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## INFORMATION AND HUMAN RIGHTS

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**Alberto J. Cerda Silva**
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# PRESENTATION

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SUR 18 was produced in collaboration with the organizations **Article 19** (Brazil and United Kingdom) and **Fundar** (Mexico). In this issue's thematic dossier, we have published articles that analyze the many relationships between information and human rights, with the ultimate goal of answering the questions: What is the relationship between human rights and information and how can information be used to guarantee human rights? This issue also carries articles on other topics related to today's human rights agenda.

## Thematic dossier: Information and Human Rights

Until recently, many human rights organizations from the Global South concentrated their activities on the defense of freedoms threatened by dictatorial regimes. In this context, their main strategy was whistleblowing, closely linked to the constant search for access to information on violations and the production of a counter narrative capable of including human rights concerns in political debates. Since they found no resonance in their own governments, the organizations very often directed their whistleblowing reports to foreign governments and international organizations, in an attempt to persuade them to exert external pressure on their own countries.*

Following the democratization of many societies in the Global South, human rights organizations began to reinvent their relationship with the State and with the system's other actors, as well as how they engaged with the population of the countries where they were operating. But the persistence of violations even after the fall of the dictatorships and the lack of transparency of many governments from the South meant that the production of counter narratives continued to be the main working tool of these organizations. Information, therefore, was still their primary raw material, since combating human rights violations necessarily requires knowledge of them (locations where they occur, the main agents involved, the nature of the victims and the frequency of occurrences etc.). Their reports, however, previously submitted to foreign governments and international organizations, were now directed at local actors, with the expectation that, armed with information about the violations and endowed with voting power and other channels of participation, they themselves would exert pressure on their governments. Furthermore, after democratization, in addition to combating abuses, many human rights organizations from the Global South aspired to become legitimate actors in the formulation of public policies to guarantee human rights, particularly the rights of minorities that are very often not represented by the majority voting system.

In this context, the information produced by the public authorities, in the form of internal reports, became fundamental for the work of civil society. These days, organizations want data not only on rights violations committed by the State, such as statistics on torture and police violence, but also activities related to public management and administration. Sometimes, they want to know about decision-making processes (how and when decisions are made to build new infrastructure in the country, for example, or the process for determining how the country will vote in the UN Human Rights Council), while at other times they are more interested in the results (how many prisoners there are in given city or region, or the size of the budget to be allocated to public health). Therefore, access to information was transformed into one of the main claims of social organizations working in a wide range of fields, and the issue of publicity and transparency of the State became a key one. This movement has scored some significant victories in recent years, and a growing number of governments have committed to the principles of Open Government** or approved different versions of freedom of information laws.***

This legislation has played an important role in the field of transitional justice, by permitting that human rights violations committed by dictatorial governments finally come to light and, in some cases, that those responsible for the violations are brought to justice. In their article **Access to Information, Access to Justice: The Challenges to Accountability in Peru**, Jo-Marie Burt and Casey Cagley examine, with a focus on Peru, the obstacles faced by citizens pursuing justice for atrocities committed in the past.

As the case of Peru examined by Burt and Cagley demonstrates, the approval of new freedom of information laws no doubt represents important progress, but the implementation of this legislation has also shown that it is not enough to make governments truly transparent. Very often, the laws only require governments to release data in response to a freedom of information request. They do not, therefore, require the State to produce reports that

*K. Sikkink coined the term "boomerang effect" to describe this type of work by civil society organizations from countries living under non-democratic regimes.

**The Open Government Partnership is an initiative created by eight countries (South Africa, Brazil, South Korea, United States, Philippines, Indonesia, Mexico, Norway and United Kingdom) to promote government transparency. The Declaration of Open Government was signed by the initial eight members in 2011, and by the end of 2012 the network had been joined by 57 nations (Available at: http://www.state.gov/r/pa/prs/ps/2012/09/198255.htm). The initiative takes into account the different stages of public transparency in each of the member countries, which is why each country has its own plan of action for implementing the principles of open government. More information on the initiative is available at: http://www.opengovpartnership.org.

***In 1990, only 13 countries had some form of Freedom of Information legislation (Cf. Toby Mendel. 2007. Access to information: the existing State of affaire around the world. In. VILLANUEVA, Ernesto. **Derecho de la información, culturas y sistemas jurídicos comparados**. México: Universidad Nacional Autónoma de México). By 2010, however, approximately 70 countries had adopted such a law. (Cf. Roberts, Alasdair S. 2010. A Great and Revolutionary Law? The First Four Years of India's Right to Information Act. **Public Administration Review**, vol.70, n. 6, p. 25–933.). Among them, South Africa (2000), Brazil (2012), Colombia (2012), South Korea (1998), India (2005), Indonesia (2010), Mexico (2002) and Peru (2003).

make the existing data intelligible, nor to release the information on their own accord. The problem is exacerbated when the State does not even produce the data that is essential for the social control of its activities. Another area in which transparency is deficient is information on private actors that are subsidized by public funding, such as mining companies, or that operate public concessions, such as telecommunications providers.

Many organizations from the South have spent time producing reports that translate government data into comprehensible information that can inform the working strategies of organized civil society or the political decisions of citizens. Human rights organizations have also pressured their governments to measure their performance against indicators that can help identify and combat inequalities in access to rights. This is the topic of the article by Laura Pautassi, entitled **Monitoring Access to Information from the Perspective of Human Rights Indicators**, in which the author discusses the mechanism adopted recently by the Inter-American System of Human Rights concerning the obligation of States-Parties to provide information under article 19 of the Protocol of San Salvador.

The relationship between information and human rights, however, is not limited to the field of government transparency. The lack of free access to information produced in the private sphere can also intensify power imbalances or even restrict access to rights for particularly vulnerable groups. The clearest example of this last risk is the pharmaceutical industry, which charges astronomical prices for medicines protected by patent laws, effectively preventing access to health for entire populations. The privatization of scientific production by publishers of academic journals is another example. The issue gained notoriety recently with the death of Aaron Swartz, an American activist who allegedly committed suicide while he was the defendant in a prolonged case of copyright violation. Sérgio Amadeu da Silveira opens this issue of SUR with a profile of Swartz (**Aaron Swartz and the Battles for Freedom of Knowledge**), linking his life to the current struggles for freedom of knowledge given the toughening of intellectual property laws and the efforts of the copyright industry to subordinate human rights to the control of the sources of creation.

Since the internet has taken on a crucial role in the production and dissemination of information, it is natural for it to have become a battleground between the public interest and private interests, as illustrated by the Swartz case. On this point, civil society and governments have sought to adopt regulations intended to balance these two sides of the scale, such as so-called Internet Freedom, the subject of another article in this issue. In **Internet Freedom is not Enough: Towards an Internet Based on Human Rights**, Alberto J. Cerda Silva argues that the measures proposed by this set of public and private initiatives are not sufficient to achieve their proposed goal, which is to contribute to the progressive realization of human rights and the functioning of democratic societies.

The importance of the internet as a vehicle of communication and information also means that internet access is now a key aspect of economic and social inclusion. To correct inequalities in this area, civil society organizations and governments have created programs aimed at the so-called "digital inclusion" of groups that face difficulty accessing the web. Fernanda Ribeiro Rosa, in another article from this issue's dossier on Information and Human Rights, **Digital Inclusion as Public Policy: Disputes in the Human Rights Field**, defends the importance of addressing digital inclusion as a social right, which, based on the dialogue in the field of education and the concept of digital literacy, goes beyond simple access to ICT and incorporates other social skills and practices that are necessary in the current informational stage of society.

## Non-thematic articles

This issue also carries five additional articles on other relevant topics for today's human rights agenda.

In **Development at the Cost of Violations: The Impact of Mega-Projects on Human Rights in Brazil**, Pétalla Brandão Timo examines a particularly relevant contemporary issue: the human rights violations that have occurred in Brazil as a result of the implementation of mega development projects, such as the Belo Monte hydroelectric complex, and preparations for mega-events like the 2014 World Cup.

Two articles address economic and social rights. In **Land Rights as Human Rights: The Case for a Specific Right to Land**, Jérémie Gilbert offers arguments for the incorporation of the right to land as a human right in international treaties, since to date it still only appears associated with other rights. In **Reaching Out to the Needy? Access to Justice and Public Attorneys' Role in Right to Health Litigation in the City of São Paulo**, Daniel W. Liang Wang and Octavio Luiz Motta Ferraz analyze legal cases related to the right to health in São Paulo in which the litigants are represented by public defenders and prosecutors, in order to determine whether the cases have benefited the most disadvantaged citizens and contributed to the expansion of access to health.

Another article looks at the principal UN mechanism for the international monitoring of human rights. In **The United Nations Human Rights Council: Six Years on**, Marisa Viegas e Silva critically examines the changes introduced to this UN body in the first six years of its work.

In **Human Rights, Extradition and the Death Penalty: Reflections on the Stand-Off between Botswana and South Africa**, Obonye Jonas examines the deadlock between the two African nations concerning the extradition of Botswana citizens who are imprisoned in South Africa and accused in their country of origin of crimes that carry the death penalty.

Finally, Antonio Moreira Maués, in **Supra-Legality of International Human Rights Treaties and Constitutional Interpretation**, analyzes the impacts of a decision in 2008 by the Supreme Court on the hierarchy of international human rights treaties in Brazilian law, when the court adopted the thesis of supra-legality.

■ ■ ■

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SÉRGIO AMADEU DA SILVEIRA

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ABSTRACT

In this article, the author offers a succinct overview of the story of Aaron Swartz, one of the major victims of the war surrounding so-called intellectual property. Aaron was found hanged on January 11, 2013 in his apartment in New York. A programmer and cyberactivist, he was accused by the U.S. government of infiltrating computers for the supposed release of copyrighted academic articles and could have been sentenced to 35 years in prison. The text ties in with the life of Swartz the current battles for freedom of knowledge amid the stiffening of intellectual property legislation and the shadowy activities of the copyright industry, which aim to subordinate human rights to the control of creative sources.

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KEYWORDS

Aaron Swartz – Cyberactivism – Intellectual property – Sharing – Free knowledge

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# AARON SWARTZ AND THE BATTLES FOR FREEDOM OF KNOWLEDGE

Sérgio Amadeu da Silveira

Professor Pedro Rezende, a cryptographer at the University of Brasilia, considers Aaron Swartz the first big victim of the cyberwar (REZENDE, 2013). But is there a cyberwar? Who are the armies? What is at stake? The discernible battles are part of a war for the control and modulation of global society in an informational context in which value is increasingly found in symbolic products and intangible goods; that is, in an nonmaterial economy. In this transitional period in history, from an industrial world to the information age, sovereign and disciplinary powers are being supplanted by widely distributed controls which increasingly generate dominions connected to large corporations. These corporations end up assuming powers previously organized within States. In this world knowledge is a direct source of wealth and power in a manner completely distinct from other periods in history.

Aaron Swartz is one of the major victims of the war surrounding so-called intellectual property. Aaron was found hanged in his New York apartment on January 11, 2013. His death, currently held to be a suicide, occurred during the intense battle that the young programmer and cyberactivist was waging with the courts and the police in the United States. Accused by the government of infiltrating computers to supposedly release copyrighted academic articles, he could have been sentenced to 35 years in prison. Federal prosecutors in the US sought an exemplary conviction to compensate for various defeats suffered in the battle to reduce the sharing of digital files on information networks.

With his life interrupted at the age of 26, Swartz, considered an Internet genius, was the co-author of RSS (Really Simple Syndication) when he was only 14. Aggregating the content of sites that are constantly updated, RSS is widely used on the net by both large gateways and small blogs. The idea of sharing culture, knowledge and information was from that very moment present in the actions of the young Aaron, who combined a great passion for freedom with a refined expertise for the development of collaborative network solutions.

To this day, the Internet and the Web are open structures that move forward collaboratively; that is, their principal protocols and standards are defined by public documents called RFCs (Requests for Comments). In 2001, Swartz began working with the World Wide Web Consortium (W3C), an international community that develops open standards with the goal of guaranteeing the growth of the web. In 2004, Swartz signed the publication of RFC 3870, titled "application/rdf+xml Media Type Registration," with the aim of describing a type of media for use with the XML language together with the RDF platform, used to support the Semantic Web. The talented young Aaron Swartz, born on November 8, 1986 in Chicago, wasn't worried about patenting and blocking access to his contributions to the world of technology.

In 2005, while attending Stanford University, Aaron Swartz started the company Infogami, which supported the Open Library project from the Internet Archive portal. Maintained by a non-profit organization, the Internet Archive project works to build a digital library of Internet sites and other cultural artifacts in digital format. Just like a traditional library, it offers free access to its files on the net to researchers, historians, academics and the general public. Here, one can again note Aaron's vocation for the dissemination of and free access to knowledge. In November 2005, Infogami merged with Reddit, a site in which users can vote on links to appear or disappear from the front page. After Reddit was acquired in 2006 by Condé Nast Publications, Swartz did not adapt to work at the new office, leaving the company.

## 1 Free knowledge activism

In 1984, Steven Levy wrote *Hackers: Heroes of the Computer Revolution*. His work looked to translate what would be the fundamental traits of the so-called hacker subculture, which arose in the United States in the 1960s, decisively influenced by the North American counterculture. Levy clarifies the ethical pillars of hacker collectives in the following passage:

> *Access to computers... should be unlimited and total...*
> *All information should be free...*
> *Mistrust authority – promote decentralization...*
> *Hackers should be judged by their hacking,*
> *not bogus criteria such as degrees, age, race, or position...*
> *You can create art and beauty on a computer...*
> *Computers can change your life for the better.*
> (LEVY, 2001, p. 27-33)

In these terms, Aaron Swartz can be seen as a hacker in the original sense of the expression. An aficionado for source code and the sharing of intellectual challenges that he could overcome. Pekka Himanen, who studies the hacker ethic, observed that "the primary value that guides the life of a hacker is passion; that is, some interesting goal that moves him or her and that in fact generates

happiness in its accomplishment" (HIMANEN, 2001, p. 18). Aaron Swartz never seemed worried about making money. Following his short life, one notices that, for him, the greatest wealth was in collaborating in the creation and dissemination of knowledge. What is most interesting is that supporters of private ownership and file-share blocking could never make the claim against Swartz that his defense of sharing was the fruit of technical shortcomings or technological inferiority, which feeds much shadowy and prejudiced rhetoric. Swartz had impressive intelligence and creative capacity.

In 2008, he utilized a script that automated the download of more than 2 million documents from PACER, the website on which all United States federal court documents are stored. To access PACER documents, one had to use an online payment system. Swartz used his program to get around the payment system, allowing free access to the texts, which were public. Because of this, the FBI investigated him. However, since no formal complaint was registered, his case was shelved.

Proposing a civic insurgence against the privatization of knowledge – which for him came from a collective construction, emerging from what was common – Swartz in 2008 released the *Guerilla Open Access Manifesto*, which clearly outlines his ideology of freedom of access to cultural and scientific resources. The following excerpts clearly demonstrate the kind of guerrilla Aaron was proposing:

> *Information is power. 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.*
>
> *(…)*
>
> *We need to take information, wherever it is stored, make our copies and share them with the world. We need to take stuff that's out of copyright and add it to the archive. We need to buy secret databases and put them on the Web. We need to download scientific journals and upload them to file sharing networks. We need to fight for Guerilla Open Access.*
>
> *With enough of us, around the world, we'll not just send a strong message opposing the privatization of knowledge — we'll make it a thing of the past. Will you join us?*
>
> Aaron Swartz July 2008, Eremo, Italy.

Free access and exchange of knowledge constitute part of the so-called hacker culture. It inspired thousands of other software developers dedicated to sharing, such as Richard Stallman, the founder of the free software movement. It is notable that all of these developers believe in the utopian possibilities of the democratization of access to information and in the importance of the free flow thereof. This hacker perspective was opposed by large corporations, who wanted

to transform algorithms and code into products that were artificially similar to the merchandise of the industrial world. Hackers were therefore subject to semiotic attacks by the media, who depended on the advertising revenue of the source code industry conglomerates.

Furthermore, studying the way that hackers were seen by the mass media, Sandor Vegh noticed that after September 11, 2001, there was a change in the discourse. Hackers, who had been depicted as common criminals, came to be described in the news as cyberterrorists. Vegh (2005) also found that articles in the United States media increasingly used a sensational tone when talking about hackers, while observing that one of the principal consequences was to open the way for the approval of laws and regulations that limit cyberactivism and "hacktivism."

Despite this scenario of growing persecution of hackers and activists, Swartz deepened his role in defense of transparency and the sharing of knowledge. In 2008, he founded Watchdog.net, to aggregate and visualize data about politics. In 2010, he was one of the co-founders of Demand Progress, a collective dedicated to political reform of the government and civil liberties activism.

## 2 Informational capitalism, intellectual property and human rights

Informational capitalism found its growth in the codification and digitalization of knowledge, culture and symbolic and nonmaterial goods and products. Cybernetic technologies operated by software made digital networks viable. These networks covered the planet and became indispensable to the daily life of a large part of society, making communication a structural element of social, economic, cultural and political processes. But digital communication is a form of communication mediated by software. Cybernetic, informational society, which can be seen as a society of control, has in software its principal media.

Researcher Lev Manovich (2008) was very astute in affirming that, just as electricity, the machine, and combustion made industrial society possible, it is software that makes global informational society possible. Software, seen as media that guarantees the growing digitalization of social activities and practices, is not apparent to this same society. Its role is not clear, much less evident. Seen as akin to any other technology, and presented by the market as merely a product, software contains source code that defines it and determines what it is capable of doing. Meanwhile, software has the power to completely determine our communication. Its design, its functions, operations and interfaces are defined by the programmers that create and maintain it. This code, in general, is closed-source and incomprehensible to those that use it.

This is something obscure, lacking any transparency. For the software market, it is this opacity of the code for its users that makes up part of the intellectual property rights of its creators. The mainstream software market was structured around a model of remuneration of property based on the denial of access to the knowledge of its logically nested routines. But the lack of source

code transparency in the context of intense digital codification isn't limited to the software market. It extends to the bodies and essential codes of the species. It is in the fusion of various disciplines with Biology and Computer Science that biotechnology, nanotechnology, and genetic engineering arise. As Adriano Premebida and Jalcione Almeida point out:

> *With the influence of cybernetics, a live organism is treated like an information system, with an extensive history of adaptation, able to be both interpretable and executed by molecular biology. Politics about life tends to center around the indifferentiation of the borders between species and understand the materiality of living beings as 'a matrix of virtual,' or possible, 'genetic combinations' (Ferreira, 2002: 238). The junction between techniques and policies in the manufacture of living beings is what will be at the center of the contemporary commercial/industrial dynamic in areas of knowledge informed by genetic engineering. 'Life can no longer be simply thought of as the result of reproduction. Life is now able to be produced' (Ibidem, 223). Biological life is part of modern power strategies and currently these strategies also focus on genetic information.*
>
> (PREMEBIDA; ALMEIDA, 2010)

The remuneration model of genetic encoding in cognitive capitalism involves closed source code or restrictions on its use through patent enforcement. Thus we witness the proximity of Microsoft and Monsanto, or Pfizer and Oracle, in their business models. Blocking free access to scientific knowledge is a profound concern for large corporations. And that is exactly where Aaron Swartz was vigorously involved.

On January 6, 2011, at 24 years old, Aaron was arrested for electronic fraud, computer fraud and unlawfully obtaining information from and recklessly damaging a protected computer. Specifically, Swartz was accused of downloading 4.8 million documents from the JSTOR academic article archives, violating its terms of use, and circumventing the Massachusetts Institute of Technology's (MIT) attempts to stop him.

According to the report, Swartz bought a laptop in 2010 and registered on the MIT network under a ghost username. On this computer, Swartz wrote a script in the Python language that allowed him to rapidly download articles from JSTOR. JSTOR detected the script and blocked the IP address. According to the report, Swartz repeatedly changed the IP and MAC address to evade JSTOR's and MIT's efforts to block access.

When JSTOR normalized MIT's network access some weeks later, Swartz had changed his technique to download the files. He was accused of going to a room containing networking equipment and hiding his laptop behind some equipment so that it would not be found. He thus circumvented existing blocking and filtering mechanisms via the direct connection to the servers, successfully executing his downloads. The police report describes how Swartz, as he went to recover his laptop from its hiding place, had his bicycle helmet clearly filmed, despite using a mask to cover his face.

The United States government alleged that Swartz probably downloaded the articles to freely distribute them on P2P (peer-to-peer) networks. However, JSTOR itself recognized that the downloaded content was not used, transferred nor distributed. But, for government representatives, mass downloading many articles from academic journals constitutes a hacker crime and should be punished by imprisonment. The interesting part is that Swartz, as an MIT student, had free access to any of the articles that he downloaded. The criminal attitude was the use of a script to download many articles.

The United States federal prosecutors sought an exemplary conviction. They wanted a sentence of 35 years and said they were acting to discourage copyright violation. Pressure mounted on the young Swartz, who had a large role in the campaign against the Stop Online Piracy Act (SOPA) and PROTECT IP Act bills in the U.S. Congress in January of 2012. These proposed bills sought to block U.S. citizens' access to digital contents and applications that supposedly were in violation of intellectual property. Furthermore, companies in the United States would have five days to block access to such sites.

The stiffening of intellectual property legislation and the shadowy activities of the copyright industry are an attempt to gain control of the sources of creation and knowledge. The case against Swartz is a legal aberration, since the only consistent accusation was over his intention to release academic texts on P2P networks for free downloading. Computer forensics consultant Alex Stamos, who is frequently asked to testify in cases to determine if intrusions in digital systems and informational crimes occurred, wrote on his blog:

> *Aaron did not "hack" the JSTOR website for all reasonable definitions of "hack". Aaron wrote a handful of basic python scripts that first discovered the URLs of journal articles and then used cURL to request them. Aaron did not use parameter tampering, break a CAPTCHA, or do anything more complicated than call a basic command line tool that downloads a file in the same manner as right-clicking and choosing "Save As" from your favorite browser.*
>
> (STAMOS, 2012)

Following the tragic death of Aaron Swartz, United States federal prosecutors dropped all of the charges against him. Many people around the world noted the truculence and arbitrariness being practiced in order to block the sharing of cultural goods and knowledge. The battles do not appear to be cooling down. The possibilities for collaboration, interaction and digital file exchange will continue to grow if the Internet continues to be open, not proprietary, and not submitted to the telecommunications infrastructure controllers. Still, the copyright industry articulates its next steps to turn cultural goods and symbolic expression proprietary, as if they were limited resources. Governments, such as the United States, coordinate treaties and laws to subjugate the rights of all citizens to the defense of intellectual property. Yes, Aaron was a major victim of this war. But millions of young people do not live and have never lived under proprietary licenses. They want to share the possibilities that information

technology creates for all. There no longer seems to be any doubt that one of the principal conflicts of the twenty-first century centers around the sharing of knowledge and cultural goods.

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RESUMO

O artigo relata sucintamente a história de Aaron Swartz, uma das grandes vítimas da guerra travada em torno da chamada propriedade do conhecimento. Aaron foi encontrado enforcado no dia 11 de janeiro de 2013, no apartamento em que morava em Nova York. Programador e ciberativista, acusado pelo governo norte-americano de invadir computadores para uma suposta liberação de artigos acadêmicos protegidos por *copyright*, poderia ser condenado a 35 anos de prisão. O texto articula a vida de Swartz com os embates atuais pela liberdade do conhecimento diante do enrijecimento das legislações de propriedade intelectual e da atuação obscura da indústria do *copyright* com vista a subordinar os direitos humanos ao controle das fontes de criação.

PALAVRAS-CHAVE

Aaron Swartz – Ciberativismo – Propriedade intelectual – Compartilhamento – Conhecimento livre

RESUMEN

Este artículo relata de forma resumida la historia de Aaron Swartz, una de las grandes víctimas de la guerra instaurada en torno a la llamada propiedad del conocimiento. Aaron fue encontrado ahorcado el día 11 de enero de 2013, en el apartamento en el que vivía en Nueva York. Programador y ciberactivista, fue acusado por el gobierno norteamericano de invadir computadoras para una supuesta liberación de artículos académicos protegidos por *copyright*, por lo que podría ser condenado a 35 años de prisión. Este texto articula la vida de Swartz con las luchas actuales por la libertad del conocimiento frente al endurecimiento de las legislaciones de propiedad intelectual y de la oscura actuación de la industria del *copyright* con el fin de subordinar los derechos humanos al control de las fuentes de creación.

PALABRAS CLAVE

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