

Sega versus accolade essay



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Accolade is a developer and seller of software for computer games.

Sega is a producer and marketer of computer entertainment/games systems, consoles and video game cartridges. Accolade is not a licensee of Sega; it has, however, done good business by producing and marketing game programs that are compatible with Sega systems. Sega has never shared in the proceeds of Accolade's sales of game programs. Accolade and Sega, then, have had an informal, mutually beneficial relationship.

The background of the disputeIn the 1990s, Sega marketed the Genesis game console. This new product was designed to accept only Sega game programs. Accolade software programs, therefore, were not compatible with " Genesis. " Accolade decided to try to overcome this problem. Having bought some Genesis consoles, Accolade engineers dissected them in a process of reverse engineering to discover and decipher the security apparatus set up by Sega to make " Genesis" reject non-Sega software programs.

They succeeded; they identified codes that Sega was using to monopolise games for Genesis. With these data, Accolade engineers created software programs that would work on Genesis consoles; thus, they freed consumers from total dependence on Sega for enjoyment of Genesis. Grievance and Counter Grievance Petitions In its petition to the court, Sega, the plaintiff complained that Accolade had committed theft: In Sega's perspective, Accolade committed a crime in its reverse engineering job on the Genesis console. Moreover, the codes that it put into Genesis are the exclusive intellectual property of Sega. Therefore, Accolade stole private property,

when it copied and transferred Sega's codes to its Genesis friendly game programs.

Accolade, the defendant responded that the security apparatus that Sega claims as private property fits in the category of common goods: in Accolade's perspective, the codes that Sega deems secret are a public interface standard. That is to say, the enabling mechanisms that Sega put into Genesis are not private property, because they are essentially standard means by which one product, game programs can work on another product, game consoles. Such standard mechanisms, Accolade argued, are public property. Therefore, Accolade did not act criminally, when it carried out reverse engineering on a Genesis console in order to obtain the public interface standard for using game programs with this console, and when it copied the codes that constitute this interface standard. The abovementioned grievance and counter grievance present a core issue of property rights and property entitlement.

Put another way, the petitions of Sega and Accolade focus on private property rights versus use of common property. This contest is a concentration factor in this paper's assessment of both petitions.

Philosophical Examinations This paper's assessment of the abovementioned positions of the plaintiff and defendant will take place from three philosophical perspectives, which carry weight in scholarly discourses on the interconnection of property, rights, and universal prosperity. These perspectives are:(1) Locke's theory of private property,(2) the utilitarian theory of private property, and(3) the Marxist theory of private property. These theories originated a long time ago. They remain relevant, however,
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because they are part of the framework of debate and discussion around economic systems, for example arguments on a free market economy versus a mixed economy, arguments on the merits and drawbacks of globalization.

In addition, they have influence in the legal community, where rulings are made on disputes that arise from economic transactions. Locke's Theory According to Locke, property is a main reason for the existence of government, and the protection of property rights is a central concern of governments. Locke argued that people have a natural right to private property. Read about Factors you should consider to understand the threat in your environment That is to say, people have a fundamental right to own things free of any obligation to share them. The scope of possession as outlined by Locke is wide: " Every man has a property in his own person. This nobody has a right to but himself.

The labor of his body, and the work of his hands...are properly his"(130). Locke sees the " state of nature" as a risk factor for the sustainability of individual ownership of property, because, in the state of nature, people are not restrained in their interactions; thus, " individuals are in constant danger of being harmed by others"(p. 30). Government was formed to deal with this danger, and protect an individual's right to property.

In the logic of Locke's thought, property can be intellectual or physical, a product of brain and/or of hands. What a person or a company creates by mental and/or physical work belongs solely to this person and/or corporation. Thus, Sega's Genesis console, inclusive of its security apparatus, and Sega's matching game programs for Genesis are Sega's property, and no other

party has rights to their ownership. Locke's philosophy of property is, in this paper's view, sympathetic to Sega's grievance against Accolade: Sega produced the Genesis console, Sega wrote the codes that enable software programs to work on Genesis; therefore, following Locke, Sega has absolute property right to these codes. Locke's thought bears also on Accolade's petition.

He holds that if a person " has mixed his labor with, and joined to it something that is his own," the person " thereby makes it his property"(p. 130). By purchase, Accolade became owner of a Genesis console. Reverse engineering qualifies as a process, in which Accolade mixed its labor with this console, which had become its own. Accolade, then, is entitled to ownership of the discovery of its reverse engineering work. Put another way, the data, which Accolade discovered through reverse engineering on a Genesis console is Accolade's intellectual property.

Accolade, by virtue of ownership through labor, is entitled to keep and use this property as it sees fit. The Utilitarian TheoryThe utilitarian theory is associated with rights of property ownership through its message " that unregulated markets and private property will produce greater benefits than any amount of regulation could"(p. 135). The companion of this philosophy is Adam Smith's theory: " When private individuals are left free to seek their own interests in free markets, they will inevitably be led to further the public welfare by an invisible hand"(p.

136). In other words, left to their own instincts and devices, individuals will make business that benefits for the whole society, even though this outcome

was not a motive behind the business. A key observation arising from the utilitarian theory is that “ Every producer seeks to make a living by using private resources to produce, and sell those goods that the producer perceives people want to buy,” and “ motivated only by self-interest, private businesses are led to serve society”(p. 136).

This observation is generalisable to Accolade perceived consumer interest in computer games; acting on this perception it became a producer of game programs, and its vision is to sell these programs to as many consumers as possible. To produce a game program compatible with Genesis, Accolade used its human capital to exploit a private resource, a Genesis console that it had purchased. Thus, Accolade injected an element of competition into the game program market: by developing a program that Genesis can take, Accolade gave the consumer public choice in buying programs for use on Genesis consoles. In the utilitarian theory perspective, market competition is a beneficent societal dynamic, which “ serves to lower prices, conserve resources, and make producers respond to consumer desires”(p. 36). In the logic of this perspective, the assessment of Accolade’s action should not be criminal behavior, but a contribution to affordable consumer products and resource sustainability.

Put another way, Accolade’s action is an example of human progress not inappropriate behavior. The free market ideas of utilitarian theory go hand in hand with the survival of the fittest doctrine of social Darwinism: “ Those individuals whose aggressive business dealings enable them to succeed in the competitive world of business are the “ fittest” and therefore the best. This outlook puts the following question to Sega’s grievance: is this

grievance a petition to restrict the emergence of the best in the computer games industry? Additionally, should government interfere with strong market competition, which is a factor contributing to broad distribution of goods and services, and, as well, to human progress. Sega's petition might also be seen as an exercise in the line of utilitarian theory. To explain this point, this paper goes back to the property rights principle of Locke.

In Locke's vision, government is the legitimate ultimate guardian of an individual's absolute right to keep and use property as the individual decides. Private property is a core aspect of the application of utilitarian theory: private property is essential to the working of free markets.

Therefore, government as the protector of private property rights is essential to the existence of free markets. In its petition to a court of law, Sega is exercising one of the levers of a competitive market, preservation of private property. One interpretation of Sega's approach is that this company is asking government through the court of law to sort out rules of competition to protect it from Locke's "state of nature," and to ensure that the fittest is also the best in a comprehensive sense; that is, a sense including commercial and ethical perspectives. Marxist Theory Marxist theory comes out of the thinking of Karl Marx, who surveyed society with a far-reaching philosophical eye.

Marx took into account economics and humanity; he looked at production and social justice. Marxist theory, the outcome of Marx's observations, rejects the value of private property: it holds that "[P]roperty should be seen as having a social purpose: something that belongs to the whole community and that should serve the needs of everyone. Property should not be "

private” but should be held in common and enjoyed by all”(p. 147). The spark for Marx’s concern was inequality in society: he saw property concentrated in a minority group, the ownership class. Since property is a key element in the materials that society uses to produce economic goods, Marxist theory argues that this concentration of property under the protection of the principle of private property rights implies a corresponding concentration of wealth, the income from production of economic goods, in the hands of the minority ownership class.

This phenomenon, in turn, alienates and subjugates the majority of society. Having no property for negotiation, members of the majority must sell their work at terms set by the ownership class. These terms are rigged in the interests of the property owners, and underline socio-economic inequalities in society. In the perspective of Marxist theory, then, Sega’s claim is groundless.

Computer games are among recreational common goods: everyone should be able to participate in these games if he or she so wants. The knowledge that contributes to the manufacture of computer games is not the private property of one party: this knowledge belongs to the whole society. In this logic, Sega’s grievance represents a petition to confine property to a minority of the population, a propping up of the ideology of an ownership class. Accolade’s action, on the other hand, represents assertion of the principle of communal ownership of property, under which property is beneficent for a larger section of society than is the case with privately owned property. By acquiring a share in the property of Genesis data, Accolade is able to expand the class of producers of game programs, and,

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importantly, to make more of such programs available to society at affordable prices. This phenomenon, in turn, enables more members of society to become owners of computer game programs.

Accolade's action, then, serves a wide constituency whilst Sega's position favors a narrow constituency. Opinion This paper recommends a mix of Locke's philosophy and Marxist theory as the background for the court's decision-making around Sega versus Accolade. In the current age, the resolution of this dispute should recognize three dynamics: (1) the self-interest of entrepreneurs and producers, (2) the legitimate claim of the whole society to participate in, and benefit from the production of economic goods, and (3) the constraints of justice on both parties. Entitlement to private property is, as Locke argues, an individual right that government should protect. This paper agrees with views associated with Locke that ownership of private property creates an incentive to care and develop property in a way that protects both physical and intellectual assets from improper treatment, the wildness of the "state of nature." Therefore, the court should listen attentively to Sega's grievance.

It is fair to see Sega's construction of Genesis, including the insertion of secret codes as a creative enterprise producing property that is uniquely Sega in its presentation in the market. At the same time, the court should note that Sega did not undertake this process from scratch. Sega turned to the present day equivalent of Locke's "state that nature has provided"(p. 130) for fundamental concepts and precedents to create the Genesis console and restrict its use to Sega brand programs. That is to say, Sega used the common goods of computer technology: it took some ideas from this source, <https://assignbuster.com/sega-versus-accolade-essay/>

adapting and improving them to create Genesis. Moreover, Sega benefited from public investment in education: the engineers who worked on Genesis are products of this investment.

Although, in an extrapolation of Locke's thought, it should be considered that through paid wages, Sega was the owner of the human and intellectual capital of the engineers whom it employed on Genesis. Sega, then, did not acquire Genesis in isolation: Sega, to paraphrase Locke's terminology, removed something from shared property, common intellectual property; it mixed its labor with this intellectual property; and, thus, Sega made new property, Genesis. Property ownership includes the right to dispose of the property at owner's will, including disposal by sale. Sega exercised disposal rights in marketing Genesis consoles. Thus, Sega transferred Genesis to the shared goods of the marketplace. Following Locke's thought, property for sale in the market is, potentially, the property of another party.

After closure of a sale, such property passes from the seller to the ownership of the buyer. In other words, sold property becomes the buyer's private property. So, when Sega sold a Genesis console to Accolade, it transferred the rights of property ownership for the particular console to Accolade. From this point, Accolade had the same bundle of rights that previously Sega alone enjoyed over the Genesis console of interest: the right "to use it, consume it, sell it, give it away, loan it, rent it, keep anything of value it produces, change it, destroy it, and, most important, exclude others from doing any of these things without my consent" (p. 132). It is important to note that the transaction, in which Sega sold a Genesis console to Accolade, did

not have stipulations restricting any of the aforementioned rights of private property ownership.

In Locke's perspective, then, Accolade, by virtue of having bought the Genesis console was free to do with it as it pleased. What pleased Accolade was to perform a reverse engineering job on this console to discover the inner details of its mechanism: Accolade wanted to know the secret of the workings of a Genesis console, and property ownership was the password, which gave it access to this information. Moreover, in performing reverse engineering, Accolade, in a Lockean framework, mixed its labor with acquired property to effect change. Thus, Accolade was enabled to produce a new software game program compatible with Genesis. The breakthrough, which Accolade accomplished through reverse engineering, was, in the light of Marxist theory, a blow for equality and humanitarianism. It broke Sega's monopoly of the software for using Genesis.

Thus, Accolade opened the door to reduction in the cost of game programs for Genesis. On the premise that computer games are a recreational need, Accolade's action is a contribution to satisfying this aspect of human needs. According to Marx " human beings should be enabled to realize their human nature by freely developing their potential for self-expression and satisfying their real human needs"(p. 46).

To penalize and/or restrict Accolade's use of Genesis consoles would be to impose governmental constraint on the actualization of human potential in production of goods and services. In summary, the court should follow Locke in a judgment that is protective of the rights of property ownership. The

court, however, should be mindful that these rights are transferable from a first owner to a secondary owner; in this case, the rights of property ownership with respect to Genesis consoles are shared by Sega and buyers of these consoles, Accolade for instance. Additionally, the court should recognize the creative and economically beneficent consequences of reverse engineering. These thoughts should preoccupy the court as it weighs the following key questions: (1) Did Accolade really steal Sega's property? and (2) Did Accolade go too far in trying to discover the underlying source code of Sega's programs? Question One This paper feels that Accolade's action does not amount to stealing. In order to perform reverse engineering on a Genesis console, Accolade had first to obtain a console.

Accolade obtained a Genesis console legitimately. It bought one. Thus, Accolade became a legal owner of a Genesis console, obtaining both equipment and a bundle of rights over it. Accolade was free to dismantle, reconfigure, or preserve this console, and it was entitled to the insight it obtained from any of these actions.

Sega did not sell the Genesis consoles under a clause that retained for it ownership of the mechanism that mediates the console's use of game programs; Sega did not restrict purchaser's use of the console. Therefore, Accolade's reverse engineering on Genesis did not violate any sale agreement. Question Two This paper approaches the subject question from the observation that human curiosity is a natural right, and is subject to legal restriction in only limited situations, usually ones involving threat of injury, destruction, or gross violation of bodily privacy. No law, as far as this paper knows, restricts the curiosity of an owner towards an object such as a

vehicle, a toy, or electronic equipment. If an owner is intrigued by thoughts of how his or her device works, he or she is within natural rights in trying to find answers.

Moreover, this curiosity can, potentially, lead to the development of new knowledge and new products. In the logic of these reflections, Accolade did not overstep limits in action, which uncovered the source code of Sega's programs. Conclusion At the end of the discourse, which appears in its previous sections, this paper comes down against a negative assessment of Accolade's action in discovering data that improves its position in the computer game market. In this view, this paper feels that Sega's move should not be to invoke the law, that is government to protect its market position: Sega should follow the creativity example of Accolade, and set to work to discover means to provide fail safe protection for the codes it installs in its computer equipment. This approach would be in line with free market principles, and in it Sega would be better able to extend its ownership of its equipment products.