

Frank D. Smith, Jr. v. Cornell University et al.
U. S. District Court for the Northern District of Georgia
Civil Action No. 4:02-CV-280

Pre-Trial Settlement Proposal of Plaintiff Frank D. Smith, Jr., pursuant
to FRCP 26 and LR 16.1

Advantages of this settlement proposal to Cornell University and other Defendants include:
there would be no adverse (to Defendants) precedent with respect to issues of Jurisdiction and Venue; and
there would be no discovery or testimony in court about the blacklist, and the proposed settlement would not require any admission about the blacklist.

The settlement proposal is based on the fact that there are two aspects to the case: Jurisdiction and Venue; and
Substantive Issues of arXiv Authorship Policy and Procedure.

The proposal is as follows:

Although I, Plaintiff Frank D. Smith, Jr., believe that Jurisdiction and Venue in the Northern District of Georgia is proper, I am willing to yield on that aspect of the case **if and only if** that is part of an overall settlement agreement on the entire case, including the Substantive Issues of arXiv Authorship Policy and Procedure, on the following basis:

1. Give authorship status (including but not limited to ID and password) to anyone requesting it.
2. Evaluate each paper on its merits, so that exclusion from the arXiv is not based on the personality of the author.

In evaluating any paper, it should be proper to consider the history of any author in determining the degree of detail in which the paper is to be reviewed.

For example, if in the judgment of the administrators of the arXiv

my past papers were to be considered problematical by either the administrators of the arXiv or by any others who have communicated such consideration to the administrators of the arXiv, then it would be proper for the administrators of the arXiv to subject a paper submitted by me to more intense scrutiny than usual.

For further example, if in the judgment of the administrators of the arXiv my past papers were to be considered unusually good by the administrators of the arXiv, then it would be proper for the administrators of the arXiv to subject a paper submitted by me to less intense scrutiny than usual.

For a still further example, if the history of the author were to include submitting a larger number of papers per unit of time than is determined by the administrators of the arXiv to be reasonable (the permissible posting rate of the number of papers per unit of time to be determined in the sole discretion of the administrators of the arXiv, but to be uniformly applied to all authors) then further submissions from that author can be excluded until that author's posting rate becomes (due to lapse of time) within the permissible posting rate.

3. If the evaluation of any paper determines that the paper should be rejected and should not be posted, then the author should be so informed and such information should also include the reasons for rejection.

4. The administrators of the arXiv should set up a forum to which any rejected author can appeal rejection by appearing before the forum and stating why the paper should be accepted and not rejected, and have the forum make a ruling after the presentation that would be binding on both the author and the administrators of the arXiv.

For example, such a forum might consist of professors at Cornell in the fields of the paper (such as physics, mathematics, non-linear sciences, computer science, etc), and the author's statement of his case might be similar to a Ph.D. thesis defense, in which the author makes a presentation for a time (30 minutes, an hour, or so, as determined by the administrators of the arXiv), followed by questions from the forum members, and then by a decision by the forum.

Further, such a forum might be held at Cornell on a reasonable

schedule (such that an author should be able to get a hearing within three to six months or so).

Further, any author appearing before such a forum should be required to travel to Cornell at his own expense, and to pay a reasonable fee (analogous to court costs) that might help defray expenses and pay for the time of those sitting on the forum.

It should be permissible for non-Cornell people to sit on such a forum, perhaps in addition to regular forum members, but if that is done at the request of an author, the author should pay any related expenses.

5. Proceedings before the forum should be public, and should be video-recorded at the (reasonable) expense of an author if an author so requests, with an author paying such expense getting a copy of the recording and full rights to use it.

6. The same right of appeal to the forum should be available for other determinations affecting a paper, such as to which archive the paper should be assigned or as to which archive the paper could be cross-listed.

Respectfully submitted, this ____ day of _____, 2003.

Frank D. Smith, Jr., Plaintiff