

Michael S. Pritchard's Commentary on "Who Can Change Proprietary Source Code"

Commentary On
Who Can Change Proprietary Source Code

It might seem that this case is basically about law rather than ethics. Clearly it does raise a number of legal questions. However, there is a strong ethical dimension as well. Derek's desire to adapt the software program to his new job circumstances seems innocent enough. But the fact that his new employer required him to sign a software agreement that what he designs becomes company property should have alerted him to a potential problem. Although Derek did not sign a similar agreement with his previous employer, this does not conclusively settle the question of ownership. Others were involved in the initial design.

At the very least, Derek should have inquired about the ownership matter prior to adapting the software to his purposes. This would not only protect his current employer from a potential law suit (should the previous employer choose to sue), it would also evidence respect for the interests of his previous associates. Carelessly placing one's employer at legal risk is both an ethical and a legal concern. Indifference to the interests of his previous associates is an ethical concern, unless we can assume that Derek is estranged from them (and even if he is, there might have been an implicit understanding about the disposition of the software). After all, Derek is very possibly legally entangling the "lifeblood" of his previous employer, given his current employer's apparent desire to claim ownership of its employees' software designs.

It might be objected that Derek did not know that his new employer would use all means at its disposal to adapt the software system throughout the company. True, but his having to sign an ownership agreement should have put him on alert.

It seems clear from the case that Derek bore no special animosity against his previous employer and associates. Now, to his regret, he has become involved a

legal and ethical quagmire. Perhaps a careful investigation of law can clarify the legal rights involved in this case, but the ethical concerns cannot be handled so readily. So, I conclude that Derek should have proceeded with greater caution, heeding the concerns of Horace. A call to his previous employer before adapting the system might have avoided these problems.