



## THE ASSOCIATION OF AMERICAN UNIVERSITY PRESSES

### FOR IMMEDIATE RELEASE

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## ***FIRST AMENDMENT PROBLEMS REMAIN IN WAKE OF LATEST OFAC PRONOUNCEMENT***

*Washington, DC (April 5, 2004)*— According to the Association of American Publishers (AAP), the Association of American University Presses (AAUP), and PEN American Center, a letter sent by the director of the Office of Foreign Assets Control (OFAC) to the Institute of Electrical and Electronic Engineers (IEEE) on April 2 leaves many questions unanswered and many First Amendment problems unresolved with respect to Treasury Department regulations governing the publication of informational materials from countries subject to U.S. trade embargoes.

In its April 2 communication, OFAC continues to insist that statutes passed by Congress explicitly exempting “informational materials” from the reach of U.S. trade embargoes (the so-called Berman Amendment) do not apply to “informational materials not fully created and in existence at the date of the transaction” or to the “substantive or artistic alteration or enhancement of the information or informational materials.” OFAC takes this position despite the fact that nothing in the statutory language supports such an interpretation.

In addition, while the April 2 letter appears to give OFAC’s approval to the specific methods used in the peer review process by one scholarly publisher (IEEE), it provides *no* assurance that other publishers, whose methods and means of communication between editors and foreign authors differ from those used by IEEE will not find themselves in the untenable position of having to seek a government license to carry on First Amendment protected publishing activities or leave themselves open to criminal penalties.

Particularly troubling is OFAC’s continued insistence that “collaborative interaction: between the publisher and foreign author is prohibited.

We appreciate that OFAC’s response to IEEE’s license application affirmed that IEEE’s peer review and style- and copy-editorial processes are exempt from current restrictions imposed on trade with embargoed countries because they have been determined to be within the scope of the Berman Amendment exemption from such restrictions, as implemented through OFAC’s regulatory enforcement.

However, this affirmation provides little comfort for the activities of countless other publishers whose peer review and editorial processes may, as OFAC acknowledges, differ significantly from those spelled out by IEEE and approved by OFAC.

Most importantly, OFAC's response remains anchored in its imposition of conditions on eligibility for the statutory exemption embodied by the Berman Amendment despite the fact that such qualifying conditions have no foundation in either statutory language or legislative history of that exemption. Thus, its approval of IEEE's particular practices indicates that OFAC intends to continue to assert licensing authority over publishing activities—authority that we believe is denied to it by the express language of the Berman Amendment, as well as the First Amendment's protection of the freedom of the press.

OFAC's position in response to IEEE will be further reviewed and discussed within AAP, AAUP, and PEN to determine what further action may be necessary to ensure that OFAC's regulatory programs remain confined within their proper authority and that publishers are not constrained by the fear of prosecution if they try to bring to the American public voices and information from Iran, North Korea, Cuba, and other countries that are of urgent concern to us all.