

## Aaron Swartz Was Right

The suicide of the Internet wunderkind Aaron Swartz has given rise to a great deal of discussion, much of it centered on whether the penalty sought against him by the prosecutor was proportional to his "crime."

The consensus so far has been that Swartz did something wrong by accessing and releasing millions of academic papers from the JSTOR archive. But perhaps it is time to ask whether Swartz did in fact act wrongly. We might entertain the possibility that Swartz's act of civil disobedience was an attempt to help rectify a harm that began long ago. Perhaps he was not only justified in his actions but morally impelled to act as he did. Moreover, we too might be morally impelled to take action.

To put it bluntly, the current state of academic publishing is the result of a series of strong-arm tactics enabling publishers to pry copyrights from authors, and then charge exorbitant fees to university libraries for access to that work. The publishers have inverted their role as disseminators of knowledge and become bottlers of knowledge, releasing it exclusively to the highest bidders. Swartz simply decided it was time to take action.

He laid the philosophical groundwork back in 2008, in an essay entitled "Guerilla Open Access Manifesto."

"Information is power," he wrote. "But like all power, there are those who want to keep it for themselves. The world's entire scientific and cultural heritage, published over centuries in books and journals, is increasingly being digitized and locked up by a handful of private corporations. Want to read the papers featuring the most famous results of the sciences? You'll need to send enormous amounts to publishers like Reed Elsevier."

Swartz said that this state of affairs was being driven by systemic problems, beginning with the need of corporations to extract maximum profit. "Large corporations, of course, are blinded by greed," he wrote. "The laws under which they operate require it—their shareholders would revolt at anything less. And the politicians they have bought off back them, passing laws giving them the exclusive power to decide who can make copies."

Finally, he argued that the situation called for action:

"There is no justice in following unjust laws. 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."

You might think that Swartz's prose is over the top ("bought off" politicians? "theft of culture"?), but it is very much on target. The academic publisher Elsevier has contributed to many U.S. Congressional representatives, pushing the Elsevier-supported Research Works Act, which among other things would have forbidden any effort by any federal agency to ensure taxpayer access to work financed by the federal government without permission of the publisher. An outcry effectively killed the proposed law, but it wasn't the first such publisher power play, and it probably won't be the last.

What is more important to human culture than access to the knowledge in our scholarly journals? If anything, Swartz's manifesto understates the egregiousness with which this theft of public culture has been allowed to happen.

Why did Swartz think that information in JSTOR belonged in the public domain? First, for the most part the articles in JSTOR were written with government support—either through agencies like the National Science Foundation and the National Endowment for the Humanities, through state-financed educational institutions, or through the tuition of students and the donations of alumni.

Once a student graduates from her college she no longer has access to JSTOR—even though her tuition supported the research that went into the data represented there. She may go on to be a generous donor to her college and still not have access to JSTOR. You have to be a faculty member or student to have access, even though, to some degree, everyone helped pay for that research.

Many people I talk to assume payments to JSTOR flow through to the authors of the archived publications. But authors of academic publications, for the most part, don't see a dime from their journal publications. Ever. Worse still, some academic publishers now demand payments from authors to publish their papers. The academic publisher Springer, for example, has attempted to steer journal submissions to its online publication Springer Plus, offering to publish them for 850 euros each, albeit allowing some waivers.

How is that even possible? Here it is important to think about one of the consequences of the publish-or-perish model in academe. If you don't publish, you won't get tenure. Even if you have tenure, your reputation (and salary) is staked to your publication record. In my field, philosophy, the top journals accept only about 5 percent of submissions. That means that publishers of academic journals have tremendous bargaining power with their authors.

When an academic signs away copyright to an academic publisher, it amounts to a "contract of adhesion"—meaning a contract in which one party has all the power and it was not freely bargained. One could even make the case that the courts ought to void these contracts.

There was a time when securing a contract with an academic publisher meant that the work would receive the widest audience possible. The publishers could deliver journals to academic libraries, and other scholars would find those works when they went to browse the library (I used to do that on a monthly basis). Today, however, it would be much more efficient to simply make the articles available online to anyone who wishes to read them. Academic publishers have inverted their whole purpose for being; they used to be vehicles for the dissemination of knowledge in the most efficient way possible. Today they are useless choke points in the distribution of knowledge, even taking advantage of their positions to demand fees.

Noam Scheiber, in a February 13 *New Republic* article, traces how Swartz focused on JSTOR in part because of a retreat he'd attended in Italy organized by the international nonprofit EIFL. According to its Web site, EIFL "works with libraries worldwide to enable access to digital information in developing and transition countries." Scheiber writes that EIFL is careful about obeying the law in the ways it disseminates information, but its key message apparently got to Swartz. "Rich people pay huge amounts of money to access articles," Scheiber quotes the EIFL official Monika Elbert as saying about the conference. "But what about the researcher in Accra? Dar es Salaam? Cambodia? It genuinely opened his eyes," she said of Swartz.

JSTOR, which did not pursue criminal charges against Swartz and "regretted being drawn into" the U.S. attorney's case against him, came into existence in 1995 with good intentions. It sought a solution to the rapidly expanding problem of paying for and storing an ever-growing list of academic journals. The situation for libraries was becoming untenable.

But like the original authors, JSTOR had to negotiate its licensing agreements from a position of weakness. There is a wonderful history of JSTOR written by Roger C. Schonfeld. In it he notes that the charter publishers signed up by JSTOR (in particular the University of Chicago Press) demanded that they be compensated if there was a loss to their (minimal) sales of rights to older materials, and they demanded compensation even before JSTOR covered its own expenses.

And JSTOR really was in an impossible bargaining position. Important scientific papers do not have cheaper alternatives. If someone wants to read Watson and Crick's paper on DNA or Einstein's paper on the photoelectric effect, it is not as if there is a paper by John Doe that is just as good and available for less. Academic publishers are, in effect, natural monopolies that can demand as much money as we can afford, and possibly more. The result today is that a university like mine must subscribe to more than 10 databases, at a cost of tens of thousands of dollars per year and without the ability to share the content with alumni, donors, or the community. JSTOR is experimenting with a "Register and Read" program that allows independent scholars free access to a subset of its database, but we need more solutions.

It's not as if there are no other options. For example, the philosophy department at the University of Michigan at Ann Arbor started an online journal called *Philosophers' Imprint*, noting in its mission statement the possibility of a sunnier alternative:

"There is a possible future in which academic libraries no longer spend millions of dollars purchasing, binding, housing, and repairing printed journals, because they have assumed the role of publishers, cooperatively disseminating the results of academic research for free, via the Internet. Each library could bear the cost of publishing some of the world's scholarly output, since it would be spared the cost of buying its own copy of any scholarship published in this way. The results of academic research would then be available without cost to all users of the Internet, including students and teachers in developing countries, as well as members of the general public."

But a few paragraphs later the editors of Imprint acknowledge that "we don't know how to get to that future from here." While "academic institutions have access to the Internet [and] they have no reason to pay subscription or subvention fees to anyone for disseminating the results of academic research," they continue to do so. And I would argue that the fault lies with us academics.

Why do scholars still submit their articles to journals that are behind pay walls, and more important why do they serve as editors and referees for these journals (usually gratis)? They submit articles because there is still prestige attached to these journals and because online alternatives do not carry the same weight in tenure and promotion decisions. This is of course due to the general inertia of academic life. Academics need to do some soul searching: Is placing so much weight on tradition worth the cost to members of the profession and the public at large?

Until academics get their acts together and start using new modes of publication, we need to recognize that actions like Aaron Swartz's civil disobedience are legitimate. They are attempts to liberate knowledge that rightly belongs to all of us but that has been acquired by academic publishers through tens of thousands of contracts of adhesion and then bottled up and released for exorbitant fees in what functionally amounts to an extortion racket.

When Swartz wrote his manifesto he pulled no punches, claiming that all of us with access to these databases have not just the right but the responsibility to liberate this information and supply it to those who are not as information-wealthy.

"Those with access to these resources—students, librarians, scientists—you have been given a privilege," he wrote. "You get to feed at this banquet of knowledge while the rest of the world is locked out. But you need not—indeed, morally, you cannot—keep this privilege for yourselves. You have a duty to share it with the world. And you have: trading passwords with colleagues, filling download requests for friends."

Aaron Swartz's act of hacktivism was an act of resistance to a corrupt system that has subverted distribution of the most important product of the academy—knowledge. Until the academy finally rectifies this situation, our best hope is that there will be many more Aaron Swartz-type activists to remind us how unconscionable the current situation is, and how important it is that we change it.

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