

Interview—Douglas E. Phillips

Interviewers: Michael Davis (MD), Tony Spencer (TS)

Location: Covington & Burling, 1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Date: Oct. 9, 2002 (edited)

QUESTIONNAIRE

SOFTWARE DEVELOPERS WRITE A CODE OF ETHICS

1. What is your educational background?

B.A. in Public and International Affairs from Princeton University (1977). J.D. from New York University Law School (1980).

2. What sort of organization do you work for? What do you do there?

Covington & Burling is a major international law firm. I do a range of legal work. In the past, I have done some litigation, but now my work is primarily transactional. Most of my current work is in intellectual property (IP) issues related to software, data, and new media. I am of counsel.

3. What experience, if any, have you had in software development? If you are a software developer, what led you into that field?

I'm not a software developer, though I have been interested in computing since I was an undergraduate. My experience with software development is primarily either as a user of software or as a legal adviser to people involved in software development. In addition, I have received a notice of allowance from the U.S. Patent Office indicating that I will be issued a patent on a software process I invented. I advise clients concerning software, data, and new media licensing transactions. I got into this area by serving as President of the Business Software Alliance, an organization formed by Microsoft and other software companies to protect intellectual property rights, and then by handling software-related litigation and being asked by existing clients to advise on new transactions.

4. Are you an engineer?

No.

5. How did you hear about the IEEE/ACM Joint Task force on Software Engineering and Professional Practice (SEEPP)?

From Greg Swift. He is now Deputy Chief Information Officer for the National Gallery of Art, but back then he was working for Mitretek.

6. What lead you to participate in SEEPP's work?

Actually, I didn't participate in SEEPP's work. About the time the various versions began to appear, 1996, I became quite busy in my law practice and continued to be busy until some time in 2000. I was never individually approached to do anything and kind of lost track of the project.

7. Were you familiar with codes of ethics before you became involved in SEEPP? Explain.

Yes. I certainly was familiar with the lawyer's code of ethics—the Rules of Professional Conduct (including the District of Columbia Rules and the ABA Model Rules). I also now have some familiarity with the AMA's code of ethics because of work I have done on a matter involving a physician's professional conduct.

8. In what ways did you participate in SEEPP's work, especially in the process of preparing the code? (The more details, the better.)

I don't think I did—apart, perhaps, from reading some emails.

9. By what means did you participate? For example, did you participate by email, or by phone, or through face-to-face meetings, or by letter, or by informal conversation, or the like?

Emails, I think. No phone or face-to-face meetings (except with Greg Swift). No letters.

10. Did any of these means of participation seem to work better than the others? Any seem to work worse? Which would you recommend as best? Why?

I might have participated more if someone had asked me personally, even if only by phone or email. The general emails didn't make me feel involved. I wasn't sure what role to play. The emails seemed aimed at engineers. What role should a lawyer play in the process? I wasn't asked about my background, as far as I recall, and because of my own workload, I did not reach out to suggest any particular role. That's certainly my responsibility as much as anyone's, but had they or I taken the initiative to carve out a role for me, I'm sure I would have been more likely to participate.

11. Any events that particularly stick in your mind relevant to the process? (The more details, the better.)

No.

12. Do you have any documents, paper or electronic, relevant to your participation in the process? May we have a copy?

I haven't found any so far. But I have some old archive disks at home. I'll check to see whether there might be something on them. I'm curious to see what, if anything, I can find.[He found nothing.]

13. Has your thinking about codes of ethics changed as a result of your participation in SEEPP's work? How?

No change I'm aware of.

14. What, in your opinion, is important about having a code of ethics?

My experience with codes of ethics is primarily with the lawyer's Rules of Professional Conduct. But I think much the same is true of other codes. The Rules help to keep lawyers mindful of their responsibility to the people they serve. In other words, the Rules cause (most) lawyers to reflect, at the time they act, on the ethical implications of what they do, especially in novel situations that raise ethical challenges. Of course, the existence of sanctions for violation, both in the form of disciplinary consequences and in the form of potential civil liability, is an important factor in focusing lawyers' attention on such standards. In most, if not all, professions, ethical standards that are merely precatory are likely to be ignored.

15. Is there anything about your *participation* that you are especially pleased with or unhappy about?

As I have already said, I wish I had participated more.

16. Is there anything about the *final code* that you are especially pleased with or unhappy about?

No.

17. Is there anyone whose participation in the process seems to you especially important? Explain.

Don Gotterbarn. He sent most of the email I remember.

18. Anyone who you think we should be sure to talk to? Explain.

No one, except Don Gotterbarn and Greg Swift.

19. If you had been in charge of the process, what, if anything, would you have done differently?

As I suggested earlier, I would have responded to anyone who sent in his or her name with a personal phone call or at least a personal email asking about special skills or interests. Once I knew something about the person, I would invite contributions related to the special skills or interests. For me at least, group email works well only between people who know each other some other way. Of course, face-to-face meetings would have been good too, but I might not have been able to attend if, for example, they had been held at a remote location.

20. Is there anything we should have asked but didn't? Anything you want to add to what you have already said?

No.

Center for the Study of Ethics in the Professions
Illinois Institute of Technology
Chicago, IL 60616