

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MASSACHUSETTS**

**FERMIN ALDABE,**

**Plaintiff,**

**v.**

**CORNELL UNIVERSITY; PAUL GINSPARG; MICHAEL  
KOTLIKOFF; HUNTER R. RAWLINGS III; ANNE R.  
KENNEY; SIMONS FOUNDATION; EBERHARD  
BODENSCHATZ;RALF BUNDSCHUH; DAVID  
EPPSTEIN;DANIEL GOTTESMAN;JOE HALPERN;TARA  
HOLM;GREG KUPERBERG;SHUDE MAO;ANDREW  
MILLIS;DAVID MORRISON;NICHOLAS  
READ;JENNIFER ROSS;LICIA VERDE;KAREN  
VOGTMANN;STEVEN GOTTLIEB;YURI  
TSCHINKEL;PAUL FENDLEY;DONG LAI;PETER  
KAHN;STEVE BECKWITH;NICKOLAS SOLOMEY;IRA  
WASSERMAN;N. DAVID MERMIN;DAVID  
NELSON;TERRY HWA; ÉANNA FLANAGAN; JIM  
ALEXANDER; TOMAS ARIAS; IVAN BAZAROV;  
EBERHARD BODENSCHATZ; ITAI COHEN;CSABA  
CSAKI; J.C. SEAMUS DAVIS;VEIT ELSER;CARL  
FRANCK; LAWRENCE GIBBONS; PAUL GINSPARG;  
YUVAL GROSSMAN; SOL GRUNER; THOMAS  
HARTMAN; GEORG HOFFSTAETTER; NATASHA  
HOLMES; EUN-AH KIM; MICHAEL LAWLER; ANDRE  
LECLAIR; PETER LEPAGE;MATTHIAS LIEPE; LIAM  
MCALLISTER; PAUL MCEUEN; ERICH MUELLER;  
CHRISTOPHER MYERS; MICHAEL NIEMACK;  
MATTHIAS NEUBERT; KATJA NOWACK; JEEVAK  
PARPIA; RITCHIE PATTERSON; MAXIM PERELSTEIN;  
DANIEL RALPH; BRAD RAMSHAW; DAVID RUBIN;  
ANDERS RYD; JAMES SETHNA; KYLE SHEN; ERIC  
SIGGIA; SAUL TEUKOLSKY; JULIA THOM-LEVY;  
ROBERT THORNE; CYRUS UMRIGAR; MUKUND  
VENGALATTORE; JANE WANG; MICHELLE WANG;  
IRA WASSERMAN; PETER WITTICH,**

**Case No 1:16-CV-12268-NMG**

**Defendants**

**COMPLAINT**

1. The plaintiff is a resident of Westford, Middlesex, Massachusetts and a citizen of the Italy.

2. The defendants work for or are associated with the University of Cornell which is based in Ithaca, New York.

3. This Court has jurisdiction pursuant Federal Rules of Civil Procedure 4 (k)(1)(A) and Massachusetts Long-Arm Statute Ch 223A.

### **BACKGROUND FACTS**

4. On or about 1994, plaintiff, at the time a post-doctoral fellow at the International Center for Theoretical Physics in Trieste Italy, joined xxx.lanl.gov (“Arxiv”), a website that exhibits scientific articles.

5. Arxiv was administered at the time by Los Alamos National Laboratory as a repository of digital scientific preprints, called eprints, created with the principal purpose of allowing prompt communication of research intended for publication in academic scientific journals as well as a way of establishing copyright and authorship of ideas as well. Academic journals can in some cases take up to two years to publish a result. Thus, Arxiv was also designed to reduce the time to disseminate a scientific idea.

6. According to Wikipedia, Arxiv “began as a physics archive, called the LANL preprint archive, but soon expanded to include astronomy, mathematics, computer science, nonlinear science, quantitative biology and, most recently, statistics. Its original domain name was xxx.lanl.gov”

7. Between 1995 and 1998, Plaintiff submitted a total of 12 papers to xxx.lanl.gov with the following identifiers: hep-th/9811234, hep-th/9701126, hep-th/9610235, hep-th/9604110, hep-th/9604107, hep-th/9603183, hep-th/9602112, nucl-th/9602014, cond-mat/9511129, nucl-th/9511034, nucl-th/9511033, hep-th/9506168. The first pair of numbers indicate the year, the second pair indicate the month. As can be seen from the identifiers, the first two numbers that denote the year, the articles were submitted between 1995 to 1998.
8. For the avoidance of doubt, all these articles were submitted while the Arxiv was at xxx.lanl.gov. According to Wikipedia “Due to LANL's lack of interest in the rapidly expanding technology, in 1999 Ginsparg [second defendant] changed institutions to Cornell University and changed the name of the repository to arXiv.org.”
9. Plaintiff never granted any copyrights to Los Alamos National Laboratory as confirmed by defendant in letter dated 2 March 2017: “**there was no contract** or breach”. For the avoidance of doubt, plaintiff concedes this affirmation by the defendant insofar as the articles submitted between 1995 and 1998 but not with regards to those submitted afterwards. Plaintiff always assumed that the papers would be in the hands of Los Alamos National Laboratory, a government agency, not for profit and working for the furtherance of science. Plaintiff agreed, if in spirit only and not by contract, to exhibit his work only at their website and nowhere else.
10. In 1999, according to Wikipedia “Due to LANL's lack of interest in the rapidly expanding technology, in 1999 Ginsparg [second defendant] changed institutions to Cornell University and changed the name of the repository to arXiv.org.”

11. Indeed, Mr Ginsparg moved to Cornell University and along with him took the repository which the owner of xxx.lanl.gov, Los Alamos National Laboratory, gave to him under some unknown agreement. However, Los Alamos National Laboratory did not own any copyrights to the any of the articles. Therefore, Mr Ginsparg took with him copyrighted documents who where not for him to take without plaintiff's consent.

12. Indeed, plaintiff is not the only one to have been in similar situation. Rather the entirety of authors who submitted between 1990 and 1999 were not requested to grant permission to Mr. Ginsparg to run away, to his benefit of obtaining among other tenure, to Cornell University. Those authors, clearly identifiable did not grant Mr Ginsparg any rights whatsoever. Again this was conceded by council to Cornell University.

13. In 2004, but most likely in 29 May 2009 according to Way Back Machine (web.archive.org) a website that keeps records of webpages from popular websites, Arxiv put to view of the public the license. This is confirmed by website:

<https://web.archive.org/web/20091016072126/http://arxiv.org/licenses/nonexclusive-distrib/1.0/license.html>

which reads:

arXiv.org - Non-exclusive license to distribute.

The URI <http://arxiv.org/licenses/nonexclusive-distrib/1.0/> is used to record the fact that the submitter granted the following license to arXiv.org on submission of an article:

I grant arXiv.org a perpetual, non-exclusive license to distribute this article.

I certify that I have the right to grant this license.

I understand that submissions cannot be completely removed once accepted.

I understand that arXiv.org reserves the right to reclassify or reject any submission.

Revision history

2004-01-16 - License above introduced as part of arXiv submission process

2007-06-21 - This HTML page created

Plaintiff was unable to confirm in Way Back Machine any other deployed licenses by arxiv before 2009 in disagreement with the revision history shown at the time.

14. However, from Arxiv's own account of its revision history, on its own website as dated 3 March 2017, Arxiv continues to confirm that any license came into effect at the earliest in 16 January 2004. Consequently, all publications between 1990 and 16 January 2004 are copyrighted but none of the defendants owns any of the copyrights because there is no known contract which transferred any copyrights.
15. Therefore, as of today, both the first and the second defendants operated a website which allows downloads of copyrighted material without any right to do so for lack of any copyright agreement. This is the same scam as Napster and Megadownload. First and second defendants operated in the same manner as Dot Kim, allowing the public to download copyrighted material without the copyrights owner's consent.
16. Today, Arxiv acts as a gateway to top tier journals like European Physics Journal C as well as Journal of High Energy Physics. Submissions to those journals will not be published unless an Arxiv assigned Id number is provided to the Journals. In general, editors of other journals will with little regard dismiss an article if the authors do not provide an Arxiv number.

17. Thus, failure to obtain an Arxiv article identification number places great difficulty for authors to submit their articles to journals, reduces the spectrum of journals available for submission and biases editors and referees against articles that do not have an Arxiv Id.
18. For the avoidance of doubt, the diffusion of an author's article is severely reduced when an article lacks an Arxiv article id. Authors who do not have an Arxiv Id are unable to compete with those Authors who do have an Arxiv Id. Without an Arxiv article id authors will find it very hard to diffuse their ideas in a timely fashion when compared with authors whose work has an Arxiv article id.
19. On 22 February 2004, according to the Way Back Machine ([web.archive.org](http://web.archive.org)), Arxiv implemented an endorsement policy. This policy required that authors who submit articles to Arxiv must be endorsed by an established member who has "authored a certain number of papers within the endorsement domain of a subject area." Without endorsement, a paper cannot be submitted to Arxiv. This means that any document submitted from 22 February 2004 until present was endorsed by an established author who read the material and deemed it to be worthy of making it part of the eprint repository Arxiv or it has been submitted by an author who has been previously endorsed or is an endorser herself and has been granted by Arxiv the privilege and authority to act as one or to submit without endorser.
20. On 9 May 2008, according to the Way Back Machine ([web.archive.org](http://web.archive.org)), Arxiv started to moderate submissions to their website. Wikipedia notes that "Although the arXiv is not [peer reviewed](#), a collection of moderators for each area review the [submissions](#); they may recategorize any that are deemed off-topic,<sup>[16]</sup> or reject submissions that are not scientific papers." This is further supported by the Arxiv website itself as dated in 7 July 2009: "*arXiv is*

*an openly accessible, moderated repository for scholarly papers in specific scientific disciplines. Material submitted to arXiv is expected to be of interest, relevance, and value to those disciplines. arXiv reserves the right to reject or reclassify any submission. Moderation helps to ensure that arXiv content is relevant to current research at much [lower cost](#) than conventional peer-reviewed journals, so we can continue to offer free access to the scientific community and the general public. Although our system may be imperfect, submissions that are determined to be inappropriate for arXiv may be still be posted on other sites or submitted to peer-reviewed journals.”*

21. This last statement is not true. To publish a paper on the Journal of High Energy Physics, European Physics Journal C or any other journal under SCOAP3, authors require an Arxiv Id.

22. The Arxiv’s license requirements which reads “Arxiv reserves the right to reclassify or reject any submission”, were subsequently modified when moderation came into effect and additional terms valid today were incorporated as a result of representations made in there webpage [arxiv.org/help/moderation](http://arxiv.org/help/moderation) which authors are expected to read before uploading a paper. Among others it reads:

Our policy is: arXiv is an openly accessible, moderated repository for scholarly papers in specific scientific disciplines. Material submitted to arXiv is expected to be of interest, relevance, and value to those disciplines. arXiv reserves the right to reject or reclassify any submission.

...

arXiv moderators will suggest the removal of a submission that violates arXiv policies in some way. Potential reasons for removal are:

Inappropriate format..., Inappropriate topic..., Duplicated content..., Submission of copyrighted material..., Excessive submission rate...

23. Therefore moderation curtails any arbitrary motive to remove or reclassify a paper. Rather, for a paper to be removed from the submission process it must have *Inappropriate format*, Inappropriate topic, Duplicated content, Submission of copyrighted material, Excessive submission rate.
24. In addition, Arxiv's description of the moderation process in that webpage states: "arXiv contains exclusively scientific research content." However, because a submitted paper is either endorsed by a scientist deemed by Arxiv to have knowledge of what constitutes scientific research or submitted by the endorser herself, then, there can be no dispute, save in very rare occasions, that any paper placed in moderation passes automatically, the scientific research content. More so, when the endorser is a scientist who has a long scientific trajectory in the area of research to which the submission belongs.
25. In any case, it is implied that if the paper is rejected, Arxiv will at the bare minimum explain why it is deemed to lack scientific quality.
26. In their moderation webpage, Arxiv gives five reasons to reject a submission: Inappropriate format, Inappropriate topic, Duplicated content, Submission of copyrighted material, Excessive submission rate. The tone is set. Rejection occurs when technical requirements are not met. And not when there is scientific disagreement, unless a good reason is given. To be clear, Arxiv cannot reject an article on the grounds that the author is black, brown, yellow, Muslim, Eastern European, Indian etc. Likewise, Arxiv cannot reject an article because it does not like the result



or the title. The latter would reject the authority of the endorser to determine the scientific quality of the article or the trajectory of the scientist. It really has to reject it because it lacks scientific quality and it must state with good reason why it lacks scientific quality.

27. On 7 October 2015, plaintiff submitted a paper to Arxiv. Because plaintiff was a member since 1994 and had published in refereed top tier scientific journals extensively as well as submitted to Arxiv many publications in the field of theoretical High Energy Physics including quantum gravity, he did not need endorsement.

28. Indeed, Arxiv did not require plaintiff to be endorsed. But if it had, plaintiff would have called a favor on any of his past distinguished professors, colleagues and students who today are professors at Princeton University or who work at Los Alamos National Laboratory or are affiliated with CERN where God's particle was recently discovered.

29. The submission required plaintiff to login into his Arxiv account created back in 1994, upload the paper, classify the paper and chose a license and agree to licensing terms, logout of the account. Upon completion, plaintiff received an email dated 7 October 2015 which read among others:

Title:  $SO(4)$  Yang-Mills Describes Quantum Gravity

Authors: Fermin Aldabe

Categories: physics.gen-ph

Comments: 20 pages (including title page) and 13 figures

License: <http://arxiv.org/licenses/nonexclusive-distrib/1.0/>

30. As can be seen from the email, the license was agreed to. By that single act, plaintiff granted "arXiv.org a perpetual, non-exclusive license to distribute this article." Therefore, plaintiff

made a promise and ceded some copyrights if not all to Arxiv. In return, Arxiv agreed to follow the moderation procedure with integrity and if successful to exhibit and distribute plaintiff's scientific article. If not, to provide a reason so that author could address it and resubmit it once resolved.

31. Therefore, terms were agreed to between plaintiff and Arxiv on 7 October 2015 and therefore a commercial contract existed between them where copyrights were exchanged for exhibition/distribution. For the avoidance of doubt, the articles uploaded to xxx.lanl.gov between 1995 and 1998 were given to Arxiv by way of email and therefore no contract was entered as conceded by first defendant's counsel.

32. Without a doubt, as stated in its website, Arxiv is receiving from plaintiff non-exclusive copyrights to distribute plaintiff's work. If plaintiff does not receive something in return, then there is no consideration and then the contract is void under law and Arxiv does not have the right to distribute plaintiff's work or any other work it posts on its website. In addition, Arxiv must pay royalties to all authors for the work it exhibits if no contract exists entitling Arxiv to distribute copyrighted material.

33. The email above, confirming receipt of the paper, reads "Categories: physics.gen-ph". The plaintiff would never of his own initiative select physics.gen-ph. Any writer writes for his audience. So plaintiff selected the category where he was most prolific, where his audience subscribed to receive eprints and where the topic and research were most appropriate: High Energy Theoretical physics with the moniker hep-th and not physics.gen-ph.

34. For the avoidance of doubt, no scientific author would select category physics.gen-ph. In all likelihood, the author would prefer to flush his work down the toilet instead of selecting physics.gen-ph. At least the bacteria would benefit from the scientist work. An article placed in physics.gen-ph is doomed to be ignored by most if not all members of the community and it would hardly reach any scientists the author intended of reaching with her work.
35. The following day, plaintiff received an email from Arxiv stating that some format problems existed and asking that plaintiff address them. Plaintiff did so promptly. On 12 October 2015, Arxiv wrote to plaintiff that paper was being placed “on hold status”. Plaintiff replied: “Please tell me this paper has been placed on hold because of the content and because I am unaffiliated.” and later wrote back again to state that some minor revisions needed to be addressed. Arxiv then moved the submission to “incomplete status” and plaintiff resubmitted on 14 October 2015 the article with corrections he wished to implement.
36. On 20 October 2015, Arxiv wrote to plaintiff: “... 1.Do you have a conventional publication record? In what field? Please provide us with a current list of publications. 2) What is the precise nature of your institutional affiliation?”
37. Institutional affiliation, here, is code word for national origin, and by proxy, race and religion.
38. It was clear that Arxiv had forgotten to look up its own database to determine what works plaintiff had published before. With regards to affiliation, plaintiff had none but could have again asked a favor to be invited to his alma matter or any other university where friends were tenured to present the paper with affiliation, a customary practice among affiliated scientists. However, because the terms incorporated into the contract between Arxiv and plaintiff were set

in stone and the only requirement was scientific quality and not affiliation, to be clear none of the terms incorporated into the contract make any mention of affiliation, plaintiff did not deem this to be a requirement.

39. That same day, plaintiff replied stating his scientific lineage going back to his scientific grand father Bohr who was a Nobel Prize winner and included a list of 24 publications, the majority of which were published in top tier refereed journals. He also explained why he was not affiliated but hinted that he would affiliate if so required.

40. Finally, plaintiff reminded Arxiv of the terms which required scientific quality and asked Arxiv to show scientific cause or other to continue to hold the paper.

41. On 22 October 2015 Arxiv rejected the paper without giving any reason. Plaintiff asked Arxiv again to explain reason for rejecting the paper. It should be noted that any scientific journal that rejects a scientific paper does so with an explanation. However, in this case, Arxiv refused to give any. Plaintiff wrote again asking if an endorser could assist in this matter. He further made clear that the Arxiv id was of paramount importance to access any journal under SCOAP3 which includes most if not all the scientific journal which cover high energy physics.

42. As a result of Arxiv's unexplained action to reject the article, plaintiff was unable to access various journals and other journals refused to take his work seriously in all probability as a result of not providing an Arxiv Id at the time of the submission to those journals.

43. Plaintiff had to call a personal favor on Prof. Antoniadis of the Ecole Polytechnique who also had been Head of the Theory Unit of CERN's Physics Department. Had it not been that Prof.

Antoniadis knew plaintiff, as a result of an invitation he extended to plaintiff, plaintiff would have found it impossible to get his paper refereed without an Arxiv id. More over, referees placed additional requirements and were often biased as a result of not having an Arxiv id. On 18 November 2015, Arxiv wrote: “Our moderators rejection indicates that your paper is in need of significant review and revision before it would be considered publishable”. However, no details were given. In particular, it leads to the believe that such a statement was unfounded and that the actual reason was not that plaintiff had 24 scientific papers most of them published in top tier journals. Clearly from Arxiv’s reply it was not a result of plaintiff’s unaffiliation. For the avoidance of doubt, the paper was revised to satisfy one of the referee’s demand which plaintiff only ceded because he was against the ropes as a result of Arxiv’s action. Plaintiff therefore had to make amendments he wished he would not have been forced to make.

44. Indeed, Arxiv was unable to give any reason because there was no reason which could be put in writing.

45. Arxiv should have stated: we reject this paper because your name sounds Muslim. However, that would make discrimination too apparent and therefore they opted to make up unjustified excuses to discriminate on the basis of plaintiff’s name. Without a doubt, if plaintiff would have worn a yellow Jewish star, then Arxiv would have published his work without any further ado. For it turns out, as shown below, that scientists with Jewish names are hardly discriminated as opposed to Muslims, Eastern Europeans or Indians.

46. On that same email dated 18 November 2015 Arxiv said it would reconsider its decision if it plaintiff’s work was published in a mainstream journal. Of course, Arxiv knew full well that the paper would have great difficulty being published without an Arxiv id. At the heart is a contract

between Arxiv, SCOAP3 and many scientific journals which use the Arxiv id as a requirement for any publication to be possible. Therefore Arxiv is not just a eprint or preprint archive, it is also a choke that scientists have to overcome in order to publish.

47. Thus Arxiv made a contradictory statement if not a catch 22. On the one hand it requires a mainstream publication to assign an Arxiv id on the other hand, the scientific journals, through SCOAP3 require the Arxiv id to publish the paper. While Arxiv left a very narrow opening for plaintiff to get his work published, it knew full well that any editor or referee would frown on a paper which does not have an Arxiv id to start with.

48. It is a coded message from Arxiv to SCOAP3 and to the Journals: this work sucks, do not publish it. That is what the journal JHEP did. It wrongly argued that it was off topic from its journal and a similar reply was given by the journal Nuclear Physics B. Plaintiff knew full well the topic of those two journals for he had published in both of them.

49. That message was an additional burden on plaintiff. Not only finding a journal but going through the referee process as well. Indeed, a read at the first referee from EPJ C Journal makes it clear that the referee did not even attempt to read the paper let alone understand it. While the paper was proposing a new particle to replace the traditional and unsuccessful candidate particle, the referee asked where the unsuccessful particle was to be found in the paper. The referee also demanded that a trivial consequence of well established theories be put in full fledged detail and which would never have been asked of another author. And once that everything demanded by the referee was satisfied, the referee rejected the paper without grounds. It took a second referee to get it accepted. That one asked for only minor clarifications and the comments made by the referee had a different tone, one of trying to guide the author

into a better presentation. Would it not been for the special relationship between the editor and the author, the paper would never had gotten a second chance.

50. So on 18 November 2015, to prevent what eventually would be a painful publishing process, plaintiff replied to Arxiv: “Will the moderator be more specific regarding the significant review and revision needed or at least cite examples of where these issues arise. These would be more than helpful in improving the paper whose results and conclusions are no doubt correct. I disagree with your comments regarding JHEP and urge to submit a paper without arxiv number. You will not be able to upload paper without arxiv number.”
51. And a second email by plaintiff followed that same day: “I believe that the email below from JHEP makes it pretty clear that arxiv is a gatekeeper to it.” Attached to the email was a reply from JHEP: “We would like to confirm that the JHEP submission system requires an arXiv number. This is necessary to correctly categorize your paper and, if accepted, to publish it according to the gold open access scheme funded by SCOAP3.”
52. Therefore JHEP made it clear that the publishing process with them was a non starter without an Arxiv id.
53. After two weeks or so, on 2 December 2015, Arxiv replied: “You are free to pursue publication in another venue, but our moderators are not willing to accept your work without prior publication in a mainstream conventional journal. Journal's requirements for funding of their content does not overrule our moderation decisions for acceptance (SCOAP3 offers to pay for publication of works within hep journals).”

54. Clearly absent from the publication was any reason for denying the Arxiv id. For the avoidance of doubt, Arxiv never gave a reason for denying the Arxiv id.
55. One of the most important benefits of submitting a paper to Arxiv is that it automatically establishes copyright protection for the author as well as for the ideas presented in the work so that the author can get proper credit for his/her work. This should not be confused with copyright transfer. One can establish copyrights without transferring them. So on 2 December 2015, as a result of doubting of Arxiv's true intentions, plaintiff replied: "I request you reply to this email with a copy of the submitted paper as well as the submitted date so as to ensure that it is not plagiarized."
56. Arxiv replied: "You received an email at the time of the submission which included the pertinent submission information and timestamp. Submissions that have been removed are not retained within on our systems and are cleaned up within a few weeks (at most) of removal. I confirm that no copy remains in cache." Thus Arxiv destroyed all information to destroy all evidence of discrimination.
57. Plaintiff replied: "Please confirm that you can readily identify the persons who had access to the manuscript in case my research somehow reappears authored by somebody else. In the meantime, I look forward to your scientific explanation as to why the paper does not meet criterion (and which clearly you cannot produce). Should it be a matter of form, Ill be happy to revise it so that you can put it in the repository. But lets face it, you refuse to post it because you cannot accept that someone unaffiliated has managed to couple gravity to the standard model."



58. Plaintiff was still demanding an explanation for discriminating his paper and urged Arxiv to beware, given the important result would bring many scientist to question all the work they had done throughout their lives in vain.
59. It should be noted that at the time, plaintiff opted not to look into the matter of discrimination on religious, race or national origin and would never had done so before getting an Arxiv id to avoid rejection. Quite clearly such an accusation would vanish any possibility that the scientific article would be given an Arxiv id.
60. On 7 November 2016, over one year after the paper was submitted to Arxiv, The European Physical Journal C (Particles And Fields) accepted plaintiff's paper for publication. That same day, the journal wrote to plaintiff warning him that the paper would not be published unless it had an Arxiv id. A submission was made to Arxiv with submission id 1716293.
61. For the avoidance of doubt, once more, during submission plaintiff selected the category of high energy physics – theory (hep-th) for the paper. Since it had now been accepted by a top tier journal in Particles and Fields and a very prestigious journal as well, Arxiv had no reason to reclassify it from hep-th to general physics. Upon finalizing the transaction, Plaintiff received an email from Arxiv incorporating terms with regards to the copyright transfer. Plaintiff was not aware that Arxiv had already reclassified it into general physics. Why would anyone do that? In any case, plaintiff was overly concerned with getting the Arxiv id to ensure publication.
62. Why would anybody reclassify a sports article published in the sport section of the Boston Globe print it in the section “matters of the heart”? There has to be something going on.

63. Nevertheless, along with the reclassification, Arxiv once more incorporated the terms of its licenses by which plaintiff gave non exclusive copyrights to Arxiv and Arxiv in turn agree to exhibit, as it continues to do so, the article in its website as well as redistribute it soon thereafter. This means that a commercial transaction did take place between Arxiv and plaintiff and that a contract was clearly established between both parties.
64. Two days later, again, the plaintiff received preferential treatment and his scientific article was placed on hold once more, despite it having been accepted for publication. And two days later, plaintiff threatened with this lawsuit.
65. On 16 November 2016, Arxiv notified plaintiff that paper was to be distributed with Arxiv identifier 1611.05281 and incorporated into its eprint archive. In addition, it made it plain that it did not care that a referee and two distinguished editors had deemed the work to be appropriately classified into High Energy Physics and not general physics. Nevertheless, Arxiv reclassified the paper into the category physics.gen-ph.
66. To summarize, a commercial transaction took place where plaintiff granted some copyrights to Arxiv for the latter to exhibit plaintiff's work on their website. Arxiv refused, despite several requests to do so, to give any reason to reject the paper submitted back in 7 October 2015. Arxiv destroyed any evidence that a submission ever existed. Arxiv reclassified the paper on 16 November 2016, effectively downgrading the paper from High Energy Physics to general physics despite the decision of a Chief Editor of a top tier High Energy Physics journal to publish the work.

67. Why go to such a length to discredit plaintiff's work? Was this the outcome of the typical contest between the referee of a journal and an author or is there something else? Plaintiff examined this issue and carried out a statistical analysis of the papers that have been reclassified to show that it is something else: A systematic discrimination of Muslims, Eastern European, Brown People and Indians. To be clear: A systematic discrimination based on race, religion and national origin.

68. Plaintiff constructed a database of all reclassified papers. Plaintiff reduced that database to include only those articles which have been published elsewhere to ensure that the works had been vetted by a third party and deemed to be acceptable scientific work. Plaintiff created a list of all the authors' names appearing in the reduced database. Plaintiff applied the UNIX command "sort -R | head -n 1000" to the reduced database to produce a random sample of names for 1000 authors in the reclassified database. Plaintiff did the same with a database of papers classified under the hep-th. Plaintiff then compared the two populations using proportions of these two independent samples, a standard method for comparing the proportion of two populations. The test statistics obtained from the two proportions shows z-scores of 3.76, 4.03, 8.52, 12.28 for Indians, Eastern Europeans, Muslims, Brown People respectively.

69. That means that with a confidence level greater than 99.99% the population of Muslims for the reclassified papers is different than in the population of hep-th, The same happens in the case of Eastern Europeans and Indians as well as Brown People.

70. To put this into perspective. To ensure the economy does not crash, the Federal Reserve requires that the risk of Citibank, Chase or any other bank for that matter be measured at 99% confidence level. That is, only in 1 day out of 100 days can a loss exceed a risk capital reserve.

The confidence level of 99% has a z-score of 2.33 which is much smaller than 3.77, 4.04, 8.68 or 12.28. It is doubtful banks would be able to operate at the 99.99%. That would mean that only 1 day out of 10000 days a loss can exceed a risk capital reserves.

71. By how much? Muslims appeared 208% times more in the reclassified population. For Indians it was 85% greater and for Eastern Europeans it has 52% greater. For Brown People it was 151%.

72. Therefore, plaintiff was not a random victim, neither was he, unknowingly in the middle of a typical contest between physicists. No. Plaintiff was discriminated because his name was taken to be Muslim because it carries the same two first letters as Al Qaeda. Plaintiff was/is/will be racially/ethically and religiously profiled by Arxiv in the same way that the British government and Customs and Border Patrol regularly profile him when entering the UK or the US. While plaintiff accepts the profiling and extra hassle he receives upon entering the UK and the US as a need in order to prevent terrorism, Arxiv is not an institution devoted to preventing terrorism and instead is devoted to the acquisition of non-exclusive copyrights and exhibition of scientific papers. Therefore, Arxiv is bound under the Civil Rights Act and cannot discriminate.

73. Arxiv engaged in systematic discrimination of Brown People, Muslims, Indians and Eastern Europeans.

## **FIRST COUNT**

Copyright Violation

Class Action

74. Arxiv violated copyright law by distributing plaintiff's copyrighted work without his consent.
75. When Mr Ginsparg took Arxiv to Cornell, Los Alamos National Laboratory gave authorization to Mr Ginsparg to take the eprint repository.
76. Los Alamos National Laboratory gave Mr Gizparg the software and hardware necessary for Arxiv to operate from Cornell University.
77. However, Los Alamos National Laboratory did not give any copyrights to distribute plaintiff's work because it did not own any copyright to distribute plaintiff's.
78. Put simply, plaintiff never transferred any copyrights to Los Alamos National Laboratory and plaintiff never agreed to give Los Alamos National Laboratory any copyrights. Plaintiff only agreed to have Los Alamos National Laboratory distribute his work but without a formal agreement. Moreover, it did not agree to let Los Alamos National Laboratory transfer that mandate to anybody, including Cornell University or Mr. Ginsparg. Neither did plaintiff agree to allow Los Alamos National Laboratory to distribute his work eternally. Neither did plaintiff transfer copyrights to Los Alamos National Laboratory, implicitly or explicitly.
79. Plaintiff established copyright of his work. He did so by simply uploading the paper into the eprint archive at xxx.lanl.gov. That does not mean that it transferred the copyright to Los Alamos National Laboratory. The two are separate and distinguishable acts. Copyright can be established so long as there is a record that shows that plaintiff had written his work by a certain date. Plaintiff secured a copyright for his original work of authorship the moment he put it in tangible form. Plaintiff, therefore, established copyright once he uploaded his work to Arxiv. In

addition, plaintiff obtained in most if not all of his works uploaded to Arxiv a preprint number from ICTP and/or U. Alberta which by itself also establishes copyright in favor of plaintiff.

80. While copyright was established once plaintiff uploaded his work to Arxiv, the copyright was not transferred to Arxiv. That would require a contract, verbal or written by which terms of the transfer are clearly set out. In this case, Arxiv is unable to produce such a contract.

81. Moreover, by letter dated 2 March 2017, council for Cornell and Arxiv stated

All of your causes of action—a breach of contract claim when **there was no contract** or breach....

82. Plaintiff agrees with defendant that there was no contract between Arxiv, or Cornell/Ginsparg for that matter, with regards to the following articles with Arxiv identifiers hep-th/9811234, hep-th/9701126, hep-th/9610235, hep-th/9604110, hep-th/9604107, hep-th/9603183, hep-th/9602112, nucl-th/9602014, cond-mat/9511129, nucl-th/9511034, nucl-th/9511033, hep-th/9506168.

83. For the avoidance of doubt, the uploading process for article with Arxiv identifier 1611.05281 transferred non-exclusive copyrights and therefore plaintiff continues to claim that for this particular article there was a commercial transaction properly backed by an agreement which took effect when the plaintiff agreed to the terms proffered on the Arxiv website.

84. Therefore, Arxiv has conceded that it has no contract and therefore does not own any of the copyrights for articles with Arxiv identifiers hep-th/9811234, hep-th/9701126, hep-th/9610235,

hep-th/9604110, hep-th/9604107, hep-th/9603183, hep-th/9602112, nucl-th/9602014, cond-mat/9511129, nucl-th/9511034, nucl-th/9511033, hep-th/9506168.

85. Nevertheless, Arxiv engaged in the distribution of copyrighted material without any authorization to do so by plaintiff. To be precise, first 6 defendants knowingly violated Section 501 of the Copyright Law of the United States.
86. While it is true that plaintiff agreed to let Los Alamos National Laboratory to distribute his work, plaintiff did so for the greater good and for the furtherance of the scientific community as a whole. More importantly, it did so only because it was a government run project and not a private enterprise.
87. Only as a result of starting this complaint, did it dawn on plaintiff that Los Alamos National Laboratory was no longer managing it and was being run by Cornell in a way and manner with plaintiff's believes and desires.
88. Plaintiff has no obligation to Cornell or Arxiv with regards to the 12 articles submitted to Arxiv between 1995 and 1998. Neither do the authors whose submissions to Arxiv took place on or before January 2004 if not 2009 when the first license appeared on the Way Back Machine.
89. Yet Cornell and Arxiv were able to bask under the light of all those works and the prestige that is associated with it as well as the funding that came along with it.
90. Cornell, through it administrators, library and head librarian pretend to become the worlds digital library. It boasts a digital legal library which is complemented if not supported by Arxiv.

They benefit, with respect to other universities, from having internal access to Arxiv, something that allows them to better understand reference services in the digital domain. It is able to better attract bright student as they become familiar with Cornell through the association of that University with Arxiv the worlds greatest digital preprint repository. Researchers all over the world flock to Cornell among other because it owns Arxiv.

91. As a result of their collusion with Arxiv, the Simons Foundation is and was better able to raise funding for scientific research from is enhanced reputation resulting from its association with Arxiv.

92. Cornell's Physics Department was also able to benefit through its association, through Cornell University, to Arxiv. So as well the careers of the administrators of Cornell and Cornell's Library, the remainder of the first 6 defendants. They were able to further their careers on the back of Arxiv and therefore on the back of plaintiff work. However, plaintiff had nothing in return and never agreed to embark in the furtherance of Cornell, its administrators, Cornell Library and its admistrator, Arxiv and its administrator and the Simons foundation.

93. For the avoidance of doubt, Cornell is not into charity. It is well established that Cornell is a for profit institution which seeks to profit at every opportunity before it. Even when discrimination practices are undertaken in violation of the Civil Rights Act are obvious.

94. Therefore, the first 6 defendants have received great benefit from plaintiff's copyrighted work. However, by defendant's council, none of the 6 defendants own any copyrights to plaintiff's work. Therefore, although it operates at a loss in terms of monetary value, the first six defendants benefit from goodwill which in turn increases their revenue and prestige.



95. Under section 506 of the Copyright Law, people who benefit financially from copyright infringement can go to jail. The first six defendants should go to jail, because that is the law and they have committed a criminal offense. It does not matter if its Napster, Megaupload or Kim Dotcom. It does not matter if it is Cornell either, as well as the other 6 first defendants.
96. People who benefit financially from copyright infringement must pay damages under section 504 of the Copyright Law. In this case, the first 6 defendants must pay copyrights royalties to all the authors whose work was distributed, but for which no copyright was ever transferred to these defendants.
97. At the very least, it includes all authors who uploaded their work to the Los Alamos National laboratory. All those authors never granted unlimited copyrights. Those authors did not transfer any copyrights whatsoever to Cornell or Arxiv which allowed them to distribute their work.
98. But the list of author's and their work should include all those works that were uploaded into Arxiv until January 2004, if not January 2009, when Arxiv first introduced a contract by which authors transferred non-exclusive copyrights.
99. Since council for defendants conceded that there are no contract between authors and Arxiv, then Cornell, as well as the other six first defendants, are liable to pay damages to any and all authors whose work have been uploaded and exhibited or distributed by Arxiv website.

100. Cornell is not above the law. It may very well use its personal police officers to prevent legal pursuers from effecting service of summons to avoid any legal liability. But it should not be treated differently than the hoodlums that profit from copyright infringement and which the Copyright Law views with disdain. If they can, then people should be able to do as well and download pirated works, go to theaters and film exhibits to later profit through paid advertisement when freely distributing copyrighted work.

101. Because the first 6 defendants benefited from all authors copyrighted work, these defendants must pay plaintiff and any and all of the other authors whose work is exhibited on Arxiv website.

102. The copyright infringement was willful. The first 6 defendants knew to well that they were operating a scheme to distribute copyrighted material fully aware they did not own the copyrights. Among the evidence supporting this is the revision history of the licensing agreement which shows that these defendants knew at least as early as 2004 that they required a non-exclusive copyright agreement to operate within the law. However, they continued to exhibit and distribute copyrighted material without having any type of copyright for all the works submitted and accepted prior to January 2004.

103. Under section 504(c)(1) of the Copyright Law, plaintiff requests the maximum of \$30,000 per each of the 12 exhibited articles. However, plaintiff sustains the burden proving the infringement was willful and has shown willfulness to be the case, plaintiff asks the court increase the award of statutory damages to \$150,000 for each of the 12 exhibited articles as permitted under section 504(c)(2) of the Copyright Law.

104. In addition, Cornell must remove any and all articles of authors who for any reason, be it because she feels Cornell discriminates against scientist on the basis of their race, religion or national origin, she feels Cornell abused its position to quash scientific competition from certain types of scientists, he feels Cornell abused its position to artificially increase its own scientific citation to defraud the government, or for any other reason whatsoever the author does not want to be associated with the name Cornell or the name Arxiv.

105. The authors who have been affected by the copyright infringement described under this count are clearly identifiable and have a right to claim, as a result of this copyright infringement the same compensation as the plaintiff.

106. Therefore, plaintiff as well as all other scientist in the same class, should be compensated accordingly.

## **SECOND COUNT**

Discrimination under the Civil Rights Act

Class Action

107. Statistical analysis shows with a 99.99% certainty that first 32 defendants<sup>1</sup> systematically discriminated against scientists based on their race, religion and national origin.

108. The test statistics obtained from the two random samples of reclassified and non-reclassified articles provides z-scores of 3.76, 4.03, 8.52, 12.28 for Indians, Easter Europeans, Muslims, Brown People respectively.

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1, but excluding the Simons Foundation, although this defendant aided and abetted.

109. That means that with a confidence level greater than 99.99% that Brown Persons, Muslims, Eastern Europeans and Indians were systematically discriminated.

110. By how much? Muslims appeared 208% times more in the reclassified population. For Indians it was 85% greater and for Eastern Europeans it has 52% greater. For Brown People it was 151%.

111. The defendants have been able to systematically discriminate for at least 10 years straight without being noticed. They have done so by destroying documents and keeping their discriminatory practices from being discovered by scientists throughout the world. It reminds us of the care we must have to avoid repeating the same mistakes from the past.

112. For the avoidance of doubt, the population of reclassified works was narrowed to those whose work was published to ensure that a third party had deemed it to be scientific work worthy of publication. It nevertheless still constitutes an unbiased sample of the reclassified population as a whole and therefore the same statistical conclusion follows for the general population of reclassified works.

113. The law is clear: any commercial activity which is a place of exhibition falls under Title II of the Civil Rights Act. Under section 203 of that act, The first 32 defendants (but excluding the Simons Foundation) cannot discriminate on the basis of race, religion or national origin. However, the statistical analysis above shows that with certainty they have systematically discriminated scientists on the basis of their national origin, religion and race.

114. While the statistics stands alone as proof of systematic discrimination, the email sent to plaintiff on 20 October 2015 also suffices by itself. Why would Arxiv ask:

2) What is the precise nature of your institutional affiliation?"

After all, according to Arxiv's website dealing with moderation Arxiv seeks to exhibit:

exclusively scientific research. Although arXiv is open to submissions from the scientific communities, our team has worked behind the scenes for a long time **to ensure the quality of our content.**

Then why does it matter where plaintiff is from? After all affiliation closely matches national origin and national origin closely matches race and religion. Then, just by knowing the affiliation, one can in the vast majority of cases, correctly inferred the national origin, race and religion.

115. Through email correspondence, plaintiff sought to establish if affiliation was an obstacle.

However, Arxiv refused to answer.

116. The only way to determine the scientific quality of content of the paper is by reading the paper and determining if it is scientifically sound. Certainly knowing where one was born, to which God one prays or one's skin color cannot be used to determine the scientific quality of a paper. Then why ask the question of affiliation if not the reject the author's work based on race, religion and national origin.

117. Arxiv did not ask: are you black. That would be politically incorrect. Arxiv will instead ask if you live in Roxbury. But we know that the two questions have one and the same purpose, to determine if you are black or not so they may more easily not bother to read the authors work

and discriminate not based on the authors scientific quality of work, as agreed between authors and Arxiv, but in terms of race, religion or national origin.

118. This takes an ironic tone when one reads through Arxiv's Business Model White Paper dated 15 January 2010 which was used to raise funds from libraries at academic institutions, research centers and even the U.S. Government itself:

It [Arxiv] has provided a crucial life-line for isolated researchers in developing countries.

Quite the contrary, it has placed obstacles on isolated researchers in developing countries in violation of the Civil Rights Act. For the avoidance of doubt, the discrimination also took place for scientists based in the United States as well.

119. Plaintiff preempts defendant's argument that the works of discriminated scientists were reclassified as a result of low quality of work. That argument does not fly because those works were endorsed or written by an endorser, were moderated, and were published as scientific works. Furthermore, according to the contract between authors and Arxiv, reclassification can only take place when an article is off topic. An overview of the works reclassified show the vast majority of the works reclassified belong to a different and more specific category than physics.gen-ph. This conclusion can be reached not only by examining key words but also by examining the citations within each of the reclassified works.

120. A review of the works show that the majority were specific enough to be better placed in a more targeted category rather than "the do no even bother to read" category which Arxiv denotes with moniker physics.gen-ph.

121. Plaintiff's latest work is proof of this. His work was published in the top tier refereed journal *European Physics Journal C- Particles and Fields*. The Chief editor, Professor I. Antoniadis, is a guru to which all of us should aspire to emulate as scientist. He determined that the paper had scientific quality as well as it belonged to hep-th. Otherwise, he would never have allowed the paper to be published in his journal. Why then did Arxiv disregarded plaintiff's wishes to have it distributed under the category hep-th and instead publish it under physics.gen-ph. More so when Arxiv knew full well before reclassifying plaintiff's work that the paper had already been accepted for publication at *European Physics Journal C- Particles and Fields*. Indeed, plaintiff emailed Arxiv on the same day he submitted the paper notifying that the paper had been published in EPJC and Arxiv had stated it would not distribute the work without prior publication in a mainstream journal. Therefore, prior to publication Arxiv knew the paper had been successfully published in a High Energy Physics journal.

122. The evidence proving Arxiv's discrimination during its reclassification process is sufficient to show that Arxiv carried out systematic discrimination. Sadly, Arxiv acknowledged to plaintiff by way of email that it systematically destroys any evidence of rejected papers. Surely, the amount of data the rejected documents occupy fit in a memory stick. Then why destroy the rejection process if not to wipe out any trace of evidence of discrimination, just like a killer throws the murder weapon into the river. Why if not to destroy any evidence of discrimination.

123. Under Title II section 204 of the Civil Rights Act, plaintiff may pursue preventive relief, including an application for a permanent or temporary injunction as well as financial compensation.

124. Plaintiff asks the Court to prohibit Arxiv from continuing with moderation and implement a new, blind system, where moderators cannot know anything about the author. To be precise, Arxiv must implement a blind system where moderators cannot have any knowledge of the authors names, affiliation, or any other information, such as source of funding, which can be used to determine race, religion and/or national origin. Only after approval from this Court which ensures that moderators are blinded from any information which may lead by inference or otherwise to estimate and determine the race, religion or national origin of the author should Arxiv be allowed to recommence with moderation.

125. Under 42 U.S. Code § 1981 - Equal rights under the law, plaintiff can obtain uncapped emotional distress damages. Plaintiff seeks \$1,000,000 under this heading or as the Court sees fit.

126. The first 32 defendants, excluding the Simons Foundation, engaged in a discriminatory proactive or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual. Plaintiff seeks an additional \$10,000,000 for each discriminated author under this heading or as the Court sees fit. This prima facie elevated figure is justified by the magnitude of the systemic discrimination involving more than 4,000 authors.

127. Therefore, plaintiff as well as all other scientist in the same class, should be compensated accordingly.



128. Plaintiff respectfully reminds this Court what it already knows by heart from the Civil Rights Act:

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

and asks the Court to act promptly.

### **THIRD COUNT**

Violation of the Sherman Antitrust Act

Class Action

129. Arxiv falls into the category of Professional Associations which have a special place in the Sherman Antitrust Act. Indeed, according to wikipedia:

A professional association (also called a professional body, professional organization, or professional society) is usually a nonprofit organization seeking to further a particular profession, the interests of individuals engaged in that profession and the public interest.

130. First, as shown by its business model, Arxiv is a non for profit association. It does not invoice and it derives all of its income from donations as stated in Arxiv's Business Model White Paper dated 15 January 2010 which also reads

Arxiv.org is internationally acknowledged as a pioneering and successful digital archive and open-access distribution service for research articles."

And therefore, it ticks all the remaining check boxes: it seeks to further the scientific profession by keeping it abreast of recent research. it seeks to further the interests of individual scientist by

distributing their work and giving access to others' works free of charge. Finally, it seeks to further the public interests which seeks the advancement of science.

131. According to the Federal Trade Commission's website (<https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/other-agreements-among>):

Other agreements among competitors that are not inherently harmful to consumers are examined under a flexible "rule of reason" standard that attempts to determine their overall competitive effect. Here the focus is on the nature of the agreement, the harm that could arise, and whether the agreement is reasonably necessary to achieve procompetitive benefits.

132. Scientific Research is one of the most competitive areas of humanity. Nobel prize winners fight with heads of prestigious departments like little children, insulting each other and trying to disprove each others work. The effects of scientific research also have a tremendous impact on economic life. Proof of this statement can be seen all around us. Not only the refrigerator which changed our diets. But the transistor as well, which lead to the computer, cell phone, world wide web, all essential items in today economy. Of course the effects are slow to come, after all the transistor was discovered many decades ago but only today we bask on the internet while playing with our smart phones. Thus when the effects reach society, they change not only commerce and the way we commerce but our way of living as a whole. The X-ray, the MRI are all consequences of physicists working in some remote corner of a research facility.

133. Also, scientific institutions compete for research money, government grants, private-university partnerships, scholarships, future students, future Nobel prizes, publications, etc. Thus while

banks and other commercial business compete for profits, scientific institutions compete for the prestige associated with knowledge which in turn drives the wealth of their endowments.

134. Arxiv is a professional association which benefits scientific institutions and their scientists in a competitive model for academic prestige with a subsequent impact on the worlds economy.

135. The FTC's website frowns on certain practices by such professional associations. In particular it frowns under the rule of reason on exclusive member benefits.

...associations made up of competitors can offer their members important services and benefits that improve efficiency and reduce costs. These services and benefits can range from general industry promotion to high-tech support. But when an association of competitors withholds these benefits from would-be members that offer a competitive alternative that consumers want, the restriction may harm competition and keep prices high.”

136. Plaintiff showed in the second count that Arxiv discriminates and therefore excludes scientists on the basis of their race, religion and national origin. Clearly, there is a finite probability that these very smart and acute individuals may among other, free of charge to the consumer, challenge established ideas, question the quality of work funded by tax payers money, provide the next big idea which changes the world. Yet Arxiv, also has other reasons than pleasure in proving themselves racially superior: Cornell, the owner of Arxiv is suppressing these individuals from distributing their ideas to curtail competition for government funding. This act is to the detriment first of the consumers awaiting the next big thing, but also to the detriment of competing scientific institutions and individuals, even those with the United States and

pecially community colleges, all of which directly compete with Cornell in many areas for research funding, students, publications and prizes.

137. The situation here is exactly what concerns the Federal Trade Commission. The problem only occurs when members of the association have a significant presence and it is difficult for non-members to compete without access to association-sponsored benefits.

138. Thus, scientists who are discriminated in terms of race, religion and national origin are unable to compete without access to Arxiv's. In particular without Arxiv's Id, the scientific work of a discriminated person already starts at a great disadvantage with respect to another person who has been allocated an Arxiv Id. In particular, the discriminated persons will find further bias on the sole basis that their work does not appear on Arxiv and that it does not have the expected Arxiv Id to begin with.

139. The discriminated scientist will face greater scrutiny and bias which will cause longer delays than other scientists. That is exactly what happened to plaintiff as shown by one of the referee's who didn't even bother to read the paper let alone understand it only to request unnecessary and trivial details and then rejected on expectations that clearly could not be part of the work ( that plaintiff explain how a particle entered the theory when the particle was never part of the theory and a different particle was replacing it).

140. It should be noted that both Darwin and Einstein did not belong to the mainstream. Indeed they were not even affiliated with an institution at the time of their greatest discoveries. Generally, the further a person is from where mainstream ideas are held, the greater the change to bring about challenges to those ideas or revolutionary, rather than evolutionary, change to

science. This is logical because those persons are less indoctrinated and are less likely to have political relations, partnerships or friendships which may lead to support mainstream ideas and/or reluctance to challenge their connected colleagues' work.

141. Thus when plaintiff's work challenged a mainstream idea, String Theory, which has drawn massive amounts of taxpayer's money over more than 30 years but yielded little or no results for resolving the quantum gravity re-normalization problem, Arxiv was quick to shut it down as much as it could.

142. Arxiv did exactly what the FTC did not want Arxiv to do: make it difficult for non-members to compete. Not only did Arxiv implement discriminatory practices to deny plaintiff an Arxiv id; Arxiv did so to ensure that Cornell could continue to draw funds for their String Theory researchers, both from the private and public sector. And to delay as much as possible plaintiff's publication in a refereed paper and distribution to ensure that Cornell's researchers could continue to rake in citations, funding, students and prizes along with all the publicity and goodwill that follows from it.

143. However, plaintiff is not alone, those whose work that were rejected or reclassified are also in the same situation. Arxiv not only has a significant presence in the process of publishing scientific works, it is also making it difficult for non-members to compete with all other scientific peer, not just those of Cornell, without access to arXiv's benefits. Not only with respect to getting their work published, but also in harvesting citations, funding, students, prizes and all those other benefits which further their academic careers as well as human knowledge. Furthermore, consumers are being deprived of the latter as a result of such illicit practices by Arxiv and Cornell under the Sherman Anti Trust Act.

144. Preemptively, plaintiff argues: The Anti Trust Standard Oil case taught in most high schools is but a microbe with respect to the anti trust case of Aristotelian Physics and should serve a clear guide of what happens when scientific competition is absent. For lack of competition, as a result of the Roman Catholic Church, Aristotelian physics which postulated that the sun revolved around the earth was allowed to limit scientific thought for about 1200 years. It took Galileo to challenge and it took roughly another 500 years more for the church to admit its mistake. Would it had instituted proceedings under the Antitrust Act, Galileo would have been able to distribute his ideas free of constraints along with his experimental findings. Perhaps if that would have happened, the refrigerator, transistor, computers, smartphones, internet among others would have been second nature to our great great grandparents instead of a novelty to us.

145. Therefore, scientific competition should be preserved at all costs because it the primary driver of the economy and also charts the economy 50 if not 1000 years from now. It will be our grandchildren who will suffer the consequence of any lack of scientific competition resulting from Arxiv's acts.

146. Arxiv is also depriving a large sector of the scientific community from accessing key journals.

This transpires from one of the emails it sent to plaintiff on 18 November 2016:

You are free to pursue publication in another venue, but our moderators are not willing to accept your work without prior publication in a mainstream conventional journal. Journal's requirements for funding of their content does not overrule our moderation decisions for acceptance (SCOAP3 offers to pay for publication of works within hep journals).

147. Plaintiff queried the matter with the prestigious journal JHEP where he had published before and replied to Arxiv:

I believe that the email below from JHEP makes it pretty clear that arxiv is a gatekeeper to it.” Attached to the email was a reply from JHEP: “We would like to confirm that the JHEP submission system requires an arXiv number. This is necessary to correctly categorize your paper and, if accepted, to publish it according to the gold open access scheme funded by SCOAP3.”

148. No Arxiv Id, No possibility of publishing with JHEP. And this does not include the fact that referees will automatically disregard and not take seriously any publication which does not have an Arxiv Id assigned to it. This makes JHEP and many other journals like it impossible to access unless Arxiv agrees to assign an Arxiv Id.

149. In finance we say knowledge is wealth. Then science is wealth and therefore economy. Perhaps not tangible today but certainly tangible in the future. One only requires to see those working toward the immediate future: the pharma sector. Arxiv is monopolizing science and concentrating economic/scientific power in the hands of a few.

150. The author of a paper without an Arxiv Id will suffer direct financial consequences. His work will have fewer citations and less impact within the community as well as more resources to overcome the stigma of lacking an Arxiv Id while getting the paper published instead of devoting those resources to research. Thus the primary profits from his work will be severely diminished. The secondary effects including among others, employment promotion, employment opportunities, research funding, access to research students, funding for her institution all are diminished when Arxiv refuses to provide an Arxiv Id.

151. The cost to produce a paper depends on the research area. However, considering wages, costs of facilities, graduate students and conference attendance lead to a consensus of \$100,000 per paper if not higher. In the case of the plaintiff it took 8 years of work before finishing his paper and he financed his work with saving and income from wife. Plaintiff concedes he did not work full time on the paper and that at least half the time was used to diffuse and challenge his own work. But the diffuse and challenge time is an essential part of research work as is well known in the neuro-science community. Plaintiff could have instead worked in the finance industry and made by contract \$500,000/year to \$1,000,000/year like he had before taking his research work.

152. Arxiv destroyed that value, at least part of it. Also plaintiff was unable to take positions between November 2015 and January 2017 as a result of Arxiv's denigration of plaintiff's work and limitation to publication sources. Plaintiff seeks, under the rule of reason, \$1,500,000 in damages being the sum of damages from the diminished impact of his work as well as time lost during the publication process.

153. In addition, seeks any and all punitive damages allowed under law.

154. Therefore, plaintiff as well as all other scientist in the same class should be compensated accordingly.

#### **FOURTH COUNT**

REDACTED



155. REDACTED

156. REDACTED

157. REDACTED

158. REDACTED

159. REDACTED

160. REDACTED

161. REDACTED

162. REDACTED

163. REDACTED

164. REDACTED

165. REDACTED

166. REDACTED

167. REDACTED

168. REDACTED

169. REDACTED

170. REDACTED

171. REDACTED

172. REDACTED

## **FIFTH COUNT**

Breach of Contract

Class Action

173. Plaintiff entered agreement in October 2015 with defendants when it transferred copyrights to Arxiv and Arxiv agreed to disseminate the article.

174. At no point during the transaction carried out through the internet, was plaintiff put on notice that the article would be subject to arbitrary guidelines. Neither did plaintiff agree to any terms of such a nature. Quite the contrary, plaintiff based his decision in part based on Arxiv's webpage dealing with moderation and incorporated into the contract and which clearly states the grounds for rejection and reclassification and do not include any arbitrary but precise grounds to do so. That website clearly states that papers will rejected if it lacks scientific quality as well as other grounds which did not apply to plaintiff's work.

175. Once his paper was placed on hold and then rejected, plaintiff contacted Arxiv several times to request information as to the grounds on which it has been rejected. Plaintiff was entitled to such explanation as it is customary business practice in the scientific publication industry. Arxiv refused over and over to give such an explanation or explain why Arxiv wanted to know the scientific affiliation as it would have any impact on the scientific quality. Arxiv only gave hand waving reasons all of which were unfounded.

176. Plaintiff requested several time that Arxiv be precise and produce examples. Arxiv refused.

177. Arxiv did not give an explanation because there was none that it could give. Rather, it used racial, and national origin discrimination to reject the paper. Arxiv ID thus deprived plaintiff of access to key journals which require Arxiv ID for submission. Also, editors of journals frown upon articles which do not have an Arxiv ID, rejecting them without further consideration of the content.

178. Arxiv breached agreement by refusing to provide in typical time the Arxiv ID needed to make plaintiff's research public by implementing arbitrary and discriminatory policies. Arxiv had great motivation to prevent publication of anything that challenges mainstream ideas as per the third and fourth count.

179. In addition the grounds for reclassification incorporated into the contract only include that the paper is off topic. But that was not the case as the paper was published in a very prestigious High Energy Physics paper and plaintiff asked Arxiv during the submission process that it classified the paper under hep-th (high energy physics theory) were it belonged.

180. Irreparable harm to plaintiff follows.

181. First, plaintiff worked for years to enhance his reputation and improve his credentials with the hope of returning to the finance industry where he once worked, both in the private and academic sector. The year long delay created by Arxiv's discriminatory policies, along with plaintiff's visa constraints and Brexit make it impossible for plaintiff to obtain a position in the finance industry suitable with his credentials. Therefore, Arxiv has affected plaintiff income since October 2015 which will only revert to original values well after the European financial industry settles into continental Europe sometime in 2020.

182. Second, plaintiff's current reputation within the scientific community is that plaintiff is working from the periphery unchecked. Thus, first 32 defendants are high jacking plaintiff's reputation and goodwill.

183. Third, plaintiff was at a disadvantage with respect to the typical deadline of April 2016 to obtain sponsorship in the financial markets for an H1b visa.

184. Who will take someone who seemingly worked for 8 years on a theory that was never published? Who will not think it is a hoax or misrepresentation and that plaintiff is a total failure who fell of the face of the earth for 8 years, now looking for his old job?

185. While plaintiff's case is exceptional as a result of his experience in the financial industry and his continued work in physics, most if not all of the persons affected by Arxiv's discriminatory

policies have suffered, loss of income, loss of research funding, loss of career progress and loss of citations.

186. Plaintiff suffered damages as set out in the third count and asks this Court to order seven defendant to compensate plaintiff accordingly and allow all those other scientists affected by the same breach of contract to be compensated for any and all damages arising from such breaches or as the Court sees fit.

187. Therefore, plaintiff as well as all other scientist in the same class should be compensated accordingly.

### **CONCLUSIONS**

The first 32 defendants either engaged in systematic violation of the Copyright Law, Civil Rights Act, Sherman Act while all the defendants systematically violated the [REDACTED]. The first 6 engaged in breach of contract. Plaintiff asks the Court to put right defendant's actions according to the law and to retribute damages to plaintiff and those who are in the same position as the plaintiff.

Plaintiff requests Bench trial.

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