

Document 3

eKnowledge Nov 7th Settlement Proposal

Nov 7, 2024

To whom it may concern at ACT Inc.

We are a very small organization run by a father and son team. Primarily we are currently working with three (3) military organizations and 5 schools (1 small private, 1 small public, and 2 medium public). Our total revenue hovers around \$100,000 per year (2021: \$55k, 2022: \$113k, 2023: \$90k, and 2024 will be ~\$70k). This project has not had a profit in over 10 years. Also, we are in the process of converting eKnowledge to a Not-For-Profit 501(c)(3).

However, beyond the profit, we are providing an important service to the organizations, schools, students, and parents that we help. Please read the letters of support from two of the schools, two of the military organizations, and a few parents and students to gain their perspective. (see attached)

- **Association of the United States Army (AUSA)**
- **Military Officers Association of America (MOAA)**
- **Whitehorse High School (San Juan County, Utah)**
- **Bearden High School (Knoxville Tennessee)**

My father was a Lt. Colonel fighter pilot in the Air Force and we moved around all over the globe when I was a child. I wanted to create a program that would give military members and others a high quality and affordable option to even the playing field when preparing for the SAT/ACT exams. Over the years we have worked very hard to create this valuable resource.

I have personally created most of the content, and my son has coded most of the website and program. We have both committed tens of thousands of hours to this project.

When we started in 2002, we accessed 295 question stems from two exams ACT Inc had released for free to the general public and encouraged students and schools to access in order to prepare for the ACT exam: (form 1864 FPRE and half of 1572 CPRE). There has never been intent to violate copyrights. It wasn't until very recently that we were made aware that ACT Inc. considered this a violation of copyright.

Since 2002 we built a deep learning program with an enormous amount of our own explanations, teaching, training, videos, text, graphics, etc. For example, the ACT question stem nodes make up only 295 of the 165,463 total content nodes or 0.017% of all the PowerPrep's content nodes. So, 99.983% of the content nodes are NOT ACT question stems. Alternatively, we also compared the size of the data files that make up the 295 question stems against the remainder of the program's file sizes; that's 8,989,257 kb to 2,360 kb or only 0.00026 of the content is related to the ACT question stems, and 99.99974% of the content file sizes is not ACT question stems.

Principles for a settlement

- We are willing to work with ACT Inc in any fair manner to protect your copyrights and trademarks.
- if you prefer to distance ACT Inc from us, we are happy to edit our website, add disclaimers to the site and program or anything else that you think is necessary to make users understand that we are in no way connected to ACT Inc. (We have already made the edits you have requested to this point.)
- However, you can see from the comments and letters attached that we are creating significant goodwill with the sectors/areas where we are helping. If you would like, we would be willing to transfer much of the credit and focus to ACT Inc for allowing us to participate with you in helping schools, students, and parents.
- If you want revenue from a licensing agreement, we would ask that you first place a threshold. As mentioned above, we don't have much revenue, so we would be grateful if we could continue using the 295 question stems without a fee. However, if we ever grow above that threshold, you would be compensated a reasonable fee for licensing your 295 question stems.
- Additionally, we would ask that you consider the work we have done and will be doing as a future NFP in helping schools/students/families who would otherwise not receive this help and grant a free license to use the 295 question stems.

All we are asking for is a reasonable way to continue using those 295 question stems so that we can continue to help the groups we are focused on, as illustrated by the attached letters and comments. Then if we were to grow beyond the threshold, build in a fair way to compensate ACT Inc. Hopefully, you will take into consideration our NFP status in calculating the fee.

Either way, we would also request a further continuance to file a formal response to your law suit beyond Nov 7, 2024, so that we can either proceed to flesh out a settlement or so that we can have time to research and find counsel.

Sincerely,

Scott Hildebrandt