

AAUP Member Alert: Publishing Work Originating in Countries under U.S. Trade Sanctions

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The Office of Foreign Assets Control in the U. S. Department of the Treasury has recently issued a ruling that appears to have serious implications for publishers seeking to publish material that originates in any of the countries on which the United States has imposed trade sanctions.

In a recent ruling involving the publication of journal articles written by authors in Iran, OFAC has declared that the publisher may freely reproduce only fully-edited, camera-ready copy supplied by the author. Supplying any of the other services normally associated with publishing—developmental and copy editing, creating artwork, designing pages, and so forth—brings the publishing activity within the purview of OFAC and requires a license from them. Proceeding without such a license would be a violation of the trade sanctions, and any publisher who does so may risk substantial penalties.

Presumably this ruling applies to all countries under a U.S. trade embargo. Currently the OFAC website lists those countries as the Balkans, Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sudan and Zimbabwe (see link below).

Background

Traditionally, the import and export of informational materials has been exempt from U.S. trade embargoes. In 2000, however, the IEEE (Institute of Electrical and Electronics Engineers) got into a dispute with OFAC over whether IEEE could continue to provide some web-based services it normally offers all its members to members who lived in Iran. That dispute led to an OFAC review of all of IEEE's activities, including its journals publishing program.

IEEE journals receive manuscripts submitted for publication from its members all over the world. The articles go through the normal, scholarly publication process: if appropriate they are sent out for peer review and the reviews are sent to the author with editorial suggestions for revision. Revised manuscripts that have been accepted for publication are edited by IEEE staff for style and organization, designed to fit the format of the journal, put into production, and published as part of an issue of the journal.

OFAC apparently held initially that publishing manuscripts submitted by authors in Iran (apparently the test case involved an author in Iran specifically) was prohibited under the embargo, because publication would require the investment of U.S. funds in a product ("the manuscript") produced on enemy soil. It would therefore be trading with the enemy, which carries serious criminal

penalties. Three years of discussions ensued.

The Ruling

In September 2003, IEEE received a modified ruling that acknowledged IEEE's right to publish articles originating in Iran, provided that IEEE secured a license from OFAC for those publishing activities OFAC ruled to involve what would otherwise be the improper investment of U.S. funds. In other words, articles submitted for publication from Iran could be sent out for peer review as long as the reviewers were volunteering their time and expertise, the articles could be copyrighted as part of the journal, and the journals in which such articles appeared could be marketed in the normal fashion. However, they ruled, all activities that required the investment of U.S. funds to improve the quality of the article itself ("the services of professional editors, designers, and so forth") could only be performed under license.

IEEE applied for the required license on October 6 and believes that OFAC will grant it. Therefore they view this ruling is a victory of sorts although the license had not been granted by December 22 since it does not force them to provide a lower level of service to members in countries under U.S. trade sanctions. (A second ruling on December 11 applies a similar analysis to the question of whether IEEE may provide standard web-based services to its members in Iran: yes, as long as IEEE does not "substantively enhance" or "customize" the information it receives for posting from members in Iran.)

Nevertheless, the licensing requirement imposes an additional burden on publishers, and IEEE has called a meeting in Washington on February 9 of other STM journals publishers to discuss the ruling, the licensing requirements, and to see whether sentiment exists for a further appeal to OFAC. This meeting is by invitation only. I have asked to be admitted as an observer, but AAUP members who wish to participate should contact IEEE directly at publications@ieee.org. Other publishers feel that the licensing requirement itself is improper, since it creates the prospect that some applications for licenses will be granted and others will not, and thus may constitute an impermissible regulation of speech. The Council of the Professional and Scholarly Publishing Division of AAP is looking into its options, one of which would be bringing a First Amendment suit. I will also be sitting in on these discussions. Paula Duffy is Chair of the Council this year and Jim Jordan is a member, so you may also want to let them know your views.

No AAUP member is in the position of IEEE, which is a very large organization with members in countries all over the world. However, AAUP members may well find themselves or already be in the position of evaluating for publication the work of poets, novelists, philosophers or scholars residing in one of the countries under sanctions. They should consider the effect of this ruling and, if necessary, seek qualified legal advice.

The OFAC homepage is at www.ustreas.gov/offices/eotffc/ofac/; the list of countries currently under embargo, with links to the sanctions themselves, is at:

<http://www.ustreas.gov/offices/eotffc/ofac/sanctions/index.html>.

The IEEE homepage is www.ieee.org; their announcement of the ruling, the February 9 meeting, and an informative FAQ are at:

<http://www.ieee.org/portal/index.jsp?>

[pageID=corp_level1&path=about&file=ofac.xml&xsl=generic.xsl](http://www.ieee.org/portal/index.jsp?pageID=corp_level1&path=about&file=ofac.xml&xsl=generic.xsl).

We will keep you informed about further developments.

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