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Were The Charges Against Internet Activist Aaron Swartz Too Severe?

January 13, 2013 Gerry Smith

Before his apparent suicide Friday, Internet activist Aaron Swartz was facing trial for allegedly stealing millions of scholarly journal articles from a digital archive at the Massachusetts Institute of Technology.

Now, in the wake of his death, some of his supporters are calling for changes to the controversial law under which he was charged, the Computer Fraud and Abuse Act. They say prosecutors have widely invoked the 1980s-era statute to bring harsh criminal penalties for relatively minor offenses.

In a tribute to Swartz on Sunday, MSNBC host Chris Hayes said: "You should know his death is a good reason to revisit the 1986 Computer Fraud and Abuse Act, the law under which he was prosecuted, since it is far too broad."

Timothy B. Lee, an adjunct scholar at the Cato Institute, wrote Saturday on the blog *Ars Technica*: "We should pay tribute to Aaron's memory by reforming the Computer Fraud and Abuse Act to prevent such disproportionate prosecutions from happening in the future."

Swartz, 26, was widely praised for his efforts to make information freely available online. Frustrated by the high cost of accessing scholarly journals, Swartz allegedly stole millions of academic articles from the nonprofit online database JSTOR by breaking into computer networks at M.I.T., prosecutors said. A reporter for *The New York Times* called him "a wizardly programmer" and an "Internet folk hero." *The Wall Street Journal* said his alleged theft of academic journals was considered "a Robin Hood-like stunt."

But the move got him into legal trouble. In July 2011, he was charged with multiple counts of wire fraud and computer fraud.

Swartz also suffered from depression, and the details of why he committed suicide remain unclear. But his supporters say his looming federal trial in April was a contributing factor. Over the weekend, his family attributed his death to federal prosecutors pursuing “an exceptionally harsh array of charges, carrying potentially over 30 years in prison, to punish an alleged crime that had no victims.”

Since Swartz's death, a White House petition to remove Massachusetts U.S. Attorney Carmen Ortiz “for overreach in the case of Aaron Swartz” had gained more than 8,500 signatures. And MIT president Rafael Reif said Sunday that the university will begin an analysis of its involvement with the federal case against Swartz.

On Sunday evening, the Twitter account belonging to the whistle-blowing site Wikileaks took credit for crashing the websites of MIT and the Department of Justice.

"The US DoJ and MIT sites are down after complicity in bullying Aaron Swartz, friend of WikiLeaks, to death. #aaronswartz #wikileaks," the tweet said.

By 9:00 p.m. Sunday night, MIT's website was still unresponsive.

A spokeswoman for the U.S. Attorney's office in Massachusetts, which charged Swartz, declined to comment, citing a desire to “respect the privacy of the family.”

Prosecutors had charged Swartz under the Computer Fraud and Abuse Act, a federal law passed in 1984 that makes it illegal to "intentionally access a computer without authorization or exceed authorized access." The law was created when the Internet was still in its infancy to crack down on computer hacking and critics say that it has not kept up with the modern era. They say its language is too vague, potentially criminalizing a host of benign online activities, such as visiting online shopping or online matchmaking sites at work.

Orin Kerr, a professor of law at the George Washington University Law School, has said the statute is “one of the most far-reaching criminal laws in the United States Code” and now “potentially regulates every use of every computer in the United States and even many millions of computers abroad.”

In recent years, the Justice Department has applied the law to a variety of cases. In 2009, federal prosecutors charged Lori Drew with violating the Computer Fraud and Abuse Act for allegedly bullying her daughter's 13-year-old classmate on MySpace, causing her to commit suicide. By creating a fictional MySpace profile, Drew had violated the social networking site's terms of service, a violating of the Computer Fraud and Abuse Act.

In another case, prosecutors cited the law to charge David Nosal in 2008 for persuading colleagues to download proprietary information from an employer's computer before he left to start a competing business.

In April, a federal appeals court ruled that the government's position "would make criminals of large groups of people who would have little reason to suspect they are committing a federal crime," such as "playing games, shopping or watching sports highlights."

The Obama administration has argued the law should not be changed. Richard Downing, deputy section chief for computer crime and intellectual property, told a House committee in 2011 removing parts of the law "could make it difficult or impossible to deter and punish serious threats from malicious insiders."