Legal Presence, Copyright, and Plagiarism in an Open Access Repository

Paul Ginsparg
CIS and Physics, Cornell University

arXiv.org is an automated repository and distribution system of physics, math, computer science, and quantitative biology articles with over 375,000 full-text documents, growing at over 51,000 new documents per year. In addition to serving tens of millions of full-text downloads per year to its user community of over 50,000 researchers, it maintains usage and other logs going back over a decade, providing a fertile information science testbed. It has also had some brief encounters with the US legal system.

Institute for Computer Policy and Law Eleventh Annual Seminar,
Cornell Univ, Ithaca NY, 27Jun 06
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Automated e-print archives | physics | Search | Form Interface | Catchup | Help

29 Sep 2004: Search engine for user help pages installed.
For more info, see cumulative "What's New" pages.
Robots Beware: indiscriminate automated downloads from this site are not permitted.

Physics

- Astrophysics (astro-ph new, recent, abs, find)
- Condensed Matter (cond-mat new, recent, abs, find)
  includes: Disordered Systems and Neural Networks; Materials Science; Mesoscopic Systems
  and Quantum Hall Effect; Other; Soft Condensed Matter; Statistical Mechanics; Strongly
  Correlated Electrons; Superconductivity
- General Relativity and Quantum Cosmology (gr-qc new, recent, abs, find)
- High Energy Physics - Experiment (hep-ex new, recent, abs, find)
- High Energy Physics - Lattice (hep-lat new, recent, abs, find)
- High Energy Physics - Phenomenology (hep-ph new, recent, abs, find)
- High Energy Physics - Theory (hep-th new, recent, abs, find)
- Mathematical Physics (math-ph new, recent, abs, find)
- Nuclear Experiment (nucl-ex new, recent, abs, find)
- Nuclear Theory (nucl-th new, recent, abs, find)
- Physics (physics new, recent, abs, find)
  includes (see detailed description): Accelerator Physics; Atmospheric and Oceanic Physics;
  Atomic Physics; Atomic and Molecular Clusters; Biological Physics; Chemical Physics;
  Classical Physics; Computational Physics; Data Analysis, Statistics and Probability; Fluid
  Dynamics; General Physics; Geophysics; History of Physics; Instrumentation and Detectors;
  Medical Physics; Optics; Physics Education; Physics and Society; Plasma Physics; Popular
  Physics; Space Physics
- Quantum Physics (quant-ph new, recent, abs, find)

Mathematics

- Mathematics (math new, recent, abs, find)
  includes (see detailed description): Algebraic Geometry; Algebraic Topology; Analysis of
  PDEs; Category Theory; Classical Analysis and ODEs; Combinatorics; Commutative Algebra;
  Complex Variables; Differential Geometry; Dynamical Systems; Functional Analysis; General
  Mathematics; General Topology; Geometric Topology; Group Theory; History and Overview;
  K-Theory and Homology; Logic; Mathematical Physics; Metric Geometry; Number Theory;
  Numerical Analysis; Operator Algebras; Optimization and Control; Probability; Quantum
  Algebra; Representation Theory; Rings and Algebras; Spectral Theory; Statistics; Symplectic
  Geometry

Nonlinear Sciences

- Nonlinear Sciences (nlin new, recent, abs, find)
  includes (see detailed description): Adaptation and Self-Organizing Systems; Cellular Automata
  and Lattice Gases; Chaotic Dynamics; Exactly Solvable and Integrable Systems; Pattern

Quantitative Biology

- Quantitative Biology (q-bio new, recent, abs, find)

Computer Science

- Computing Research Repository (CoRR new, recent, abs, find)
  includes (see detailed description): Architecture; Artificial Intelligence; Computation and
  Language; Computational Complexity; Computational Engineering, Finance, and Science;
  Computational Geometry; Computer Science and Game Theory; Computer Vision and Pattern
  Recognition; Computers and Society; Cryptography and Security; Data Structures and
  Algorithms; Databases; Digital Libraries/Discrete Mathematics; Distributed, Parallel, and
  Cluster Computing; General Literature; Graphics; Human-Computer Interaction; Information
  Retrieval; Information Theory; Learning; Logic in Computer Science; Mathematical Software;
  Multiagent Systems; Multimedia; Networking and Internet Architecture; Neural and
  Evolutionary Computing; Numerical Analysis; Operating Systems; Other; Performance;
  Programming Languages; Robotics; Software Engineering; Sound; Symbolic Computation

About arXiv

- some related and unrelated servers (including arXiv mirror sites)
- RSS feeds are now available for individual archives and categories.
- today's usage for arXiv.org (not including mirrors)
- some info on delivery type [src] and potential problems
- arXiv Advisory Board
- available macros and brief description
- available help on submitting and retrieving papers
- some background blurb, including invited talk at UNESCO HQ (Paris, 21 Feb ’96), update Sep
  ’96
- some info on hypertex

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- e-mail interface started August 1991
  - download data available from start
  - WWW usage logs starting from 1993

- **375,000** full text documents (with full graphics), as of 27 Jun 2006
  - physics, mathematics, computer science, non-linear science
  - growing at **51,000** new submissions per year (est. 2006 ⇒ > **400,000** at end of year)
    - 20 references per article (over 8 million total)

- over 40 million full text downloads during calendar year ’05
  - over 375 downloads per article from ’96-’03

- Now managed by CU library (starting roughly 2001)
Submissions per month, ’91 – ’06

First 14.8 years (5 Apr ’06 total = 362,698)

Total \(\approx 375,000\) (27 Jun 2006)
Top four subject areas

Average Monthly Submission Rates for hep / cond-mat / astro-ph / math

First 14.4 years (through Dec '05)
**http://arxiv.org/Stats/au_all.html**: Distribution according to e-mail domain of submitting author of all 183004 submissions received during the four year period 1 Jan 00 through 31 Dec 04:

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Who Should Own Scientific Papers?

S. Bachrach et al.

Science 4 September 1998:
Vol. 281. no. 5382, pp. 1459 - 1460
DOI: 10.1126/science.281.5382.1459

Matching Scientific Research Goals to Public Policy Goals

Articulating the Public Benefits of Research Publication

But, benign copyright holder? (e.g., PROLA)

“And I can’t tell you the rest until the journal comes out.”
US Copyright Law

http://www.law.cornell.edu/copyright/copyright.act.chapt2.html#17usc205

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(2) the license was taken in good faith before recordation of the transfer and without notice of it.
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Author confusion: Does Fair Use govern

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- reuse in conference proceedings (different publisher)?
- distribution in class or at conference?

Why not public domain? Or more generally

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license adequate for e-print use and gives arXiv the necessary rights?

- Encourage the use of the more permissive “Attribution” (By)

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http://www.law.cornell.edu/constitution/constitution.billofrights.html

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Amendment V: No person shall . . . be deprived of life, liberty, or property, without due process of law; . . .

Amendment XIV: . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

xxxxxxx x. xxxxx; and THE xxxxx FOUNDATION, A Non-Profit Scientific Research Foundation, Plaintiffs

v.

CORNELL UNIVERSITY; LOS ALAMOS NATIONAL LABORATORY; UNIVERSITY OF CALIFORNIA SYSTEM; NATIONAL SCIENCE FOUNDATION; UNITED STATES DEPARTMENT OF ENERGY;
JURISDICTION AND VENUE

10. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States. This Court has supplemental jurisdiction to hear the state claims of the Plaintiffs under 28 U.S.C. § 1367(a).

11. Jurisdiction also is conferred upon this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the Plaintiffs and all Defendants and the matter in controversy, exclusive of interest and costs, exceeds the sum of seventy-five thousand dollars.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to Plaintiffs’ claims took place within Knox County, the Eastern Division of the District of Tennessee.
Suit Against Cornell Dropped in International Libel Case (6 Nov ’98)


... 

“An Internet service provider, including a university, should not be held liable for the speech of its subscribers,” said Barry Steinhardt, director of the Electronic Frontier Foundation, a civil liberties group. “To hold them liable is to turn them into censors.”

... 

In October 1997, Godfrey, a British lecturer in physics and computer science, sued Cornell and Michael Dolenga, a former graduate student in biochemistry, in the High Court of Justice in London. Godfrey claimed that between December 1994 and April 1995, Dolenga used the Cornell computer system to post five defamatory messages about him on a Usenet newsgroup about Canadian politics and culture.
PRELIMINARY STATEMENT

13. This is a civil rights action against employees and the agencies of the Los Alamos National Laboratory (LANL), the University of California System, the National Science Foundation (NSF), the United States Department of Energy (DOE) and Cornell University (Cornell) for depriving Plaintiffs . . . of established constitutional and statutory rights.

14. This action seeks a judgment declaring that the regulation, policies and administration of the above-named defendants prohibiting and suppressing the publishing of legitimate scientific work on an open, federally and state funded scientific forum contravenes the First, Fifth and Fourteenth Amendments to the United States Constitution (U. S. Const. Amend. I, V, XIV.) and 42 U.S.C. §1983 as well as Article I, §§3, 8 and 11 of the Constitution of the State of New York. This proceeding also seeks an injunction against the current administrators of the arXiv database and Cornell University enjoining them from continuing to prohibit and suppress the submission and posting of Plaintiff’s scientific work, as well as damages resulting from such prohibition and suppression.
Claims for Relief

68. As a result of Defendants’ negligence, Plaintiffs were deprived of the benefits of the submission of important scientific work to the scientific community in a timely fashion based on the religious content of that work. This denial of submission in a timely fashion has had a serious adverse impact on Plaintiff’s professional and academic career and reputational damage which reduced Plaintiffs’ opportunities within the scientific community.

... 

(b) Award compensatory damages in an amount to be determined, but to exceed $75,000.00, according to proof by Plaintiffs against all Defendants in their individual capacities;
Ousted creationist sues over website

**Nature** 420, 597 (12 December 2002) — doi: 10.1038/420597b

www.nature.com/nature/journal/v420/n6916/full/420597b.html

**Ousted creationist sues over website**

Geoff Brumfiel, Washington

A Tennessee creationist is suing the operators of a popular physics website that refused to publish his alternative Big Bang hypothesis.

Robert Gentry, a lifelong Seventh-Day Adventist, filed the suit in the district court at Knoxville, Tennessee, against the operators of the arXiv preprint server, claiming that they refused a series of ten of his papers because of their religious content. Counsel representing the chief defendant, Cornell University in Ithaca, New York, says the claims have no merit and that the university has the right to choose what appears on the site.

Gentry, who has a masters degree in physics from the University of Florida, had papers in nuclear geophysics published in journals, including *Science* and *Nature*, during the 1960s and 1970s. Those papers, he says, inspired him to come up with an alternative Big Bang hypothesis, which he submitted unsuccessfully to academic journals. He then tried posting his articles on the arXiv preprint server — a non-peer-reviewed website where physicists often post papers before submitting them to journals. When arXiv curators removed the papers and revoked his posting rights in 2001, Gentry complained, then filed the suit to regain access this August. “I’m a creationist and a believer in the Bible, but I want to know the truth. I want these papers to be tested by the scientific community,” he says.

Paul Ginsparg, a professor at Cornell and creator of the site, declined to comment, citing the ongoing suit. But Nelson Roth, Cornell’s associate counsel in charge of litigation, says that the rejection was based on Gentry’s lack of academic affiliation, not his beliefs. “The religious views of the plaintiff are completely irrelevant,” he says.

Even if the legal case makes no progress, it highlights some problems associated with websites whose content is not peer-reviewed, says Adrian Melott, a cosmologist at the University of Kansas in Lawrence. Melott, a co-founder of Kansas Citizens for Science, a group that has successfully lobbied against teaching creationism in the state’s schools, says he’s noticed a rise in “flaky” publications on the section of the arXiv server that he uses most. “We’re coming to a crunch” over what can be published on open servers, he says.
Lawsuit Filed (Dec 2002)

http://www.valdostamuseum.org/hamsmith/SmithvCornell.pdf

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

xxxxx x. xxxxx, xx., Plaintiff

v.

CORNELL UNIVERSITY; LOS ALAMOS NATIONAL LABORATORY;
UNIVERSITY OF CALIFORNIA SYSTEM; NATIONAL SCIENCE
FOUNDATION; UNITED STATES DEPARTMENT OF ENERGY;

and

...
JURISDICTION AND VENUE

11. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to Plaintiffs’ claims took place within the Northern District of Georgia.

13. Factors indicating that the e-print archives are subject to jurisdiction and venue in this case include, but at not necessarily limited to, the following:
   i. The e-print archives do business over the internet by contracting with authors, including residents of the Northern District of Georgia, to post their papers in the form of computer files that are knowingly submitted by authors and transmitted by authors to the e-print archives.
   ii. The e-print archives are not a passive Web site that does little more
than make information available to those who are interested is indicated.

iii. The e-print archives are an interactive Web site where a user can exchange information with the host computer.

iv. The e-print archives have a high level of interactivity.

v. The e-print archives, whose business and commerce involves submissions and posting papers (as opposed to sales of goods or services for money, since the e-print archives receive financial support from taxpayers through such entities as the National Science Foundation), have sufficient contacts within the Northern District of Georgia to be subject to the jurisdiction of this court.

vi. The business of the e-print archives, which includes submissions and posting of papers, is covered by the Georgia long-arm statute, Georgia Code 9-10-91.

A Temple Law School web page at http://www.temple.edu/lawschool/dpost/jurisdictioncases.htm comments on that case, stating: ”... The District Court concluded that exercising personal jurisdiction over a Georgia Corporation, based on the maintenance of a web site and 6 contracts with New York residents was reasonable. ... As for a due process analysis, the court acknowledged that simply maintaining a web site on the internet would not, necessarily, by itself constitute purposeful availment.

However, Access’s consistent marketing to the entire U.S., as well as, servicing its customers in New York, were sufficient. Based on these activities it was foreseeable that Access could be haled into court not only where its web site had been viewed, but where Access had secured customers. ...”. For the e-print archives, “contracts” correspond to submissions and posting of papers, and “customers” correspond to authors of papers.
PRELIMINARY STATEMENT

15. This action seeks a judgment declaring that the regulation, policies and administration of the above-named defendants prohibiting and suppressing the publishing of legitimate scientific work on an open, federally and state funded scientific public forum contravenes the First and Fourteenth Amendments to the United States Constitution (U. S. Const. Amend. I, XIV.) and 42 U.S.C. §1983. This proceeding also seeks orders that defendants carry out open authorship policy for the public forum and provide a due process for aggrieved parties to contest adverse rulings.
REQUEST FOR RELIEF

(a) order Defendants Cornell and its employees and to cease and desist from taking any action inconsistent with the policy of open authorship for the e-print archives, and to correct and rectify any and all past actions inconsistent with the policy of open authorship for the e-print archives, and to provide a forum and procedure for contesting rulings by the e-print archives; or, in the alternative, order Defendants LANL, DOE, and Cal and their employees to cease and desist acting as primary backup for the e-print archives, and to resume full administration of the e-print archives using the data, equipment, and personnel under their possession or control, and to cease and desist from taking any action inconsistent with the policy of open authorship for the e-print archives, and to correct and rectify any and all past actions inconsistent with the policy of open authorship for the e-print archives, and to provide a forum and procedure for contesting rulings by the e-print archive.

(b) order Defendants to provide adequate training and supervision of their employees and subordinates;
In the Meantime


The Chronicle of Higher Education:
“A U.S. SUPREME COURT JUSTICE on Friday reinstated a lower-court decision that held that a California trade association could not sue an individual in California courts over materials he had posted on the Web while he was a college student in Indiana.”

Counsel: “...31 Dec 2002 decision by the United States Court of Appeals comes from the Fifth Circuit (our cases are in the Sixth and Eleventh Circuits), the analysis is persuasive and the case cites favorably to a Sixth Circuit case we relied upon...Supreme Court Justice Sandra Day O’Connor first suspended and then reinstated the ruling (suggesting that she concluded that the Supreme Court would not overturn the ruling).”
5. I do not conduct any business in the State of Georgia and never have. I have no contact with people or organizations in Georgia. The only communication between plaintiff and Cornell University concerning arXiv of which I am aware relates to plaintiff’s attempt to post on arXiv.org in August of 2002. I am aware of an e-mail exchange initiated by plaintiff on August 10, 2002 and our responses dated August 12, 2002 and September 8, 2002.
Outcomes

• 25 Mar 2003: In a 70 page order, Judge Murphy (Georgia) granted the Motion to Dismiss on Rule 12(b)(2) (jurisdictional) grounds.

Counsel: “Given that the decision is 70 pages and limited to the issue of personal jurisdiction, I suspect that it addresses the timely and significant issue of the extent to which internet activities subject a person/entity to suit in a foreign jurisdiction.”

• 23 Mar 2004: Tennessee case against the Cornell and UC defendants dismissed by judge for lack of personal jurisdiction.

*Nature 428, 458 - 459 (2004), doi:10.1038/428458a*

Retribution denied to creationist suing arXiv over religious bias

Washington - A lawsuit that accused arXiv, a preprint server for physics and astronomy papers, of religious discrimination has been thrown out of court on a technicality. . . . The suit was dismissed from a Tennessee court on 23 March because . . . failed to show that the server, or its operators Cornell University in Ithaca, New York, the National Science Foundation and Los Alamos National Laboratory in New Mexico had sufficient presence in the state to merit legal action. . . .
Open Access (OA)

- OA “supports the principle that the published output of scientific research should be available, without charge, to everyone” (UK House of Commons Science and Technology Committee, 2004)
- self-evident from public policy standpoint? ⇒ legislated?
- endorsed by Nobel laureates, library associations, and US Chamber of Commerce.
- OA ≠ “free access”
  - OA: authors retain copyright and give license under to permit future uses (frequently prohibited when copyright transferred)
  - OA: can be deposited in central server, available in searchable “information space” in perpetuity
- published research: share knowledge + author recognition
Financial Models

- naive? hopeless? obvious?

- Current publishing revenues:
  - subscriptions, author fees, advertising
  - free access undercuts subscription revenue?

- OA shifts burden to authors (and authoring institutions):
  - author fees, advertising, institutional and grant support
  - sustainable?
  - “No author left behind”
    - fee waivers for authors w/o financial support

- Why us? Why now?
  - New technology enables new model for scholarly publication
Changes?

• Subscription-based journal publishers relax access restrictions

• Some new OA journals accepted by scientists

• Back door route!

• Gov’ts becoming involved, some may mandate some form of OA.
  ▶ NIH “Draft Proposal for Enhanced Public Access to NIH Research Information”: all NIH-funded research freely accessible 6 months after original publication, deposited in PMC
  ▶ other funding agencies?

• lower profit margins?

• Priorities: cost or functionality?

• Change peer review methodology?

(John Cornyn (R-Texas) and Joe Lieberman (“D”-Conn), 2 May 2006)

Articles generated through research funded by federal agencies with annual research budget >$100M open access by 6 mos of publication:

• Require each researcher — funded totally or partially by the agency — to submit an electronic copy of the final manuscript that has been accepted for publication in a peer-reviewed journal;

• Ensure the manuscript is preserved in a stable, digital repository maintained by that agency or in another suitable repository that permits free public access, interoperability, and long-term preservation; and

• Require that free, online access to each taxpayer-funded manuscript be available as soon as possible, and no later than six months after its publication in a peer-reviewed journal.
Brussels delivers blow to Reed Elsevier (3 May 2006)
http://media.guardian.co.uk/newmedia/story/0,,1756544,00.html

Scientific research funded by the European taxpayer should be freely available to everyone over the internet, according to a European commission report — a blow to the lucrative scientific publishing operations of media groups such as Reed Elsevier and Germany’s Springer.

The report, produced by economists from Toulouse University and the Free University of Brussels for the EC and published this month and open to consultation until the summer, recommends open access to publicly funded research. It proposes that researchers who receive EU funding should be ‘mandated’ to place copies of articles published in subscription journals on web-based archives that can be accessed by everyone for free.

The worry for traditional publishers such as Reed, Springer, Blackwell and the hundreds of learned societies that make their money through journals, is that if research is available for free on the internet no one will pay subscriptions. The EC report also recommends experimenting with new forms of ‘open access publishing’, whereby researchers pay for their articles to be published free to all on the internet.
Cornell University Faculty Senate Endorses Resolution on Open Access and Scholarly Communication

(Ithaca, NY, May 17, 2005) The Cornell University Faculty Senate endorsed a resolution concerning scholarly publishing at its meeting on May 11, 2005.

The resolution, introduced by the University Faculty Library Board, responds to the increasingly excessive prices of some scholarly publications and encourages the open access publication of scholarship.

Sarah E. Thomas, Carl A. Kroch University Librarian, thanked the University Faculty Library Board for their energetic engagement on behalf of increasing dissemination of scholarship through open access. “Cornell faculty have been leaders in speaking out on behalf of reasonably priced scholarly journals, and their efforts have had a world-wide impact,” she said.

The resolution urges tenured faculty to cease supporting publishers who engage in exorbitant pricing, by not submitting papers to, or refereeing for, the journals sold by those publishers, and by resigning from their editorial boards if more reasonable pricing policies are not forthcoming.

Examples of Cornell faculty and librarians who have already taken action include:
Resolutions for the New Year

(proposed May 2006)

WHEREAS

the Cornell Faculty Senate on 11 May 2005 passed a resolution on scholarly publishing, according to which “The Senate strongly urges all faculty to negotiate with the journals in which they publish either to retain copyright rights and transfer only the right of first print and electronic publication, or to retain at a minimum the right of postprint archiving”; and

... 

THEREFORE BE IT RESOLVED THAT

The Senate urges faculty members to attach the SPARC Authors Addendum to publishing contracts that they sign unless they arrange to retain copyright itself and transfer only the right of first print and electronic publication.
1. **Authors Retention of Rights.** In addition to any rights under copyright retained by Author in the Publication Agreement, Author retains:

   (i) the rights to reproduce, distribute, publicly perform, and publicly display the Article in any medium for non-commercial purposes;

   (ii) the right to prepare derivative works from the Article; and

   (iii) the right to authorize others to make any non-commercial use of the Article so long as Author receives credit as author and the journal in which the Article has been published is cited as the source of first publication of the Article. For example, Author may make and distribute copies in the course of teaching and research and may post the Article on personal or institutional Websites and in other open-access digital repositories.

2. **Publishers Additional Commitments.** Publisher agrees to provide to Author within 14 days of first publication and at no charge an electronic copy of the published Article in Adobe Acrobat Portable Document Format (.pdf). The Security Settings for such copy shall be set to NoSecurity.