

Likely to be confused? This is Ron Coleman's LIKELIHOOD OF CONFUSION® blog

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*Ron Coleman's blog on trademark, copyright, Internet law and free speech*

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July 21, 2011 | [4 Comments](#)

## The continuing STOR-y

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Steal this work.

I barely had time to get my arms around the story of [Aron Swartz, who was arrested](#) for downloading a ton of stuff off the J-STOR academic papers website and... well, downloading them, see. The FBI says it was criminal, but it's far from clear; in the words of [Demand Progress](#) — whose agenda is not exactly mine, but still, they put it pithily here: "[I]t's like trying to put someone in jail for allegedly checking too many books out of the library." It will certainly be an interesting case.

Well what I was saying was I had barely any time to get my arms around it when [along came this just now](#) from Gigaom:

A user called Greg Maxwell just uploaded a torrent with 18,592 scientific publications to [The Pirate Bay](#), in what appears to be a protest directed both at [the recent indictment of programmer Aaron Swartz for data theft](#) as well as the scientific-publishing model in general. All of the documents of the 32-gigabyte torrent were taken from JSTOR, the academic database that's at the center of the case against Swartz. . . .

As [I tweeted](#) when I first saw this earlier today, "Things are moving fast. But where are they going?" Maxwell is quoted in Gigaom as follows:

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 the authors an impossibly weak negotiating position, and the existing system has enormous inertia."

Protest part? I get it. Exploited authors? I hear you. Take the law into your own hands and steal a bunch of stuff because you think the business model is dead and you have a better idea?

Well, I'm a lawyer. I'm not going to like that. ~~Moreover, civil disobedience is a lot less impressive as a bold statement of principle when it's done [anonymously](#) — "Greg Maxwell" appearing not to be a real name. (See comment #3 below.)~~

Here's an interesting angle on the story, by the way. Again, same article:

Maxwell goes on to explain that he initially planned to upload the documents to Wikipedia. But then he looked into the legality of the situation, and realized that he could get sued by publishers who'd claim that merely scanning the documents or adding a watermark gave them new copyright protections.

It would be a real shame if all this comes down to such a gross misapprehension of copyright law. Did "Maxwell" ask anyone about this or did he just "look into the legality" via a crystal ball? [You can't even claim copyright in scans of art or graphic works](#) — notwithstanding claims that you prettied 'em up and all. Scans of documents, much less if they in turn rendered into searchable text (I don't know if this is the case with JSTOR documents, or if it is the case with some of them) certainly lack the modicum of creativity necessary for copyright protection. Watermark? No, I don't think so.

It sounds more likely that Maxwell didn't want to get involved with what Wikipedia would have to say about the whole thing. As I said, I still don't know where this anarchic trend is going. But it doesn't say much for the [future of copyright](#) — FBI or not.

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## 4 Responses to “The continuing STOR-y”

1.



[Reply](#)

[Seth Finkelstein](#)

July 21, 2011 at 8:04 pm [# Edit](#)

Ron, perhaps as a lawyer you have a different perspective on asserting legal rights. However, non-lawyers often can't risk the cost of litigation against even a near-frivolous case. My favorite quote on this comes from another activist case:

Cyber Patrol break FAQ (version 1.11) Matthew Skala

<http://ansuz.sooke.bc.ca/lawpoli/youthrights/cpbfaq.php>

Of course I was disappointed by this state of affairs. When we published the essay I didn't expect a lawsuit, but I had also thought, "Well, if there is a lawsuit it won't be a problem, because there are organizations that take care of things like that." I fondly imagined that in case of legal silliness, someone would just step in and say "We'll take it from here." What I found out was that those organizations, through no fault of their own, were able to give me a lot of sympathy and not enough of anything else, particularly money, to bring my personal risk of tragic consequences down to an acceptable level, despite, incredibly, the fact that what I had done was legal. Ultimately, I couldn't rely on anybody to deal with my problems but myself.

Some people learn that lesson a bit less impressively than I had to.



2.

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[Ron Coleman](#)

July 21, 2011 at 11:13 pm [# Edit](#)

I've learned it the hard way myself, Seth. It's true about pretty much everything in life. I agree with you, too, that non-lawyers need to steer way clear of not only legal liability, but the mere risk of being sued frivolously. Indeed, I have never understood why the judges empowered with both Rule 11, various fee-shifting provisions and their inherent power to sanction consistently fail to impose any cost on typically wealthy parties for using frivolous litigation as a weapon of competition. This is one of the topics I write about on this blog on a regular basis.

On the other hand, it's not as if Greg Maxwell achieved the goal of avoiding exposure to legal risk here, is it? Even the premise that uploading this material to the Pirate Bay as any less of a copyright "infringement" than uploading it to Wikipedia makes no sense. And for that matter, considering that Aron Swartz attracted the FBI with his adventures ... Maxwell makes him look like a real piker!



3.

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[Seth Finkelstein](#)

July 21, 2011 at 11:33 pm [# Edit](#)

His full statement gives more details about his reasoning:

"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."

Also, he claims it's his real name, different from what you write above:

"I had considered releasing this collection anonymously, but others pointed out that the obviously overzealous prosecutors of Aaron Swartz would probably accuse him of it and add it to their growing list of ridiculous charges. This didn't sit well with my conscience, and I generally believe that anything worth doing is worth attaching your name to."



4.

[Reply](#)

Reid

July 22, 2011 at 10:15 am [# Edit](#)

Ron, thanks for commenting on this situation. I saw the headlines the other day and was too deep into other projects to give a more critical look at the copyright issues.

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