‘Hacktivist’ or Thief?: What the Aaron Swartz Case Means to the Open Access. Movement

Traci A Zimmerman, James Madison University

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In July 2011, a 24-year old online activist was arrested in Boston on a number of charges, including computer hacking and wire fraud, which stemmed from his downloading articles which, under normal circumstances, he would have been entitled to get for free. It isn’t a crime to download entire articles from JSTOR; in fact, many of us have done so in the course of our work as teachers and scholars. Most college/university libraries pay for access to JSTOR so that their users (like teachers and students) are allowed to access the articles for free. But downloading 4.8 million JSTOR articles (and crashing some of its servers in the process) is another story. Or is it?

Who is Aaron Swartz?
Labeled as an “Internet Folk hero” and “hacktivist,” Aaron Swartz is not new to the “internet elite.” As a teenager, he helped to create RSS, “a bit of computer code that allows people to receive automatic feeds of online notices and news.” He also founded Demand Progress and helped to launch Creative Commons.

In 2008, he wrote and released a “Guerrilla Open Access Manifesto” which “called for activists to ‘fight back’ against the sequestering of scholarly papers and information behind pay walls.” And his penchant for massive downloads (and for inspiring federal investigations) is not new either: in 2009, he downloaded close to 20 million pages of court documents for a project that made them free and available online.

At the time of his arrest, Swartz was a fellow at the Edmond J. Safra Center for Ethics at Harvard University.

What's at Stake?
The US Attorney’s office (via the US District Court of Massachusetts) has charged Aaron Swartz with “wire fraud, computer fraud, unlawfully obtaining information from a protected computer, and recklessly damaging a protected computer” charges that carry heavy penalties: up to 35 years in prison and $1 million in fines. Swartz pleaded “not guilty” to all counts and was released on $100,000 bail. According to the indictment, Swartz broke into a computer wiring closet at MIT and set up a laptop using the name “Gary Host” (which, when shortened for the email address, becomes “ghost”). He then used this fake MIT address to gain free JSTOR access through the school’s network. He would periodically retrieve the laptop, ostensibly to offload the contents, and then replace it in the wiring closet, hiding his face behind a bicycle helmet to conceal his identity.

David Segal, the executive director of ‘Demand Progress’ likens the indictment to “trying to put someone in jail for allegedly checking too many books out of the library.” Demand Progress set up a petition in support of Swartz that gained 15,000 signatures in the first few hours that reinforced Segal’s sentiments: “As best we can tell,” the site reads, “he is being charged with allegedly downloading too many journal articles from the web.”

Lawrence Lessig, a champion in the open access/fair use/commons arena and Director of the Edmond J. Safra Center for Ethics at Harvard University, spoke to the motive of the alleged “crime,” stating that “Aaron has never done anything in this context for personal gain – this isn’t a hacking case, in the sense of someone trying to steal credit cards…That’s something JSTOR saw, and the government obviously didn’t.” But US attorney Carmen Ortiz offered a much more stark assessment of Swartz’s acts: “Stealing is stealing, whether you use a computer command or a crowbar, and whether you take documents, data, or dollars. It is equally harmful to the victim whether you sell what you have stolen, or give it away.”

In a statement released by JSTOR, they noted that they are “fully cooperating” with the US Attorney’s Office, but they have “no interest in this becoming
an ongoing legal matter." After securing the content that was taken and receiving confirmation [from Swartz] that "the content was not and would not be used, copied, transferred, or distributed," JSTOR then seems to distance themselves from the criminal investigation, noting that "it was the government's decision whether to prosecute, not JSTOR's." Heidi McGregor, vice president of marketing and communications at JSTOR, emphasized the fact that JSTOR's main concern was that the information taken "was secure and wasn't disseminated" and confirmed that none of the downloaded content included any information about particular database users.9

Implications for the Open Access Movement
As Aaron Swartz wrote in his manifesto: "It's time to come into the light and, in the grand tradition of civil disobedience, declare our opposition to this private theft of public culture…we need to download scientific journals and upload them to file-sharing networks."10

But even his friends seem a bit divided on the JSTOR incident. Carl Malamud, "an online activist who worked with Swartz on the court document project," noted that "the JSTOR incident is very disturbing."11 Malamud continues: "My style, when I see a gate barring entry and that gate is sanctioned by the law, is to go up to that gate and pound on it hard and force them to open up. Others sometimes look for a back door. I'm not convinced that style is always effective, and it is certainly often dangerous."12

Only days after Swartz's indictment, however, another programmer posted JSTOR's archive of historic science journals online via BitTorrent on the Pirate Bay website.13 Gregory Maxwell shared over 18,000 papers from The Philosophical Transactions of the Royal Society, a journal that has been around since 1665 (and, as such, is out of copyright and in the public domain) but its contents are still "locked up" by the academic publishing system, in particular JSTOR's subscription-only database. In a note posted on the Pirate Bay website, Maxwell explains:

These documents are part of the shared heritage of all mankind and are rightfully in the public domain, but they are not available freely. Instead the articles are available at $19 each – for one month's viewing, by one person, on one computer. It's a steal. From you.14

In an exclusive interview with The Chronicle of Higher Education, Maxwell acknowledged that he was inspired to post the Royal Society files because of the Swartz case:

I've had these files for a long time, but I've been afraid that if I published them, I would be subject to unjust legal harassment by those who profit from controlling access to these works. I now feel that I've been making the wrong decision.15

The case against Swartz also prompted Maxwell to release the documents “under his real name” so that people would not immediately suspect Swartz as the culprit.16

JSTOR confirmed that the Royal Society files that Maxwell uploaded were indeed copies of material that JSTOR had digitized.17 In response to Maxwell's comments about the price of accessing these materials, JSTOR noted that it is equally important to understand "that there are costs associated with digitizing, preserving, and providing access to content."18 The fact that there are costs associated with distribution is one accepted by Maxwell; what he cannot accept "is the position that making a century-old document available costs nearly $20 every single time it is accessed."19

In his written statement on the Pirate Bay website, Maxwell deftly identifies what he sees as the root of the access problem:

Academic publishing is an odd system — the authors are not paid for their writing, nor are the peer reviewers (they’re just more unpaid academics), and in some fields even the journal editors are unpaid. Sometimes the authors must even pay the publishers. And yet scientific publications are some of the most outrageously expensive pieces of literature you can buy. In the past, the high access fees supported the costly mechanical reproduction of niche paper journals, but online distribution has mostly made this function obsolete. As far as I can tell, the money paid for access today serves little significant purpose except to perpetuate dead business models. The “publish or perish” pressure in academia gives authors an impossibly weak negotiating position, and the existing system has enormous inertia.20

JSTOR, then, is just a symptom (and a remnant) from what has become a chronic disease: the seeming inability of old
business models to adapt to new technology. Indeed, this is at the root of the problem in all areas of the content industry – whether journals or jpegs, medicine or mp3s, books or BitTorrents, the question of access is still being answered by the old models of distribution.

There have been rumors of a settlement in the Swartz case. Many at MIT questioned why the feds were involved in the first place. Christopher Capozzola, associate professor of history and interim dean of the school of humanities, arts, and social sciences at MIT, acknowledged that Swartz’s acts were “clear violations of the rules and protocols of the library and the [MIT] community,” but that the “penalties in this case, and the sources of those penalties are really remarkable…they [the penalties] really go against MIT’s culture of breaking down barriers.”

Richard Stallman – a computer programmer, “free culture” advocate and MIT alum – stated the case even more bluntly, saying that he was “mystified” by the fact that Secret Service agents were brought in when Swartz’s laptop was discovered in the wiring closet: “At best – if they didn’t know what the laptop was doing – it was an overreaction….Surely MIT people can examine a laptop without police help.”

But the Swartz case catalyzes the debate about academic publishing, paywalls, and the public domain. As John H. Summers, historian and editor of a journal devoted to cultural criticism, wrote, “What Aaron’s case begs us to remember is that universities are supposed to be public, not-for-profit institutions…they owe a standing moral debt to the public.”

The interesting post-script to this story?

Two months after Swartz was indicted, JSTOR announced that users anywhere in the world would now have free access to JSTOR’s Early Journal Content – scholarly articles published prior to 1923 in the US and prior to 1870 elsewhere. In the announcement, Laura Brown, JSTOR’s managing director, “said the move was not prompted by a much-publicized incident this year involving Aaron Swartz, a hacktivist charged with violations related to making unauthorized downloads of millions of JSTOR files.”

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2 Ibid.
3 Ibid.
5 Ibid.
6 Ibid.
7 Ibid.
8 Ibid.
9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
14 Ibid.
15 Ibid.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.

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Submitted by
Traci Zimmerman
Associate Professor
School of Writing, Rhetoric, and Technical Communication
James Madison University

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