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Cross-Border Speech Conflicts

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According to this [report](#), two German nationals who were convicted of murder and have served their prison terms have sued the Wikimedia Foundation to have their names expunged from the English language version of an [article on Wikipedia](#) relating to the victim. The plaintiffs have already successfully sued for the same relief with regard to coverage of their crime in German media. Germany's privacy law apparently provides for such relief, under a high court ruling from 1973.

Cross-border speech conflicts of this sort have become increasingly common in the Internet age. The report references the [case](#) involving an order by a French court enjoining Yahoo! from permitting the auctioning of Nazi memorabilia in France. So-called "libel tourism," where a plaintiff sues for defamation in a jurisdiction lacking *Sullivan*-like protections (typically the U.K.) seeks to enforce the judgment in the U.S., has also arisen with some frequency. Several courts in the U.S. have refused to enforce such judgments. A few state legislatures have enacted laws prohibiting courts from enforcing certain foreign libel judgments. Congress is currently considering libel tourism bills that would bar enforcement of foreign judgments and perhaps provide a cause of action for American defendants. Meanwhile, across the pond, British officials are considering changes to defamation law that would prevent manipulation of its courts by defamation plaintiffs.

These and other cross-border speech conflicts are complicated by a number of issues, including the lack of global speech and privacy laws, the uncertain "place" of the First Amendment in a digitized and globalized world, the need to develop standards for resolving conflicts among national speech and privacy laws, the "rights imperialism" that may be involved in exporting a single nation's speech or privacy laws to other nations, and the practicalities of enforcement.

As to the last, it is difficult to see how the foreign lawsuit will provide any meaningful remedy for the plaintiffs in this case. The Wikimedia Foundation does not appear to have any assets in Germany. More importantly, it will be practically impossible to scrub the Web, including archival materials, of all references to these plaintiffs. As Dan Solove explained in [The Future of Reputation](#), this information is part of a permanent chronicle of their lives.

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