Who Owns Your Source Code? And Why Should You Care?

In a world where the terms “open source”, “intellectual property” and “source code” fly through business conversations faster than tennis balls at Wimbledon, it can be tough for a business owner to get up to speed. It can be even more challenging to put together an intelligent conversation with someone who knows more than you do about computers. And it can be downright intimidating to know what questions to ask when hiring a contract programmer.

Getting a handle on these concepts really isn’t as complicated as it might seem. Let’s start at the beginning by considering two basic questions: What is source code? More importantly, who owns it—the developer, or the customer who’s paying for it?

What is “Source Code”?
Source code is the original work created by a software developer. Programmers use different programming languages to create source code, but all programming languages are readable by humans.

Computers, on the other hand, can’t read or understand source code. At their core level, they only understand two values: 0 and 1.

Therefore, source code must be translated (through a process known as compiling) into a binary file—a series of 1’s and 0’s such as the illustration above—so your computer can read it. This compiled file is what end users launch on their computers, not the source itself.

In theory, programmers could create binary files without using source code—but it would be extremely time-consuming. The simplest of programs would take years to write. Instead, we use programming languages to crank out source code that’s much easier to work with and understand. Source code is the mold that developers use to write business applications. It’s the recipe that computers follow to build working business applications.

From another angle: when you buy a Big Mac or Whopper, you’re not buying the recipe—only the product created from the recipe. Similarly, when you buy an off-the-shelf application like QuickBooks or Microsoft Word, you’re not buying the source code—but merely a copy of the compiled application.

You really don’t need the source code in order to run applications such as Excel or Peachtree. In fact, software companies like Microsoft and Intuit go to great lengths to make sure it never leaves the confines of their company.

Source code is extremely important to programmers. They’ll invest countless hours and dollars taking classes, devouring books on the subject, and attending conferences devoted to their specialty.

It’s my opinion that source code should be important to you, the business owner, even if you never read a word of it.

To help explain why, consider the following analogies:

- Your bakery hires a French pastry chef to tweak your recipes for your croissants and tarts. You love her work. And so do your customers—
product flies off the shelf at record rates. But then you learn that your chef has returned to France—without leaving a copy of the recipes. Now what do you do? Once you run out of dough, you’re back where you started.

- Your company commissions a sculptor to create a unique cast bronze sculpture for your building. You love his work, and gladly pay the final installment of his commission. Months later you discover thousands of exact replicas for sale on the internet. When you contact the sculptor, he explains that your agreement allows him to do whatever he wants with the molds. Suddenly your unique sculpture is no longer one-of-a-kind.

Spending a few hundred dollars on an off-the-shelf application is one thing. Purchasing custom software is quite another. Unlike off-the-shelf applications, custom software is tailored specifically to your specific way of doing business. It takes a considerable investment of time and skill to develop.

Therefore, it’s a good idea to request (even demand) a copy of the source code from your developer. That way, you’ll be able to find another developer to pick up where he left off, should your developer get hit by the proverbial bus, or if your relationship ever heads south.

As computers and peripherals evolve, and as your needs change over time, you’ll probably want to tweak the recipe now and then. That’ll be hard to do if your “chef” isn’t available, and never gave you a copy of the recipe. So before purchasing custom software, find out what exactly you’re buying—the compiled application, the source code, or both?

Who owns your source code?

When you hire a developer to create custom software for your company, you automatically own the source code, right? Not necessarily. Software developers often have differing policies and price structures when selling their services. Some include source code in their pricing. Some don’t. Still others claim to include the source code that’s specific to your application—but don’t necessarily give you everything you need to move on to another developer.

It’s not unusual for our customers to discover that they really don’t own all the source code they need to compile a new binary file. Here’s a paraphrase of how one software developer responded to a client when we asked him to provide missing files:

Dear <name>,

You were provided all the Source Code that was developed specifically for your application. The “missing” files are ‘my’ base class library/framework that the application was built on top of. That is proprietary source code that I’ve spent years writing and don’t hand out to anyone. Therefore there is no other Source Code to provide to you.

[Using] the analogy of vehicle production & maintenance, while some generic pieces can be purchased at an auto parts store, almost all of the car ... has to be provided by the same people that made the product in the first place.

You can go elsewhere, but they are going to have to disassemble the original parts, figure out it works and build a factory to produce the same things that the original one did.

From this programmer’s perspective the client only paid for the custom-painted doors and trim, but not the engine. The only engine that will work is the one he’s built—and he won’t give it to anybody. In other words, they’re trapped—they must continue to use his programming services because he’s not going to give them ALL the source code.

If I were his customer, I’d be mighty frustrated. But it doesn’t have to be this way. Most business owners

Source Code Example

```c
// Static function that indicates the backcolor to use if none is specified
///<summary>
//</summary>
///<param name="rowNum">Dummy value used because the delegate requires it</param>
///<returns>Color that the cells are to be colored</returns>
public static Color getDefaulBackColor(int rowNum) { return Color.White; }

///<summary>
// Overides the DefaultDataGridRowPaint Method
//</summary>
{ try
}
```

Source Code Example
don’t believe it’s a good business practice to hold their customers hostage. That’s why our agreements include a paragraph containing two main points:

- First, that our clients own all the source code needed to recompile their business applications. If they ever become dissatisfied with us, they’re free to hire another developer who can pick up where we left off.

- Secondly, like the developer above, we don’t re-invent the wheel each time we develop an application. We’ll reuse parts of the same source code in other customer’s applications. The difference is that we include a copy of this common source code. Customers are free to edit it—even rewrite it if desired. We simply ask that clients don’t resell this “engine” code to other developers.

We think this approach is a healthier one because it doesn’t lock our customers into a relationship they can’t get out of. At the same time, it helps to protect our years of research and development efforts. So everyone wins.

In a nutshell …

Let the savvy software buyer beware! It’s a good business practice to ask for a written agreement which spells out exactly what you’ll be receiving for your investment, and exactly who owns the source code when all is said and done. Here are a few questions you may want to ask your developer:

- Who will own the source code used to create our application?

- Will you provide us with a copy of all the source code needed to compile a completed application?

- When will you provide a copy of the source code?

- Will you resell and/or recompile this source code and market it to our competitors?

- If you use pre-existing classes, libraries or procedure files, will they be included in the source code you provide?

Talk to a typical small business owner about source code ownership and his eyes will glaze over. But if your business relies on custom software to maintain a strategic advantage in the marketplace, you would do well to stay abreast of these issues. Rather than stake your company’s future on a software developer’s reputation or marketing materials, it’s better to have a firm grasp of the basics, and know which questions to ask.

About I/O Technologies, Inc.

Founded in 1994, I/O Technologies Inc. is a woman-owned company which provides computer solutions for businesses large and small. The company offers a wide range of products and services designed to empower people through great hardware and software — any time, any place.

Dave Martin
dmartin@iotechno.com
262-437-3239

I/O Technologies, Inc.
N116 W15830 Main St.
Suite 101
Germantown, WI 53022
800-993-9028