

Enforcement of Foreign Media Judgments in the Aftermath of *Gutnick v. Dow Jones & Co.*

KEN KRAUS AND DAN POLATSEK

In *Gutnick v. Dow Jones & Co.*,¹ the Australian High Court jolted the U.S. publishing community by holding that it could exercise personal jurisdiction over U.S.-based Dow Jones because an article downloaded from its website allegedly defamed an Australian citizen. This means that the case, scheduled for trial this fall, will proceed under the strict liability defamation law of Australia.

Because the First Amendment provides greater protection for U.S. media companies than in foreign countries, the groundbreaking *Gutnick* decision raises the question of whether foreign judgments against the media can be enforced in the United States.² If the federal courts follow the leading cases, any foreign judgment entered without the protections generally afforded by the First Amendment will not be enforceable in the United States. Media company assets in foreign jurisdictions will, of course, be subject to attachment under the laws of those countries.³

This article examines the *Gutnick* decision and three of the leading cases on the enforcement of foreign media judgments in the United States. It also examines recent and ongoing developments of the enforcement treaty proposed by the Hague conference as well as the federal enforcement statute proposed by the American Law Institute.

The *Gutnick* Decision

Joseph Gutnick is an entrepreneur in Victoria, Australia, and a prominent figure in the local business community with a reputation in philanthropic, sporting, and religious circles. In October 2000, *Barron's Magazine* featured an article entitled "Unholy Gains" that Gutnick alleged accused him of tax evasion and money laundering. The article was available in both print and online editions. In November 2000, Gutnick filed a defamation action in the Supreme Court of Victoria, alleging that his reputation was injured in the Australian state of Victoria. Undoubtedly hoping to benefit from

defamation, the uniquely broad reach of the Internet would lead to an onslaught of global litigation and result in a "chilling effect." The High Court characterized Dow Jones's concern as "unreal."⁷ It found that the Internet was no more ubiquitous than television.⁸ As with television, an Internet publisher knows the breadth of the audience its message can reach. Therefore, those who post information on the Internet do so knowingly and make such information available to all without any geographic restriction.⁹ The High Court predicted publishers would not have to consider the law of every country with access to online articles because the applicable law will be identified, and presumably limited, by the identity of the person who is the subject of an article.¹⁰

Third, Dow Jones argued the single publication rule should apply.¹¹ This rule provides that for a single publication a plaintiff may file only one action but may recover damages suffered in all jurisdictions.¹² Dow Jones argued that the application of the single publication rule permitted jurisdiction only in the United States because publication occurred there. The High Court responded that, although Australian common law favors a rule encouraging the resolution of a dispute in a single action, those principles do not resolve issues of jurisdiction and choice of law. Moreover, those principles do not require the identification of a single place of publication in every defamation case.¹³ The High Court stated that the place where the tort is committed is not answered by the "uncritical adoption" of the single publication rule.¹⁴

The High Court realized the impact of its decision. In an interesting concurrence, Justice Kirby noted that if it is necessary to enforce a judgment in another jurisdiction, the difficulty or impossibility of enforcement might amount to a practical reason for providing the type of relief Dow Jones sought in this case.¹⁵ He also wrote that a publisher who has no pres-

Australia's strict liability rule for defamation and a local jury, Gutnick alleged in his complaint that he was injured when the article was downloaded in his home state.

Dow Jones maintained that publication occurred when the article was uploaded to the website's servers in New Jersey and, therefore, jurisdiction was proper only in New Jersey. Dow Jones further argued that a contrary ruling would have a "chilling effect" on Internet content because publishers would have to scrutinize every article for defamatory content under the laws of every jurisdiction from "Afghanistan to Zimbabwe." The lower court held that jurisdiction is proper where the article is downloaded—in this case, Victoria, Australia. Disregarding several recent Internet jurisdiction cases,⁴ the court based its holding in part on the fact that the allegedly defamatory material was downloaded by subscription holders⁵ in Victoria.

On appeal to the High Court of Australia, Dow Jones emphasized:

- 1) The need for a single uniform law governing Internet defamation.
- 2) The "chilling effect" that would result in the absence of a uniform law, thereby forcing publishers to reduce Internet content rather than face lawsuits from around the globe.
- 3) The single publication rule, under which New Jersey was the only place where personal jurisdiction should be exercised.

First, Dow Jones argued, an Internet publisher should only have to conform its conduct to the law of the place where it maintained its web servers, unless that place was merely "adventitious or opportunistic." But the High Court found those terms were too difficult to apply and rejected Dow Jones's suggestion that the court should adopt one uniform law for determining the proper exercise of personal jurisdiction.⁶

Second, Dow Jones argued that, in the absence of a uniform law governing

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ence or assets in a particular jurisdiction might ignore the action, choosing instead to defend only against enforcement and raise constitutional arguments.¹⁶ Justice Kirby commented that such a result was less than satisfactory and warrants national legislative attention as well as international discussion in a forum as global as the Internet itself.¹⁷ Without local legislation and international agreement, Justice Kirby wrote, national courts are limited in providing radical solutions by overhauling a country's defamation law. He also observed that courts should decline the invitation to solve problems that others, in a much better position to devise solutions, have neglected to repair.¹⁸

Enforcing Foreign Judgments in the United States

Constitutional grounds would make it difficult, if not impossible, for Gutnick to enforce an Australian judgment in the United States. Justice Kirby's observation is based primarily on three cases that the High Court majority also cited:¹⁹ *Bachchan v. India Abroad Publications*,²⁰ *Matusevitch v. Telnikoff*,²¹ and *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*.²² Although *Matusevitch* is widely recognized as the seminal case with respect to the enforcement of foreign media judgments in the United States, *Bachchan* was the first and *Yahoo!* is the most recent.

In *Bachchan*, a New York state court refused to enforce a British libel judgment.²³ An English court had granted a judgment to an Indian national against a New York news service that transmitted the article to India and also published it in New York.²⁴ The *Bachchan* court applied the public policy exception in New York's statute on "Recognition of Foreign Country Money Judgments."²⁵ The court held it was repugnant to the First Amendment and the New York state constitution to enforce a judgment under English law because the defendant would be required to prove the truth of the libelous allegations of public concern, even if the plaintiff is a pri-

vate figure.²⁶ Furthermore, the court held that it would be unconstitutional to enforce the judgment because the plaintiff under British law did not have to prove the defendant was at fault.²⁷

*Matusevitch v. Telnikoff*²⁸ is the most frequently cited case discussing the enforcement of foreign media judgments. In *Matusevitch*, the federal district court for the District of Columbia found several British defamation rules were contrary to U.S. law. As a result, it refused to enforce the foreign judgment because it violated the public policy of the state of Maryland and was repugnant to the First and Fourteenth Amendments.²⁹

Matusevitch involved a freelance author who published an article in the *London Daily Telegraph* that discussed the BBC's hiring criteria. A reader wrote a letter to the editor that was featured in the same paper, suggesting among other things, that the author was racist. Both parties were English residents. The author secured a £ 240,000 verdict and attempted to enforce the verdict in the United States.³⁰

The *Matusevitch* court began its analysis by observing that a foreign judgment cannot be enforced in the United States unless recognized by the state in which enforcement is sought. Under Maryland law, which was applicable in this case, the Uniform Foreign-Money Judgments Recognition Act of 1962 governs the enforcement of foreign judgments.³¹ Under that act, the court need not recognize a foreign judgment if the cause of action upon which the judgment was based violates the public policy of that state.³² The court held that enforcing this judgment reached under British law would violate the public policy of both Maryland and the United States.³³ Additionally, the court relied upon common law in finding that public policy barred enforcement.³⁴

With these principles set out, the court analyzed the British judgment. The court observed the different burdens of proof for a libel claim under each country's legal system. In Britain, the defendant bears the burden of proving that the allegedly defamatory statements at issue are true. In the United States, the plaintiff must prove that the alleged defamatory statements are false. In this instance, the court found that the plaintiff was a limited public figure. As a result, the plaintiff would have had to prove the defendant acted with actual

malice in the United States, a burden that is not required under British law.³⁵

Next, the court concluded that the defendant should have been able to argue his statements were hyperbole and protected under the First Amendment. The court further noted that the British court instructed the jury at the defendant's trial to ignore context. Under U.S. law, context is considered when assessing the alleged defamatory language. The court reasoned that had the jury been allowed to consider the context in which the alleged libelous statements were made, it would have realized that the statements at issue were opinion rather than an assertion of fact.³⁶ Finally, the court held that if the British court had applied U.S. law on the misuse of quotation marks, the plaintiff could not have proven actual malice.³⁷ Given these drastically different standards, the court held that it could not enforce the British judgment because it was reached under standards that violated the First and Fourteenth Amendments.³⁸

The enforcement of foreign media judgments was most recently revisited in the *Yahoo!* case,³⁹ in which a French court ordered Yahoo! to eliminate French citizens' Internet access to the part of its auction website where objects related to Nazis and the Third Reich were for sale. Offering these items for sale in France was a violation of the French Criminal Code.⁴⁰ The French court order also instructed Yahoo! to eliminate French citizens' access to the web pages displaying text and related information from certain Nazi-related publications.⁴¹

Yahoo! filed an action for declaratory judgment arguing that the French court's order was neither cognizable nor enforceable under the laws of the United States.⁴² The *Yahoo!* Court framed the issue as whether a French court could regulate the speech of a U.S.-based resident that also reached a French audience on the Internet.⁴³ As a threshold matter, the court recognized that the First Amendment permits the non-violent expression of offensive viewpoints as opposed to viewpoint-based governmental regulation of speech.⁴⁴

After finding an actual controversy and a real threat of enforcement,⁴⁵ the court discussed the principles of comity. The *Yahoo!* Court viewed comity as a principle that was not one of absolute obligation or of mere courtesy and goodwill. Rather, the recognition and

Ken Kraus (kraus@sw.com) is a partner with Schopf & Weiss in Chicago and teaches mass media law at DePaul University College of Law. Dan Polatsek (polatsek@sw.com) is counsel with Schopf & Weiss.

enforcement of a foreign judgment lay somewhere in between. The court stated the United States would recognize a foreign judgment unless its enforcement would be prejudicial or contrary to this country's judicial system.⁴⁶

The French court's order in this instance, however, fell squarely into this exception. Specifically, it did not survive strict scrutiny because the French court issued an impermissibly vague order that prohibited both French and U.S. residents from viewing certain content posted on Yahoo!'s Internet site. Although legally valid in France, this order could not be recognized or enforced in the United States because it attempted to regulate the free speech of a U.S.-based resident that is protected under the First Amendment.⁴⁷

The court held the principle of comity is outweighed by the court's obligation to uphold the First Amendment, absent international standards for speech on the Internet, or an appropriate treaty or legislation addressing the enforcement of such standards for speech originating within the United States.⁴⁸ Accordingly, the French court's order was neither recognized nor enforced.

Is More Aggressive Enforcement Likely?

Both the Hague Convention and the American Law Institute are working on proposals that are likely to increase the enforcement of foreign media judgments in the United States. Neither of these two proposals are particularly close to adoption although the prospects for the federal statute under consideration by the ALI are somewhat better. Each proposal, like those referred to by the court in *Yahoo!* and by Justice Kirby in *Gutnick*, contains a public policy exception to enforcement of foreign judgments. But a concern remains over disagreements on whether U.S. public policy requires rejection of any foreign judgment entered without First Amendment protections.

The Hague Convention

The Hague Convention on Jurisdiction and the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters is a draft international treaty that could lead to the enforcement of judgments in the United States, such as the French censorship order in *Yahoo!*, or a potential defamation judgment grounded on strict liability, as

in *Gutnick*. Fortunately, its prospects for approval by the United States appear dim.

The proposed convention provides for recognition and enforcement of judgments by courts of member states.⁴⁹ Any judgment entered in a signatory state would be enforceable in any other signatory state. The key exception of interest to media companies publishing on the Internet is contained in article 28(f) and provides that a signatory state can refuse to recognize or enforce a judgment if "recognition or enforcement would be manifestly incompatible with the public policy of the State addressed."⁵⁰ If adopted, the United States conceivably could feel pressured to enforce foreign judgments that run counter to the public policy exception in the interest of having U.S. judgments enforced abroad.⁵¹

Although the United States was one of the original proponents of the proposed convention, it has since retreated from this position.⁵² Initially favoring the Convention as a way to gain increased recognition abroad of U.S. judgments, U.S. delegates are now concerned that if the United States becomes a signatory country, its residents could become liable for Internet content that would otherwise be protected by the First Amendment.⁵³ A U.S.-based Internet publisher might find itself in the unenviable position of tailoring the content of its articles to adhere to the most restrictive jurisdiction among the signatory countries.⁵⁴ This is the argument Dow Jones made unsuccessfully in *Gutnick* and that Yahoo! is pressing in its appeal before the Ninth Circuit.

Another concern is that, under the proposed convention, orders entered without First Amendment or similar protections can be enforced against Internet service providers in most countries outside the United States.⁵⁵

Ultimately, the proposed convention is unlikely to be implemented.⁵⁶ According to one report, a working group met in March 2003 with the intent of presenting a draft to a Special Commission. That commission would present an agreement that could then be presented to government delegations.⁵⁷ It is possible the United States will abandon the Hague Convention entirely, given the great number of Internet com-

panies in the United States.⁵⁸

American Law Institute

The principal concern with the ALI's draft is that the drafters include advocates opposed to the viewpoint that any judgment entered without First Amendment protection should not be enforced in the United States. The reporter's notes, citing scholarship by

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these drafters, leave considerable doubt about whether the courts should continue to follow the trend that began with *Bachchan* and continues through *Matusevitch* to *Yahoo!*.

Neither any treaty of the United States nor any federal statute addresses foreign judgments.⁵⁹ The ALI's International Jurisdiction and Judgments Project is a proposed federal statute that was conceived as implementing legislation for the Hague proposed convention, as discussed above. As the prospects for the adoption of the Hague project dimmed, the ALI changed its focus to drafting a freestanding federal statute, which would create one law, with concurrent jurisdiction in state and federal courts, governing the recognition and enforcement of foreign judgments.⁶⁰ The proposed statute generally follows the Uniform Foreign Country Money-Judgment Act and would be subject to U.S. Supreme Court review.⁶¹ The draft sets forth mandatory and discretionary bars to recognition and enforcement of foreign judgments and provides that courts may not deny recognition and enforcement on any grounds that are not delineated in the Act.⁶² Judgments for criminal penalties and fines may, but need not, be enforced.⁶³

The key provision for media lawyers is § 5(a)(vi), which reads:

5. Nonrecognition of a Foreign Judgment

A foreign judgment shall not be recognized or enforced in a court in the United States if the judgment debtor or other person resisting recognition or enforcement establishes:

...

(vi) the judgment or the claim on which the

judgment is based is repugnant to the public policy of the United States.

This language is nearly identical to the public policy exception under the Uniform Foreign Country Money Judgment Act cited in *Matusevitch* and *Bachchan*. The only difference is that the ALI statute does not recognize a judgment based on a repugnant “judgment or claim” and the uniform act does not recognize a judgment based on a repugnant “cause of action.”

However, despite the similar language, the reporters of the ALI project have repeatedly commented that the public policy exception in the proposed statute may not always bar recognition of a foreign judgment rendered without First Amendment protections. In their comments on the March 29, 2002, draft of the project, the reporters discussed *Matusevitch* and *Bachchan* and then stated:

[T]he thrust of § 5(a)(vi), together with the basic obligation set out in § 2, is that a court presented with a libel judgment from a state with a fundamentally fair legal system (i.e., not a dictatorship that punishes all critique of the government) should balance the public policy in favor of free speech against the pub-

posal, if the effect on speech or publication in the United States could be established.⁶⁶ The reporters also cited the *Yahoo!* decision as an illustration of the approach called for by the ALI proposal, but failed to elaborate further.⁶⁷

The reporter’s notes to the December 2002 draft of the ALI proposal added more uncertainty. The reporters questioned whether the differences between English and American libel law are so fundamental that they are repugnant to the basic concepts of justice and decency in the United States.⁶⁸ The reporters cited a treatise and an article criticizing the position that a judgment entered without protections similar to the First Amendment should not be enforced. They also cited an article supporting the media position. Both a co-author of the treatise and the author of an article criticizing the media position are among the 113 ALI members serving on the consultative group for the ALI project.⁶⁹

The latest draft of the ALI project was just released and the reporters’ notes continue to leave doubt about whether the media position is correct. The notes discuss the *Gutnick* decision and Justice

Kirby’s call for international discussion of and agreement on Internet defamation jurisdiction. The reporters write that Internet defamation may be among the issues most likely to raise the public-policy question. But the notes do not state that courts should not enforce

Internet defamation judgments entered without the protections like those provided by the First Amendment. Rather, the notes suggest that a trend toward adoption in Europe of principles akin to the First Amendment will make recognition and enforcement of their judgments more likely.⁷⁰ The ALI project will be debated at the group’s annual meeting in May 2003.

Conclusion

Although the *Gutnick* decision is a setback for media companies hoping to avoid foreign jurisdiction based on Internet publication, the current state of U.S. law on enforcement of foreign media judgments is reassuring. The cases discussed in this article, *Matusevitch*, *Bachchan*, and *Yahoo!*, should ensure that the foreign judgments found to offend the First Amendment will not be

enforced in the United States. However, media lawyers should continue to monitor this area. Public policy must require that no judgment entered without First Amendment protections should be enforced, whether in the United States under the statute proposed by the ALI or anywhere that U.S. assets can be found under the Hague treaty. 

Endnotes

- [2002] H.C.A. 56.
- According to the lower court in the *Gutnick* case, the Supreme Court of Victoria, three other foreign courts have considered whether jurisdiction in a defamation action is proper in the place where an article is downloaded: the Malaya High Court in 1998, an unreported decision from a lower court in Ontario, Canada, and an English lower court in 1999. [2001] V.S.C. 305 ¶¶ 44–55. However, *Gutnick* is the first decision of a major court of last resort to pass on the question.
- The threat of enforcement of foreign judgments includes enforcement in foreign countries other than the original venue. *See, e.g.,* the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, Sept. 27, 1968.
- [2001] V.S.C. 305 ¶ 39. The lower court’s discussion of jurisdiction relied in part on three U.S. decisions for the proposition that jurisdiction is proper where an article is downloaded: *Calder v. Jones*, 465 U.S. 783 (1984); *Telco Communications v. An Apple A Day*, 977 F. Supp. 404 (E.D. Va. 1997); *EDIAS Software Int’l, Inc. v. BASIS Int’l Ltd.*, 947 F. Supp. 413, 420 (D. Ariz. 1996). [2001] V.S.C. 305 ¶ 57. These cases focused on whether the alleged defamation has an effect in the forum state. *See, e.g., Calder*, 465 U.S. at 789–90. Curiously, the lower court described *Calder* as an “Internet decision” despite the fact it was decided in 1984. Later cases stand for the proposition that more than a website is required to find personal jurisdiction, including showing that the defendant targeted the plaintiff’s forum, that the residents of the forum were affected, or that residents of the forum viewed the defamatory statements from the Internet. *See Medinah Mining, Inc. v. Christian Amunategui*, 237 F. Supp. 2d 1137, 1137–39 (D. Nev. 2002). *See also Bailey v. Turbine Design, Inc.* 86 F. Supp. 2d 790, 796–97 (W.D. Tenn. 2000); *Barret v. Catacombs Press*, 44 F. Supp. 2d 717, 728–29 (E.D. Pa. 1999); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997). The lower court did not cite these cases but may have considered them. *See* [2001] V.S.C. 305 ¶ 58.
- [2001] V.S.C. 305 ¶ 7. According to the Supreme Court of Victoria, 1,700 of the 550,000 subscribers to Dow Jones’ Internet

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lic policy in favor of recognition and enforcement of foreign judgment, and not appraise the foreign judgment by the specialized constitutional standards of U.S. libel law as it has developed in recent years.⁶⁴

The reporters noted that to the extent *Matusevitch* and *Bachchan* applied American standards to conduct wholly outside of the United States, it would not seem that the American interests were sufficiently engaged to overcome the narrow limits of the public-policy defense.⁶⁵ For example, both the plaintiff and the defendant in *Matusevitch* were British residents and the publication was in a British newspaper. In *Bachchan*, the plaintiff was a foreign citizen but the article was distributed both in the United States and abroad. The reporters commented that the *Bachchan* case might have been resolved the same way under the ALI pro-

site (wsj.com) were in Australia and several hundred in the State of Victoria. *Id.* ¶ 1. Furthermore, Dow Jones had published 305,563 copies of *Barron's Magazine* worldwide and that "a number of them" were sold in Victoria. *Id.* The court approximated that "in excess of 300" people viewed the online article and "probably about 14" people read the hard-copy edition. *Id.* ¶ 32. The court implied it would have found jurisdiction in Victoria solely on the basis of the print copies sold. *Id.* ¶¶ 33, 61.

6. [2002] H.C.A. 56 ¶ 20.

7. *Id.* ¶ 54.

8. *Id.* ¶ 39.

9. *Id.*

10. *Id.* ¶ 54.

11. *Id.* ¶ 28. The High Court noted that one Australian appellate court has rejected the rule.

12. RESTATEMENT (SECOND) OF TORTS § 577A(4) (1977). A judgment for or against the plaintiff on the merits bars any other action for damages between the parties in all jurisdictions. *Id.* See also *Keeton v. Hustler Magazine*, 465 U.S. 770, 773 n.2 (1984).

13. [2002] H.C.A. 56 ¶ 36.

14. *Id.* ¶ 27.

15. *Id.* ¶ 121, Kirby, J., concurring.

16. *Id.* ¶ 165. The lower court noted that it would be "an improper course" to ignore a judgment and would damage Dow Jones's reputation worldwide. [2001] V.S.C. 305 ¶ 117.

17. [2002] H.C.A. 56 ¶ 166, Kirby, J., concurring.

18. *Id.* Although there are no further avenues for Dow Jones & Co. to appeal this determination within Australia, the journalist who wrote the article on which the *Gutnick* case is based now has filed a petition with the United Nations High Commissioner for Human Rights in Geneva arguing that the decision violates Article 19 of the International Covenant on Civil and Political Rights. This development highlights the global nature of this issue and the importance attached to it by the U.S. publishing industry. See Fergus Shiel, *Journalist Appealing to UN over Gutnick Case*, THE AGE, Apr. 17, 2003, available at www.theage.com.au/articles/2003/04/16/1050172650855.html (last visited May 6, 2003).

19. [2002] H.C.A. 56 at n.52.

20. 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992).

21. 877 F. Supp. 1 (D.D.C. 1995), *aff'd*, (table) 159 F.3d 636 (D.C. Cir. 1998).

22. 169 F. Supp. 2d 1181 (N.D. Cal. 2001), *appeal docketed*, No. 01-17424 (9th Cir. 2001). An appeal of this decision was argued in December and a ruling is expected soon.

23. *Bachchan*, 585 N.Y.S.2d at 665.

24. *Id.* at 661.

25. "Other grounds for non-recognition. A foreign country judgment need not be recognized if: the cause of action on which the judgment is based is repugnant to the public policy of this state." N.Y.C.P.L.R. § 5304(b)(4).

26. *Contra Philadelphia Newspapers v. Hepps*, 475 U.S. 767, 776 (1986).

27. See *Hepps*, 475 U.S. at 775; *Chapadeau v. Utica Observer-Dispatch*, 341 N.E.2d 569, 571 (N.Y. 1975) (describing plaintiff's burden to prove by a preponderance of the evidence that "the publisher acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties").

28. 877 F. Supp. 1 (D.D.C. 1995), *aff'd*, (table) 159 F.3d 636 (D.C. Cir. 1998).

29. *Matusevitch*, 877 F. Supp. at 4.

30. See *Telnikoff v. Matusevitch*, 702 A.2d 230, 233-34 (Md. 1997). On appeal of the federal district court action, the D.C. Circuit Court of Appeals certified to the Maryland Court of Appeals the question "Would recognition of Telnikoff's foreign judgment be repugnant to the public policy of Maryland?" The Maryland Court of Appeals answered in the affirmative, citing the public policy exception in the Uniform Foreign-Money Judgments Recognition Act of 1962, MD. CODE ANN., CTS. & JUD. PROC. § 10-704 (b)(2) (1974, 1995 Repl. Vol.). *Matusevitch*, 702 A.2d at 236, 238. The court held that "Maryland defamation law is totally different from English defamation law in virtually every significant respect. Moreover, the differences are rooted in historic and fundamental public policy differences concerning freedom of the press and speech." *Id.* at 248.

31. MD. CODE ANN., CTS. & JUD. PROC. § 10-701. The Uniform Foreign-Money Judgments Recognition Act of 1962 has been adopted in some form by thirty-one states. The court also discussed the Uniform Enforcement of Foreign Judgments Act of 1964.

32. *Id.* § 10-704(b)(2).

33. *Matusevitch*, 877 F. Supp. at 4.

34. *Hilton v. Guyot*, 159 U.S. 113 (1895). In *Hilton*, the U.S. Supreme Court held that principles of comity must yield if recognition of a foreign judgment results in a violation of U.S. policy or citizens' rights. The *Matusevitch* court also cited *Abdullah v. Sheridan Square Press*, No. 2525, 1994 WL 419847 (S.D.N.Y. May 4, 1994), which dismissed as antithetical to First Amendment a claim, rather than a judgment, under the British law of defamation. Rather than citing particular aspects of British defamation law as antithetical, the *Abdullah* court cited *Bachchan*.

35. *Matusevitch*, 877 F. Supp. at 4.

36. *Id.* at 5.

37. *Id.* at 4-6, citing a treatise on the burden of proof; *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Curtis Publishing v. Butts*, 388 U.S. 130 (1967); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), on public figures; *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), on hyperbole; *Moldea v. New York Times*, 22 F.2d 310 (D.C. Cir. 1994), on context; *Masson v. New Yorker Magazine*, 501 U.S. 496 (1991), on the use of quotation marks.

38. See *Matusevitch*, 877 F. Supp. at 4.

39. 169 F. Supp. 2d 1181 (N.D. Cal. 2001).

40. *Id.* at 1184.

41. *Id.*

42. *Id.* at 1186.

43. *Id.*

44. *Id.* at 1187.

45. *Id.* at 1190.

46. *Id.* at 1192-93.

47. *Id.* at 1193-94.

48. *Id.* at 1193.

49. See Proposed Hague Convention on Jurisdiction and the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, available at <http://www.hcch.net/e/workprog/jdgm.html>; Kristen Hudson Clayton, *The Draft Hague Convention on Jurisdiction and Enforcement of Judgments and the Internet—A New Jurisdictional Framework*, 36 J. MARSHALL L. REV. 223, 225-27 (2002).

50. Proposed Hague Convention, *supra* note 49, at art. 28(f).

51. Kurt Wimmer, *International Law and the Enforcement of Foreign Judgments Based on Internet Content I*, at 21 (2002), available at www.ldrc.com/Cyberspace/International%20Internet%20Label.pdf.

52. *Id.* at 15.

53. *Id.* at 16.

54. *Id.*

55. *Id.* at 22.

56. *Id.*

57. See Preliminary Result of the Work of the Informal Working Group on the Judgments Project—Preliminary Doc. No. 8 (Mar. 2003), at 3, available at www.hcch.net/e/workprog/jdgm.html.

58. *Id.*

59. See American Law Institute International Jurisdiction and Judgments Project, Discussion Draft (Mar. 29, 2002), at 3.

60. *Id.* at xvii.

61. *Id.*

62. *Id.* § 2(a).

63. *Id.* § 2(b).

64. *Id.* at 61.

65. *Id.* at 60-61.

66. *Id.* at 61.

67. *Id.* at 61-62.

68. See MEDIA LAW RESOURCE CENTER, *MEDIA LAW LETTER*, Jan. 2003, at 5 (ALI reporters' notes).

69. *Id.* at 5; ALI draft, *supra* note 59, at ix.

70. See American Law Institute International Jurisdiction and Judgments Project, Tentative Draft (Apr. 14, 2003), at 63-64.