**FREEDOM TO READ FOUNDATION**

**BOARD OF TRUSTEES**

**AGENDA FOR THE VIRTUAL 2022 LIBLEARNX EXHIBITION MEETING** of the 2021–2022 Board of Trustees of the Freedom to Read Foundation.

WHERE: Via Zoom   
<https://ala-events.zoom.us/j/99392130661?pwd=UGUwOXlWcXlZaVB5Tk9PTEtjS1Y1Zz09>

DATE: Tuesday, January 18, 2022

TIME: 1:30 p.m.–5:00 p.m., Central Time

1. **CALL TO ORDER**: B. Stripling
2. **INTRODUCTIONS**: B. Stripling
3. **DETERMINATION OF A QUORUM**: D. Caldwell-Stone
4. **REVIEW AND APPROVAL OF AGENDA**: B. Stripling
5. **REVIEW AND APPROVAL OF MINUTES** of meetings held Thursday, June 24, 2021 and Tuesday, September 21, 2021

MINUTES have been distributed separately. Please bring your copy to the meeting along with your TRUSTEE MANUAL.

1. **OLD BUSINESS**
   1. **Litigation:** T. Chmara (Exhibit I, to be distributed)
      1. *Gibson Bros, Inc., et al., v. Oberlin College, et al.*

In November 2016, a public protest occurred at Oberlin College in Ohio following a confrontation between an employee of Gibson’s Food Market and three African American Oberlin College students. On the day of the protest, the Oberlin Student Senate passed a resolution, which was posted in Oberlin's Wilder Hall. Oberlin employees and others also distributed a flyer during the protest.

The family that owns the market and bakery subsequently sued Oberlin College and its Dean of Students, alleging that they were defamed in the Oberlin Student Senate resolution and in the flyer handed out at the protest. A jury found Oberlin and its Dean of Students liable for defamation after the trial court instructed the jury that it could find the defendants liable on the basis of mere negligence. However, Ohio Supreme Court precedent establishes that those who redistribute others' speech can be held liable for defamation only upon a showing of actual malice, which requires proof that the defendant knew of the false statement or had a reckless disregard of the truth.

FTRF has signed on to an amicus brief authored by counsel for the Reporters' Committee for Freedom of the Press that argues that a defamation claim against a redistributor of speech can succeed only if the plaintiff demonstrates actual malice. Oral argument was held on November 10, 2020, and a decision is pending.

1. **NEW BUSINESS**
   1. **New Litigation:** T. Chmara **(**Exhibit I, to be distributed)

* + 1. *Coleman v. Grand*: Steven Coleman, a prominent jazz musician, sued an aspiring musician, María Grand, in federal district court, claiming that comments she made in a November 2017 letter to friends and colleagues in the jazz music industry about Coleman's and Grand's personal and professional relationship defamed him. The district court awarded summary judgment to Grand, finding that under the actual malice fault standard established by New York's newly amended anti-SLAPP law Coleman had failed to show by clear and convincing evidence that Grand acted with actual malice. [Anti-SLAPP ("Strategic Lawsuit Against Public Participation") statutes limit the use of defamation lawsuits to silence critics speaking out on matters of public concern.]

Coleman has appealed that decision, arguing that New York state law should not apply in a federal lawsuit and that the district court erred in applying the New York's actual malice standard in his case. He also argues that Grand's statements concern "purely private matters" and do not constitute "an issue of public interest" for purposes of the anti-SLAPP law.

FTRF has joined an amicus curiae brief authored by counsel for the Reporters’ Committee for Freedom of the Press that supports providing additional protection for speakers making comments on matters of public concern, such as the comments made by the defendant about her views on sexism in the jazz music industry. The brief argues that the Anti-SLAPP law applies because the case involves a substantive matter and not a procedural matter and that actual malice is the correct standard to be applied in this lawsuit. The brief further argues that Grand's statements concerning sexual harassment in the music industry, made in the early days of the #MeToo movement, concern an issue of vital public interest. Finally, the brief highlights examples of meaningful reporting concerning the #MeToo movement which relied on the willingness of individuals to share their subjective, personal experiences and warns of the possible chilling effect should individuals no longer feel free to share their stories for fear of potential civil liability. The case is pending before the Second Circuit Court of Appeals.

* + 1. *Hepp v. Facebook, Inc. and WGCZ*: Karen Hepp, a Philadelphia-based newscaster, filed suit against Facebook and other platforms after discovering in 2018 that her photograph was being used in an advertisement for a dating app appearing on Facebook. The photo was also being shared on the online forum Reddit and image-hosting website Imgur.

Hepp’s complaint against Facebook, Reddit, Imgur and others asserted claims for violation of her right of publicity under Pennsylvania law. At trial, the federal district court dismissed Hepp’s complaint with prejudice, ruling that the three companies were entitled to immunity pursuant to Section 230(c) of the Communications Decency Act. Hepp appealed that decision, and the Third Circuit Court of Appeals reversed it and remanded the case to the trial court, finding that Section 230 does not provide immunity from state law-based intellectual property claims and that Hepp’s right of publicity claims under Pennsylvania law represented such claims.

FTRF has joined an amicus curiae brief authored by counsel for the Electronic Frontier Foundation that argues that excluding state publicity rights claims from Section 230 immunity would impair the ability of online platforms to host content, as such online intermediaries could only host as much speech as their lawyers, content moderators, and filters could screen beforehand, based on the most restrictive provisions in varying state laws. These circumstances will force email providers, social media platforms, and any site that supports user-generated content to tailor their sites to ensure compliance with the most restrictive state laws. Libraries, for example, might need to closely monitor patrons' use of the Internet.

The Third Circuit issued its opinion and mandate on November 26, 2021.

* 1. **Media Coalition Report and Update:** D. Horowitz
  2. **State, Federal, and Local Actions Impacting the Freedom to Read:** D. Caldwell-Stone
  3. **Developing Issues Committee:** Cole Adams
  4. **Symposium on Intersection between Intellectual Freedom and Social Justice:** Sukrit Goswami, Sophia Sotilleo
  5. **Discussion of Mission and Future Direction of Foundation:** B. Stripling, D. Caldwell-Stone

1. **REPORTS OF OFFICERS**
   1. **President’s Report**: B. Stripling
      1. Board Members' Commitment ($500)
   2. **Treasurer’s Report and Finance Committee**; J. Neal
      1. Budget and Asset Overview (Exhibit\_\_, to be distributed)
      2. Action Item: Proposed 2021-2022 Budget (Exhibit\_\_, to be distributed)
   3. **Executive Director's Update**: D. Caldwell-Stone
      1. Advocacy: Letters and Statements
      2. Update: UIUC Downs Award Sponsorship
      3. Update: ALA Return to Office and COVID Response
2. **COMMITTEE REPORTS**
   1. **Membership Committee**: S. Dallas
   2. **Fundraising Committee:** P. Coyl
   3. **Krug Fund**
      1. **Banned Books Week Grants**: W. Huffaker, J. Hagen-McIntosh
      2. **LIS Education Initiative**: D. Hand, J. Hagen-McIntosh
   4. **Communications Committee**: E. Knox

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* 1. **Nominating Committee**: K. Downing
  2. **Roll of Honor Committee**: P. Coyl
  3. **Conable Scholarship Committee**: L. Garcia-Febo
  4. **Intellectual Freedom - Equity, Diversity, Inclusion Committee:** C. Hohl

1. **REPORTS FROM LIAISONS**
2. **ALA EXECUTIVE BOARD REPORT:** P. Wong
3. **UPCOMING MEETINGS**

The next meeting of the 2021–2022 Board of Trustees is tentatively scheduled to take place during ALA's 2022 Annual Conference in Washington, DC, in June 2022.

1. **ANY OTHER BUSINESS THAT PROPERLY MAY COME BEFORE THE BOARD OF TRUSTEES**
2. **CONFIRMATION OF GRANTS**

In accordance with Board procedure, the Trustees’ last item of business is final approval of grants tentatively authorized during the meeting.

1. **ADJOURNMENT**