse as human thought'" with the capability of providing instant access on topics ranging from "the music of Wagner to Balkan politics to AIDS prevention to the Chicago Bulls." *Reno I*, 521 U.S. at 851, 852 (quoting 929 F. Supp. at 842). Judge Stuart Dalzell of the United States District Court for the Eastern District of Pennsylvania characterized the Internet as "a never-ending worldwide conversation" and "the most participatory form of mass speech yet developed." *Reno I*, 929 F. Supp. at 883. Judge Lowell Reed wrote that in "the medium of cyberspace . . . anyone can build a soap box out of web pages and speak her mind in the virtual village green to an audience larger and more diverse than any the Framers could have imagined." *ACLU v. Reno II*, 31 F. Supp. 2d at 476. Another district court, noting that "[i]t is probably safe to say that more ideas and information are shared on the Internet than in any other medium," suggested that it may be only a slight overstatement to conclude that "the Internet represents a brave new world of free speech." *Blumenthal v. Drudge*, 992 F. Supp. 44, 48 n.7 (D.D.C. 1998) (citation omitted). Yet another court proclaimed that the Internet "may well be the premier technological innovation of the present age." *Pataki*, 969 F. Supp. at 161.

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420 (6th Cir. 2000) (Guy, Hood and Norris, J.J.) (table), *aff'g*, 55 F. Supp. 2d 737 (E.D. Mich. 1999); *ACLU v. Reno*, 217 F.3d 162 (3d Cir. 2000) (Nygaard, McKee and Garth), *aff'g*, 31 F. Supp. 2d 473 (E.D. Pa. 1999) ("*Reno II*"), *petition for cert. filed*, 69 U.S.L.W. 3557 (Feb. 12, 2001) (No. 00-1203) *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999) (Anderson, Briscoe and Kimball, J.J.), *aff'g*, 4 F. Supp. 2d 1024 (D.N.M. 1998); *PSINet, Inc. v. Chapman*, 108 F. Supp. 2d 611 (W.D. Va. 2000); *American Libraries Ass'n. v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997); *ACLU of Georgia v. Miller*, 977 F. Supp. 1228, 1233 n.5, 1234 (N.D. Ga. 1997); *Shea v. Reno*, 930 F. Supp. 916 (S.D.N.Y. 1996), *aff'd*, 521 U.S. 1113 (1997).

These judicial assessments of the Internet as a vital medium of communication, and the courts' conclusions about its protected constitutional status are predicated on "the unique factors that affect communication in the new and technology-laden medium of the Web." *Reno II*, 31 F. Supp. 2d at 495. *See Reno II*, 217 F.3d at 168 ("'the unique character of these new electronic media significantly affect our opinion'"). A key characteristic that is relevant here is the global nature of the medium. The Supreme Court described the Internet as a "'unique and wholly new medium of worldwide human communication.'" *Reno I*, 521 U.S. at 849 (quoting 929 F. Supp. at 844). The Internet makes information available "'not just in Philadelphia, but also in Provo and Prague.'" *Id*. at 854 (quoting 929 F. Supp. at 844). Cyberspace is located in no particular geographical location and has no centralized control point and is available to anyone, anywhere in the world with access. *Id*. at 851. It is "ambient – nowhere in particular and everywhere at once." *Reno II*, 217 F.3d at 169 (quoting *Doe v. Roe*, 955 P.2d 951, 956 (Ariz. 1998)). This characteristic makes geography "a virtually meaningless construct on the Internet." *Pataki*, 969 F. Supp. at 169.

Yahoo! epitomizes the type of worldwide communication made possible on the Internet. It provides and hosts a wide array of Internet sites and services that were not possible just a few years ago, including its automated auction site, webpage hosting services, streaming media services and a search engine. Yahoo! enables its individual users to reach a worldwide audience with their own messages because of the nature of this medium. Although Yahoo!'s services are in English, oriented toward a U.S. audience and are hosted entirely on servers located in the U.S., its home website at http://www.yahoo.com is accessible globally, as are all Internet sites. It is this characteristic of Internet communication – that the Yahoo! U.S. site can be reached by French citizens – that is the basis of the legal dispute in this case.

B. Other Nations Have Adopted a Very Different Approach to Freedom of Expression on the Internet

Recognizing the essential character of the Internet as a global medium, American courts have overwhelmingly rejected attempts to censor it. This is not true elsewhere. Decision-makers in other nations have imposed controls on the Internet intended to silence disfavored expression originating within their borders and to keep out disfavored expression originating abroad. At least 59 different countries limit freedom of expression online. Reporters Sans Frontieres, ENEMIES OF THE INTERNET 5 (2001) ("ENEMIES OF THE INTERNET"); *see also* Leonard R. Sussman, CENSOR DOT GOV: THE INTERNET AND PRESS FREEDOM 2 (2000) http://www.freedomhouse.org/pfs2000/sussman.html (reporting that countries in all regions restrict domestic and transnational news flows). When nations erect technological barriers to the ability of their citizens to obtain access to news, information, or ideas from abroad, the impact of their repressive policies remains localized. However, to the extent these nations seek to control content on the Internet by applying their domestic laws extraterritorially to speech originating in the United States, the broader threat to freedom of expression is palpable. A few examples illustrate what is at stake.

China. The Peoples' Republic of China severely restricts communication via the Internet, including all forms of dissent and the free reporting of news. The so-called "Measures for Managing Internet Information Services," prohibit private websites from publishing "news" without prior approval from Communist officials. 6/ Disturbingly, Chinese officials are trying to

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6/ *See* Managing Internet Information-Release Services, P.R.C. Ministry of Information Industry Regulation, Nov. 7, 2000; *see also China issues regulations on managing Internet information-release services*, China Online, Nov. 13, 2000 <http://www.chinaonline.com/issues/internet_policy/NewsArchive/Secure/2000/November/C00110604.asp>. Other restrictions target a variety of disfavored groups, particularly supporters of

stop online protest messages available on overseas websites, particularly those located in the United States, from which so much pro-democracy speech emanates. Sussman, *supra*, at 2-3. Such restrictions pose a particular threat to groups and individuals like *amicus* VIP Reference (also known as "Dacankao"), Lin Hai and Human Rights in China ("HRIC"), all of whom have been directly affected by these laws. 7/ If U.S. courts begin enforcing foreign speech standards like the French law that gave rise to the judgment against Yahoo!, Chinese authorities are likely to pursue similar quasi-civil penalties in the hopes of silencing other pro-democracy speech.

Singapore. The Singapore Broadcasting Authority ("SBA") maintains strict control over the free speech activities of that country's Internet users. A recent U.S. human rights audit explained that the SBA has regulated access to content on the Internet since 1996 by licensing both domestic websites and ISPs. Service providers must install "proxy servers" which filter out content that the Government considers objectionable. The SBA directs service providers to block access to web pages that, in the Government's view, undermine public security, national defense, racial and religious harmony, and public morals. In 1997 the SBA announced an Internet Code of Practice to block access to material that contained pornography, excessive violence or that incited racial or religious hatred. U.S. Dep't of State, Country Reports On Human Rights Practices, Singapore § 2a 2000 (2001).

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the Falun Gong spiritual movement. *See China passes Internet security law*, China Online, Dec. 29, 2000 <http://www.chinaonline.com/issues/internet_policy/NewsArchive/Secure/2000/December/C00122805.asp>.

7/ VIP Reference is the leading Chinese pro-democracy electronic newsletter. Based in Washington D.C., it is run by Richard Long, and is read by countless individuals in mainland China. *See* Complete Archives of Dacankao Daily News (visited Mar. 23, 2001) <http://www.bignews.org>. Similarly, Chinese government agents shut down Xinwenming, a China-based pro-democracy website. *Xinwenming* (last visited Feb. 27, 2001) <http://www.hrichina.org/Xinwenming/index.htm>.

Saudi Arabia. Saudi Arabia bans publishing or even accessing various types of online expression, including "[a]nything contrary to the state or its system;" "[n]ews damaging to the Saudi Arabian armed forces;" "[a]nything damaging to the dignity of heads of states;" "[a]ny false information ascribed to state officials;" "[s]ubversive ideas;" and "[s]landerous or libellous [sic] material."8/ All 30 of the country's ISPs are linked to a ground-floor room at the Riyadh Internet entranceway, where all of the country's web activity is stored in massive cache files and screened for offensive or sacrilegious material before it is released to individual users. Whitaker, *Losing the Saudi Cyberwar*. The central servers are configured to block access to "sensitive" sites that might violate "the social, cultural, political, media, economic, and religious values of the Kingdom." Human Rights Watch World Report 1999: FREEDOM OF EXPRESSION ON THE INTERNET, <www.hrw.org/hrw/worldreport99/special/internet.html>. Several key overseas websites have received special scrutiny and blocking, including the Movement for Islamic Reform in Arabia – a group based in England. Saudi Arabian authorities have also issued a *fatwa* against Pokémon, claiming that the popular children's games and cards possess the minds of children while promoting gambling and Zionism. *See Adieu Pikachu*, http://www.abcnews.go.com/sections/world/DailyNews/pokemon010326.html.

Syria. Syria bans many types of content on the Internet, such as statements that would endanger "national unity" or otherwise divulge "state secrets" – categories which include pro-Israeli speech. *See* Syrian Const. art. XXXXII; ENEMIES OF THE INTERNET, *supra*, at 101. Syrian citizens can be jailed for sending e-mail to people overseas without government

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8/ Saudi Internet regulations, Saudi Arabia Council of Ministers Resolution (Feb. 12, 2001) <http://www.al-bab.com/media/docs/saudi.htm>; *see also*, Brian Whitaker, *Losing the Saudi Cyberwar*, THE GUARDIAN, Feb. 26, 2001 <http://www.guardianunlimited.co.uk/elsewhere/journalist/story/ 0,7792,443261,00.html>.

authorization. *Id*. Syrian authorities enforce these bans in several ways, including by intensive surveillance. Online access is severely restricted. There is only one Internet service provider in the country, which is government-run and which imposes heavy blocking and monitoring schemes. ENEMIES OF THE INTERNET, *supra*, at 101-102.

Australia. The Australian government has issued regulations that bar many forms of expression on the Internet. Under Amendments to the Broadcasting Services Act, Australian citizens will be prevented from accessing sites that refuse movie-style classifications or are rated X. Additionally, the scheme is designed to deny Australian minors access to any "R-rated" websites. Specifically with respect to Internet content hosted outside Australia, access is prohibited if the Internet content has been classified RC or X by the Classification Board. Broadcasting Services Act, 1992 (amended 1999), part 15, § 216B, sched. 5, part 3, div. 1 (Austl.). The list of subjects that can be banned as being unsuitable for minors includes suicide, crime, corruption, marital problems, emotional trauma, drug and alcohol dependency, death and serious illness, racism, religious issues. *See, e.g*., Guidelines for the Classification of Films and Videotapes, Austl. Office of Film and Literature Classification (Sept. 18, 2000). Violators may be subject to website shutdowns and other criminal penalties. Broadcasting Services Act, 1992 (amended 1999), part 15, § 216B, sched. 5, part 4.

Italy. Italy restricts both online and offline speech in various ways. The Italian constitution contains broad language that forbids "[p]rinted publications, performances, and all other exhibits offensive to public morality." Italian Const. art. XXI, § 6. Italy also allows law enforcement agents to seize questionable "periodical publications" under certain conditions. *Id.* § 4; *see also Id.* art. XIII, § 3. This heightened ability of the state to regulate speech gains added significance in light of a recent court decision that declared these standards should be applied

globally – not just in Italy. A Roman tribunal held that it has the power to shut down foreign websites to the extent they can viewed in Italy. *In the Matter of Moshe D.*, Italy. Cass., closed session, Nov. 17-Dec. 27, 2000, Judgment No. 4741 ("if confronted with a [defamatory statement] initiated abroad and terminated . . . in our Country, the Italian State is entitled to jurisdiction and the meting [out] of punishment"). (Appendix 2) The court noted that "the use of the Internet embodies one of the cases of aggravation described in Article 595 of the penal code," and that in this case "the sender deserves to be meted a more severe form of punishment." *Id*. The court's decision may well have been influenced by the fact that the speech at issue contained not only statements about a private party, but also "extremely negative defamatory opinions" about "the work of the Italian judicial authorities." *Id*.

Freedom of expression would be crippled were online speakers in the United States required to conform their speech to the restrictions of foreign nations, which vary widely from country to country and often conflict with core First Amendment principles. Even if such conformity were possible (which it is not), our constitutionally-based protections for online speech forbid any such requirement.

C. Enforcing the French Court Judgment Against Yahoo! in the United States Would Undermine Domestic Protection for Internet Communication

Granting recognition to the French court's judgment would have practical and legal ramifications that extend far beyond one nation's law or a single court order. It would establish a legal framework wherein all websites on the global Internet are subject to the laws of all other nations, regardless of the extent to which such a legal requirement conflicts with the law of the place where the speakers are located. Any finding that the November 20 Order may be enforced in the United States would establish an international regime in which any nation would

be able to enforce its legal and cultural "local community standards" on speakers in all other nations. In such a regime, Internet Service Providers and content providers would have no real choice but to restrict their speech to the lowest common denominator in order to avoid potentially crushing liability.

Although Judge Gomez reasoned that requiring Yahoo! "to extend its ban to symbols of Nazism" would satisfy "an ethical and moral imperative shared by all democratic societies," and that restrictions on Yahoo!'s United States operations are necessary to enforce a "simple public morality," November 20 Order at 18, these are not the questions presented by this case. Whether or not all nations share a belief in the evils of Nazism – a point not in dispute here – the critical issue in this case is that all nations do not agree that there is "an ethical and moral imperative" to censor disfavored speech. More importantly, enforcing matters of "public morality" is not so simple as the November 20 Order assumes. The legal principle upon which the November 20 Order is based is not confined to Nazism or to other issues in which values presumably are "shared." Its reasoning would permit enforcement of any nation's limitations on Internet speech, regardless of the extent to which such restrictions undermine human rights.

The effect of an analogous legal rule has been analyzed in cases assessing the impact of varying state laws on Internet speech. As Judge Loretta Preska pointed out, "[t]he unique nature of the Internet highlights the likelihood that a single actor might be subject to haphazard, uncoordinated, and even outright inconsistent treatment by states that the actor never intended to reach and possibly was unaware were being accessed." *Pataki*, 969 F. Supp. at 168. "[B]ecause of the peculiar geography-free nature of cyberspace, a 'community standards' test would essentially require every Web communication to abide by the most restrictive community's standards." *Reno II*, 217 F.3d at 175. Web publishers would be required to "comply

with the regulation imposed by the State with the most stringent standard or [entirely] forego Internet communication of the message that might or might not subject [the publisher] to prosecution." *Id*. at 176 (citation omitted).

The impact of such a lowest common denominator approach is measured not by counting the number of nations that already have sought to apply their laws beyond their borders (although that number is growing, as noted above). Rather, it is determined by assessing the practical effects on website operators, considering how the challenged rule "may interact with the legitimate regulatory regimes of other [nations] and what effect would arise if not one, but many or every, [nation] adopted similar legislation." *Pataki*, 969 F. Supp. at 175 (citation omitted). By this standard, web publishers will face a daunting task to the extent they must take measures to disable access to any information that may be illegal in foreign countries.

In the international arena, inconsistent regulation of Internet content acts like a "customs dut[y]." *Id.* at 174. A White House report on electronic commerce called for a minimum of government regulation internationally and warned that content regulation "could cripple the growth and diversity of the Internet." It described content regulations as non-tariff trade barriers. White House, A FRAMEWORK FOR GLOBAL ELECTRONIC COMMERCE 18 (July 1997). Similarly, the U.S. Department of Commerce has found that "[f]ull realization of the economic promise of information technology depends on the development of the same safeguards and predictable legal environment that individuals and businesses have come to expect in the offline world. U.S. Dep't of Commerce, DIGITAL ECONOMY 2000, at 22 (Dec. 2000).

Refusing to enforce the French judgment would in no way undermine the rule of law in France. France has full authority to regulate the behavior of its citizenry and to require

that they limit their web browsing to conform to local norms, just as other nations do. Other countries, such as China, Singapore and Saudi Arabia permit their citizens only to see officially approved websites and use technology to try to block access to non-conforming sites. *Amici* believe that freedom of expression is a fundamental human right and disagree strongly with such policies. But we acknowledge that other nations have made these policy choices. Whether or not such regulations conform to international notions of human rights, such actions at least do not affect freedom in the rest of the world.

The same could not be said if foreign judgments may be applied extraterritorially. Here, for example, the November 20 Order would have a dramatic impact on global free speech if it were deemed to be enforceable outside France. As noted above, Yahoo! would be forced to alter the architecture of its U.S. servers to block the offending material. And if French law can be enforced in this way, Yahoo! could likewise be forced to block access to information that "sabotages national unity" in China, undermines "religious harmony and public morals" in Singapore, offends "the social, cultural, political, media, economic, and religious values" of Saudi Arabia, fosters "pro-Israeli speech" in Syria, facilitates viewing unrated or inappropriately rated websites in Australia, or makes available information "offensive to public morality" in Italy – just to name a few examples. Under such a regime, U.S. courts would become vehicles for enforcing foreign speech restrictions on U.S. speakers. Such a rule is fundamentally inconsistent with the First Amendment and with U.S. public policy.

II. ENFORCEMENT OF THE FRENCH JUDGMENT WOULD BE REPUGNANT TO PUBLIC POLICY

Judgments of foreign courts are not entitled to automatic recognition or enforcement in American courts. *Wilson v. Marchington*, 127 F.3d 805, 808 (9th Cir. 1997*), cert.*

denied, 523 U.S. 1074 (1998). Whether the forum court will honor a foreign judgment is determined by principles of comity. *Id.* at 808. Among these is the rule that a court need not enforce a foreign judgment if to do so will offend the public policy of the forum state. *Ackermann v. Levine*, 788 F.2d 830, 837 (2d Cir. 1986); *Laker Airways Ltd v. Sabena, Belgian World Airlines*, 731 F.2d 909, 929, 931, 937, 943 (D.C. Cir. 1984); *Yuen v. U.S. Stock Transfer Co.*, 966 F. Supp. 944, 948 (C.D. Cal. 1997); *see Hilton v. Guyot*, 159 U.S. 113 (1895) (outlining fundamental principles of comity); Cal. Civ. Proc. Code § 1713.4(b)(3) (court need not recognize foreign money judgment based on cause of action repugnant to public policy of state).

A classic example of a judgment that will not be enforced on public policy grounds is a judgment that unconstitutionally impairs individual rights of personal liberty. *Ackermann v. Levine*, 788 F.2d at 841; *see Hilton v. Guyot*, 159 U.S. at 164, 193; *Somportex Ltd v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 443 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972). This includes a judgment based on laws or procedures that do not comport with fundamental First Amendment principles or their state constitutional counterparts. *See, e.g.*, *Matusevitch v. Telnikoff*, 877 F. Supp. 1 (D.D.C. 1995), *aff'd on other grounds*, 159 F.3d 636 (D.C. Cir. (1998) (Talbe); *Bachchan v. India Abroad Publ'ns. Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992). Similarly, judgments cannot be enforced if they violate an explicit public policy expressed by Congress. Here, enforcement of the November 20 Order would violate public policy as expressed in both statutory and constitutional law.

A. Enforcement of the French Judgment Would Violate the First Amendment

The French Order requiring Yahoo! to block access to portions of its website based on its assessment of the "simple morality" of its mandate conflicts with the basic premises of the First Amendment. Our constitutional jurisprudence is based on the understanding that:

> Those who won our independence . . . believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine.

Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis and Holmes, J.J., concurring). *See also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 826 (2000) ("The history of the law of free expression is one of vindication in cases involving speech that many citizens may find shabby, offensive, or even ugly."). The conflict with First Amendment policy is especially pronounced with respect to Internet censorship since, as noted above, U.S. courts have decisively invalidated restrictions on Internet speech. *See supra* note 5.

Here, to the extent that French law prohibits the mere viewing of Nazi memorabilia, including such plainly expressive items as books, *see Board of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853 (1982), or flags, *see Spence v. Washington*, 418 U.S. 405, 410 (1974), it flies in the face of fundamental principles of free expression. The French law discriminates on the basis of viewpoint by prohibiting expression that presumably evidences approval of the former Nazi regime while nevertheless permitting speech critical of that era. Such viewpoint discrimination is presumptively invalid under the First Amendment. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-829 (1995); *R.A.V. v. City of*

St. Paul, 505 U.S. 377, 382 (1992); *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

Additionally, by affirmatively ordering Yahoo! to take all necessary measures to ". . . make impossible any access via yahoo.com to the auction service for Nazi merchandise as well as to any other site or service that may be construed as constituting an apology for Nazism or contesting the reality of Nazi crimes[,]", November Order at 2, the French court has imposed a prior restraint on speech, which is also presumptively unconstitutional. *Alexander v. United States*, 509 U.S. 544, 550 (1993) ("court orders that actually forbid speech activities . . . are classic examples of prior restraints"); *Wilson v. Superior Court*, 13 Cal. 3d 652, 659, 532 P.2d 116, 120 (1975) ("The concept that a statement on a public issue may be suppressed because it is believed by a court to be untrue is entirely inconsistent with constitutional guarantees and raises the spectre of censorship in a most pernicious form.").

Moreover, this conflict is not limited to the French order *per se*. As noted above, the legal regimes governing Internet speech of many nations are fundamentally at odds with First Amendment jurisprudence. They restrict websites precisely because "the Internet represents a brave new world of free speech," *Blumenthal v. Drudge*, 992 F. Supp. at 48 n.7, which is the direct opposite of our legal presumptions. Adopting a rule that would apply such rules to U.S. websites simply because the Internet makes them available without regard to international borders would be fundamentally at odds with First Amendment policy. *See supra* note 5.

In a number of cases, U.S. courts have refused to enforce the libel judgments based on foreign law because of the First Amendment limits on American libel law imposed by the Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). For example, in *Telnikoff v. Matusevitch*, 702 A.2d 230, 238-239, (Md. 1997), the court held that enforcement of

the foreign judgment was contrary to public policy as embodied in the First Amendment even though the allegedly defamatory statements were published only in the LONDON DAILY TELEGRAPH. *See also Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d at 665 (protections of free speech "would be seriously jeopardized by the entry of foreign libel judgments granted pursuant to standards deemed appropriate in England but considered antithetical to the protections afforded the press by the U.S. Constitution"). Similarly, in *Ellis v. Time, Inc.*, 1997 WL 863267, 26 Media L. Rptr. 1225 (D.D.C. 1997), plaintiff brought suit in the United States under both American and English law, claiming that he was entitled to the benefit of English law for publications that occurred in England. The court disagreed, holding that applying English law would violate the Constitution. *Id.*, at *13, 26 Media L. Rptr. at 1234. "United States courts must apply rules of law consistent with the Constitution, regardless of where the alleged wrong occurs." *Id.*, 26 Media L. Rptr. at 1235. *See also DeRoburt v. Gannett Co.*, 83 F.R.D. 574, 580 (D. Haw. 1979) ("the public policy of the United States requires the application of the First Amendment to libel cases brought in the courts of this country").

In this case, the conflict with the First Amendment transcends mere questions of "public policy;" enforcement of the November 20 Order is directly prohibited by the First Amendment. Ordinarily, the question of whether to deny enforcement to a foreign judgment on public policy grounds is a matter of discretion. *See, e.g.*, Restatement (Third) of the Foreign Relations Law of the United States § 422 (1987); Cal. Civ. Proc. Code § 1713.4(b). The rule is different, however, where enforcement of the judgment will violate the First Amendment. When that is the case, as here, enforcement of the foreign judgment is constitutionally forbidden. *Matusevitch v. Telnikoff*, 877 F. Supp. at 4 (*see* 1998 WL 388800 for the circuit court's unpublished opinion affirming the lower court); *Bachchan v. India Abroad Publications, Inc.*, at

1234, 585 N.Y.S. 2d at 662; *Ellis v. Time, Inc.*, 1997 W. 863267, at *13, 26, Media L. Rptr. (D.D.C. 1997).

B. Enforcement of the French Judgment Would be Repugnant to the Public Policy of the State of California

The conflict between French law and the constitutional guarantees in this country is even more pronounced under California law. As explained by the California Supreme Court in *Wilson v. Superior Court*, 13 Cal. 3d at 659, 532 P.2d at 120, "[i]n this state we have consistently viewed with great solicitude the right to uninhibited comment on public issues." That solicitude is based not just on the First Amendment, but on article I, section 2(a) of the California Constitution ("the liberty of speech clause"). It provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

This provision has long been held to be broader and more protective than the First Amendment. *Dailey v. Superior Court*, 112 Cal. 94, 97-98, 44 P. 458, 459-460 (1896); *accord*, *Gerawan Farming, Inc. v. Lyons*, 24 Cal. 4th 468, 491, 12 P.3d 720, 735 (2000) (and cases cited therein); *Wilson v. Superior Court*, 13 Cal. 3d at 658, 532 P.2d at 720. This is true both as a matter of the language and history of the state constitutional provision and as a matter of its application by California courts. For example, the California provision finds its antecedents not so much in the First Amendment as in the New York Constitution and Blackstone's *Commentaries on the Laws of England*. *Los Angeles Alliance for Survival v. City of Los Angeles*, 22 Cal. 4th 352, 366 n.9, 993 P.2d 334, 341 n.9 (2000); *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899, 908-910, 592 P.2d 341, 346, (1979), *aff'd* 447 U.S. 74 (1980). Consequently, its language does more than prevent government suppression of speech. It

affirmatively establishes a right to speak out and publish "on all subjects." *See Gerawan*, 24 Cal. 4th at 492, 12 P.2d at 735 (quoting Cal. Const. art. I, § 2a).

Enforcement of the French judgment would, at a minimum, require the validation of a prior restraint that would plainly violate both the federal and state constitutions if issued by a California court. It would also result in a monetary judgment representing the fines imposed by the French court for Yahoo!'s failure to comply with that prior restraint. Enforcement of such a judgment is completely at odds with California's strong public policy protecting the expression of all points of view.

C. Enforcement of the French Judgment Would be Repugnant to the Public Policy of the United States as Expressed by Congress

It is the statutory policy of the United States that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Section 230 of the Communications Act establishes the clear policy that the public interest is best served by "promot[ing] the continued development of the Internet and other interactive computer services," 47 U.S.C. § 230(b)(1), and by "preserv[ing] the vibrant and competitive free market" for these services, "unfettered by Federal or State regulation." *Id.* § 230(b)(2). Accordingly, Congress has created "a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998). Just as with the cases cited above regarding Internet censorship, U.S. courts have applied this statutory immunity broadly. 9/

9/ *Zeran*, 129 F.3d 327 (AOL not liable for postings to bulletin board by third party); *accord Ben Ezra, Weinstein, & Co. v. America Online, Inc.*, 206 F.3d 980, 984-85 (10th Cir. 2000) (AOL not liable for incorrect information available through its Quotes & Portfolios

Such immunity from liability for third-party content is not the international norm. In *Godfrey v. Demon Internet, Ltd.*, 3 ILR (P&F) 98 (Q.B. 1999), for example, an English court held that an ISP could be held responsible for defamatory postings by a third party to the extent it made newsgroups containing the postings available.10/ The court considered U.S. authorities, including Section 230, and concluded that British law "did not adopt this approach or have this purpose." *Id.* It also noted that "[t]he impact of the First Amendment has resulted in a substantial divergence of approach between American and English defamation law." *Id.* Just as in the defamation cases cited above, there is a significant divergence between U.S. policy and that of other nations with respect to third-party liability for Internet Service Providers.

The November 20 Order exemplifies this difference. The French judgment at issue here does more than simply create an "incentive" for self-censorship. *See Zeran*, 129 F.3d at 331, 333. It absolutely requires it. Giving effect to the French judgment – and, by extension, to all of the other judgments from around the world that will undoubtedly follow in its wake – will most surely strip the Internet of its hallmark characteristic as a "forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for

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service), *cert. denied*, 121 S. Ct. 69 (2001); *Blumenthal v. Drudge*, 992 F. Supp. at 50 (AOL not liable for defamatory material appearing in publication made available to subscribers to its service); *Does v. Franco Prods.*, 2000 WL 816779 (N.D. Ill. June 22, 2000) (GTE and PSINet not liable in their capacities as web site hosts for material originating with others); *Kathleen R. v. City of Livermore*, 87 Cal. App. 4th 684, 104 Cal. Rptr. 2d 772, 776, 781 (2001) (public library not liable for providing unrestricted Internet access); *Stoner v. eBay, Inc.*, 56 U.S.P.Q. 2d 1852, 1852 (Cal. Super. Ct. 2000) (eBay not liable for sale by others of "bootleg" sound recordings through its auction service); *Doe v. America Online, Inc.*, ___ So. 2d ___, 2001 WL 228446, at **5-6 (Fla. Mar. 8, 2001) (decision not yet final) (America Online not liable for third party's sale via AOL of child pornography depicting plaintiff's son); *Doe v. Oliver*, 755 A.2d 1000, 1003 (Conn. Super. Ct. 2000) (AOL not liable for e-mail sent by one of its subscribers using AOL's e-mail service).

10/ For the Court's convenience, a copy of the *Godfrey* decision is attached as Appendix 3.

intellectual activity." *See* 47 U.S.C. § 230(a)(3). It will eviscerate the protection for this "extraordinary advance in the availability of educational and information resources to our citizens" *id.* § 230(a)(1), that Congress so clearly intended to provide. Because that result must inevitably frustrate "Congress' desire to promote unfettered speech on the Internet," *Zeran* 129 F.3d at 334, the French judgment cannot be enforced.

CONCLUSION

This is a pivotal time in the development of the Internet. Not only is the technology evolving before our eyes, but the law surrounding this new medium is developing as well. In the United States, courts have been uniform in supporting the Internet as a preserve for free expression, and in striking down restrictions on speech. This case, however, presents this Court with a situation that could undermine the protections of U.S. law and handicap the further development of the Internet. This Court should make clear that efforts to import censorship to the United States through the vehicle of this new medium are repugnant to U.S. law. Respect for the laws of other nations does not require enforcement of judgments in U.S. courts that would undermine longstanding legal and constitutional protections.

For the foregoing reasons, *Amici* respectfully ask this Court to grant Yahoo!'s Motion for Summary Judgment.

Dated: April 6, 2001

Respectfully submitted,

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