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Freelance Writers Denounce Federal Appeals Court Attack on Authors' Constitutional Right to Copyright Protection

New York, Dec. 1 – A decision Thursday by a federal appeals court to vacate a settlement between freelance writers and publishers over electronic copyright infringements was denounced today by the National Writers Union, the nation's trade union for freelance writers and a plaintiff in the case.

“It is an outrageous attempt to use an appeal to write new law that strikes at the heart of authors' copyright protection in the U.S. Constitution,” said Gerard Colby, President of the union, which is affiliated with the Technical Office and Professional division of the United Auto Workers.

A majority of a three judge panel of the Second Circuit Court of Appeal ruled that writers who had not specifically registered their works with the U.S. Copyright Office were denied any access to federal court. The Appeals Court said the U.S. District Court was wrong to accept the case and it voided the \$18 million settlement between freelance writers and publishers reached in March 2005.

“The Appeals Court overreached in applying an ‘enforcement’ provision in the 1976 Copyright Act to assert that the federal courts have no jurisdiction to protect authors' basic constitutional right to copyright protection,” Colby said. “That provision was only meant to prevent unregistered writers from access to ‘punitive’ damages. It was not intended to bar access to compensatory damages or to other protection afforded by the Constitution.

“The ruling by the two judges is a blatant attempt to rewrite not only an Act of Congress but also Article One, Section 8 of the U. S. Constitution itself. It is a dangerous precedent that must not be allowed to stand.”

The appeals court's decision overturned the settlement between freelance writers and publishers and database companies over unauthorized sales over the Internet of authors' copyrighted works.

“It took over two years of heated negotiations to reach this settlement,” said Colby. “Like all settlements, it was a compromise between contending sides that not everyone was happy with. The writers who objected to it had every right to do so. But unfortunately they opened the door to conservative activists on the appeals court to go way beyond what the objectors claimed.”

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