

Tyler-James-20050315033003

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Date: 03/15/2005

From: James Tyler

Comment:

I think software source code should be escrowed, and, when the copyright holder stops business, the copyright and orphan works should become public domain.

About ten years ago, Big Island created and sold the YoYo. The YoYo was a computer peripheral that monitored your telephone line. When a call came in, YoYo would read the caller ID, record it, and time the call. Additionally, if you configured the YoYo, it could email or call someone else or you (call your pager) or fax to let you know who called or perform almost any function you could script. For a support person it was a fantastic tool. It told me who was calling and timed the length of the call -- OR -- if I was away, it told me whose call I missed so I could call them back. When the computer was off, YoYo's memory kept recording the phone calls and performing the functions it could and remembering the functions it would perform.

Big Island went away.

The YoYo software quit working when the new operating system came out.

I sought the source code for the YoYo so I could update it to the latest operating system; however, Big Island is gone and no one knows where the source code went.

I sought permission to reverse engineer the YoYo hardware; however, I was told that it is 'very illegal.'

Now, I have a YoYo paperweight.

As a consumer, I did not buy a YoYo as a temporary piece of equipment that would become unusable in two or three years. My contract with Big Island implied that they would leave YoYo operating. When Big Island ceased to exist and my YoYo quit, Big Island violated their part of the contract.

To whom does a consumer complain when a company ceases operations? An individual demanding that a defunct company honor its contract is absurd. Similarly, asking permission of a defunct company to modify its code to sustain its orphaned software is absurd. Fearing reprisal from a defunct company for reverse engineering its defunct code is absurd but real.

As a minimum when Big Island began operations it should have escrowed the source code and firmware code to continue the spirit of their contract obligations. If the source code were escrowed so that when Big Island went away the software (and firmware) became public domain, it would serve its customers and, possibly, pass along knowledge on how to overcome firmware, software, and hardware problems.

Similarly, Claris em@iler was the best email program I ever had.

Apple killed Claris. em@iler kept working. Apple released three more operating system versions and em@iler kept working. (Combined with YoYo, em@iler was a software support person's dream.) em@iler continued along doing a fantastic job until last year when AOL and mac.com went imap.

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An email acquaintance knew where a copy of the source code was and could add imap functionality; however, the acquaintance was afraid because no one knows who owns the source code, or who to ask and no one knows if modifying the software would get them into trouble.

Even though em@iler's end of life was 1998, it lived on until imap. If the source were public doman, it could live on.

Again, the contract between Claris and the user was usable software. The source code should have been escrowed at that point. When Claris ceased operations and Claris em@iler was no longer sold, the source code should have been released as public domain.

If the firmware and source code were escrowed so that when a software company went away -- and the software was no longer sold -- the software became public domain, it would contribute knowledge to the world -- and honor the contracts that seem to be violated without consequence.