Second Writing Assignment
ENGR/PHIL 482, Spring 2005

William Genovese, a 27-year-old Connecticut man, is facing felony economic espionage charges for selling a 200 megabyte portion of Microsoft’s source code for Windows 2000. The code was, according to Genovese, widely available on the net, and he jokingly said on his website, illmob.org, that he would sell it for $20. Since the law, which has penalties of up to ten years in prison, requires that money must be exchanged in order for espionage to be illegal, Microsoft hired an investigator to buy a copy of the code from Genovese. FBI agents then arrested Genovese, who is now free on a $50,000 signature bond. Genovese, whose handle is “illwill,” already has a conviction for intruding into private users’ computers in 2000 and spying on their keystrokes, for which he was sentenced to two years of probation. There are a number of issues in this case.

Part One (20%): Was the code a “trade secret”?

A trade secret is information which gives a firm an advantage over competitors and is neither copyrighted nor patented, but protected because the firm keeps the information private. By some accounts, once information becomes publicly available, it can, by definition, no longer be a trade secret. Some have questioned whether information can be a trade secret when it is globally available on the Internet. According to the literature on this case, however, the courts are still wrestling with the issues (conceptual and application issues in our terminology) of how to define “trade secret” and when something is a trade secret. Furthermore, some apparently believe the issue of whether the information could be considered a trade secret will be a major issue in the case.

What are some arguments for and against the claim that the source code sold by Mr. Genovese was a trade secret? What is your opinion and why?

Part Two (60 %): From a utilitarian perspective, was Mr. Genovese’s action morally justifiable?

On the one hand, Microsoft already makes parts of its source code available to about 3000 entities, including Texas A&M. This suggests that Microsoft believes that the more eyes it has on its code looking for bugs, the more fixes will occur. Furthermore, those in the Opensource movement believe that, in the interests of the public good (utility), all source codes should be available to the public.

On the other hand, access to the code may allow hackers to break into computers that use Windows software and to write viruses and other “bugs” that exploit weaknesses in Windows software. A large portion of the world’s computers could be compromised by the leak. Furthermore, Microsoft may have wanted to pressure customers to dump the Windows 2000, parts of whose source code was sold, in favor of XP. Still further, one can argue that the incentive to be creative is increased by economic rewards, and these are best insured by protecting the property of innovators.
These arguments are given as examples. Although you may use these arguments, you can probably think of other (possibly better) arguments. Some of the arguments may be act-utilitarian arguments and some may be rule-utilitarian arguments.

Your assignment in this part of the essay is to give an act utilitarian argument for the conclusion that Mr. Genovese’s action was (or was not) morally justifiable (30%), and a rule utilitarian argument for the conclusion that Mr. Genovese’s action was (or was not) morally justifiable (30%). Remember that to give a utilitarian argument of any type, you must give arguments for and against and conclude that the arguments on one side are stronger than arguments on the other side.

20% of the grade will be allotted to writing. This includes grammar, spelling, use of complete sentences, clarity of explanation, good logic and argumentation, etc.

Here are some links that you might find useful:

http://money.cnn.com/2004/02/17/technology/msft_code/?cnn=yes (underscore between msft and code)
http://www.infoworld.com/article/04/02/12/HNmicroleak_1.html (underscore between HNmicroleak and 1)

The essay should be no more than four double-spaced typewritten pages, and it is due at the recitation section on Friday, March 11. Before you give the essay to your TA, submit it to turnitin.com.

See http://itsinfo.tamu.edu/turnitin/students.htm for details on how to set up your turnitin.com account. You will need to create an account before your paper will be accepted by the system. After creating an account, use the following ID and password to submit your paper:

ID: 1178752
Password: 482ethics

A more detailed guide can be found at http://turnitin.com/static/training_support/tii_student_guide.pdf. Note that there are spacers between “training” and “support,” “tii” and “student,” and “student” and “guide.” This part of the URL reads: training_support/tii_student_guide.pdf.