# Chapter 5: With Great Privilege Comes Great Responsibility

## Introduction

Every person in this world, by virtue of simply having the status of being who he is, has certain privileges and thereby, responsibilities. Despite Simon & Garfunkel's popular lyric, no man is an island in the contemporary world. No matter where you go, no matter how off-the-grid you are, your actions and behaviors have an impact on others. Not only do all of us start off as helpless infants dependent upon others for our survival, but most of us continue on as full participants in our society, both taking and giving from others and our environment.

In a globalized world, even those who attempt to live independently have an impact outside of themselves on natural resources and the environment, which in turn plays a part in the global environment. Some theories go even further. For instance, the Gaia Theory "posits that the organic and inorganic components of Planet Earth have evolved together as a single living, self-regulating system. It suggests that this living system has automatically controlled global temperature, atmospheric content, ocean salinity, and other factors, that maintains its own habitability.1" Simply being a human surviving means that we are using resources. This resource use necessarily affects others and thereby brings about the question of responsibility of this use vis a vis others affected.

The more we gain from our position in the world, the stronger and more complex our responsibilities become. We are first children, developing responsibilities to our parents based upon the fact that they brought us into this world and, hopefully, participated in our survival. We then go to school, learning from others and often taking advantage of an educational system. We come to have responsibilities to our teachers our classmates and our society who provided the education. As we reach the age of majority, we become civic participants, adults with all the rights and responsibilities of citizens. We can vote, voice our opinions, be protected by police officers and the military, but we must pay taxes, abide by laws and serve on juries. Those acquiring professions earn esteem, status and higher pay checks, but have corresponding duties to perform his profession responsibly.

As an economic, civic and human participant, we must balance many responsibilities: responsibilities to our families, our communities, our employers, the world at large. These responsibilities can be found in professional codes of conduct, employee handbooks, contracts, laws and ethical sensibilities. Sometimes these responsibilities

align and other times they conflict. The key is to be aware of your multitude responsibilities in order to find a harmonious balance.

# Professional Responsibilities

Professional responsibilities come from two major sources. The first being attached to the nature and conduct of the profession to which one is a part. For example the legal profession, the healthcare profession, or the teaching profession. The second attaching to the particular company or position in which one makes a living. For instance, the company policies, the contracts that one signs as part of his livelihood.

# Computing Profession

Although it is considered a fundamental right to be able to pursue a trade or profession, this right is balanced against the duty of the government to protect citizens from harm<sup>2</sup>. For this reason, many professions that have a great potential for harm, are regulated by the state by way of licensing. Practicing such a profession without a license typically is illegal and subject to punishment.

In addition to certain licensing requirements, there are various trade organizations, non-governmental organizations and professional groups that offer certifications. Having a particular endorsement or certification can increase the business of a particular company or professional. For example a business that has a Better Business Bureau approval is much more likely to be chosen over a business that does to have such an approval.

Both legal licensure and certification requirements often include abiding by a professional or business code of conduct. If one does not abide by such a code, then he or she is either removed from the group and/or their endorsement is withdrawn. In an economically competitive world, losing the respect of one's peers can lead to a decline in business.

Although most computing professions do not currently require legal licensure (sometimes licensure is needed), many computing professionals abide by codes of conduct adopted by professional groups such as the Association for Computing Machinery (ACM), Institute of Electrical and Electronics Engineers (IEEE), the Association of Information Technology, Australian Computer Society, and the Computing Society of India<sup>3</sup>. Although this is by no means an exhaustive list, each of these professional groups is respected and requires its members to abide by their code of ethical conduct. These codes generally require members to be responsible in their conduct towards humanity, the companies for whom they work and their peers.

# Professional Engineer in Software

In 2013, the National Society of Professional Engineers (NSPE) in collaboration with IEEE, administered the first professional engineer license exam in software engineering<sup>4</sup>. More and more governments are requiring that projects be singed off on by a professional engineer. A licenses professional engineer must abide by the NSPE Code of Ethics for Engineers<sup>4</sup>.

# Professionalism in the Workplace

In the age of low-income startups, CEOs sporting zip hoodies and lifestyle workplaces, professional conduct may be hard to discern, but make no mistake professionalism in the workplace has not gone by the wayside. Some workplaces may have a casual culture—use of first names, informal emails and casual attire, a buddy culture—encouraging jokes and games at work and office happy hours, or a traditional culture—business dress, strict hierarchies and official processes., but certain professional boundaries persist no matter the culture.

#### Get The Job Done

No matter whether you work for a company or for yourself, someone hired you to do a specific task or set of tasks. In exchange for the work, you are gaining various benefits —money, prestige, a purpose, experience, confidence, perks. It is important that you meet your end of the bargain.

In order to do the job you were hired to do, it is imperative that you understand your boss/client's expectations: when the task needs to be complete, what specs are non-negotiable/preferable, how often progress should be communicated, what level of expertise the one who hired you has about the task. When a boss or a client hires you for a task, he/she is trying to delegate this to you either because they don't know how to do the task or they do not have the time. If you deliver a product late, or with specs that don't meet his/her expectations then it feels to them as though you haven't done the job because they still have to deal with it. It is best to figure out these expectations in advance. Getting the job done right the first time is professional. Communicating about any impediments to getting the job done well in advance is also professional.

## Respectful Communication

Although some expectations are laid out in the hiring or project documents, not all of them will be. Furthermore, some tasks will require interaction with others. Thus it is important to make sure you can communicate professionally to get the job done.

When communicating with others, make eye contact and watch your body language. Making eye contact shows confidence and honesty. An open body posture, including leaning in while speaking and open arms encourages communication. Crossing your arms and leaning back indicates a closed mind and disinterest in the other speaker.

Chose your words carefully. Words are not neutral. The words you use can have a charge to them. By choosing your words carefully you can better control how your message will be heard. Consider the following pairs of words:

- Assertive vs. Agressive
- · Pushy vs. Determined
- Strong Headed vs. Controlling
- · Cautious vs. Scared

When emailing or instant messaging, don't use all capital letters. Capital letters equates to screaming at someone. Copy the appropriate persons. If someone is part of a project team make sure to copy them on communications as this is inclusive. Conversely, don't flood other people's in boxes by replying all when you only need to reply to one person.

At a busy workplace it is important to make sure you are using your time well, but even more importantly that you use other people's time well. Any time you schedule a meeting, communicate with a co-worker or have a task that must be reviewed or completed in sequence, you are using other people's time. Since you don't know the workload or day-to-day schedule of your co-workers it is important to be respectful of their time and to allow them as much freedom to manage their own time as possible. If a communication can happen in a manner that is more efficient, chose that manner, if a meeting is not time sensitive make that known and if you are not going to be able to review something that everyone must review make sure you are not scheduled to review it early on.

Respecting time also involves making sure that you engage in conversations when the person is ready to have the conversation. If someone simply does not have the time or mental space to have the conversation you want to have it will negatively impact the conversation and its effectiveness.

# Awareness and Responsiveness

A workplace is primarily there for working. Although there is nothing wrong with making friends at work and having fun while working, it is important to make sure that one is aware of his/her intentions and how they are viewed by others. The workplace is not a bar, a club, a locker room or a game.

What was once a nice place to work can too easily become an uncomfortable place to work. Some conduct to be aware of that might cross over into making others uncomfortable include: dressing provocatively, making sexually charged comments, making derogatory comments, engaging in cliquish behavior or bringing politics to work. Some of these types of behaviors can result in harassment or hostile work environment claims, but even those that don't can still make your co-workers uncomfortable and make you seem unprofessional. Make sure you are paying attention to those around you—how they act and how you feel and how they respond when you act.

# **Employee Obligations**

In addition to the basic rules of conduct above, always make sure that you are reading all the policies, procedures and expectations set out by your specific workplace. In addition to such written policies, your company may have certain habits and rules. Make sure that you know of such unwritten rules and that you follow them—including such basic rules as cleaning out the fridge at the end of the week or making a new pot off coffee when you've finished it. Pay attention to and ask about any style guidelines for presentations or code; any policies regarding code review and merging code; and any dos and don'ts already established.

# Legal Responsibilities

In addition to professional responsibilities that one might have in a particular employment position or profession, all of us must abide by the laws of the jurisdiction in which we find ourselves. There are countless laws that all of us must follow, but computing professionals are more likely to encounter certain laws. As such you should be generally aware of them. The laws mentioned in this section are by no means comprehensive and this section is not legal advice. This is merely a very brief overview of some laws that this author thought worth mentioning.

#### Criminal Code

The laws found in the criminal code deal with acts that constitute crimes. Although there are numerous crimes that could be committed with the aid of computers, some of the more common computer crimes include: hacking, identity theft, fraud, piracy, cyber terrorism, online stalking, and the dissemination of child pornography<sup>5</sup>. In addition to the general criminal laws, there are a few laws dealing specifically with computers including: The Computer Fraud Crime and Abuse Act, the Electronic Communications

Privacy Act (ECPA), the Identity Theft Enforcement and Restitution Act of 2008 (ITERA), and certain provisions of the USA PATRIOT Act.

#### Civil Laws

Civil laws encompass a wide array of topics, some of which have already been alluded to such as licensing requirements and other employment laws. One should always consult a competent lawyer if he/she has question regarding his legal obligations.

#### General laws

#### Consumer Protection

The Federal Trade Commission Act was passed in 1914 creating the Federal Trade Commission. The FTC was initially created to bust up trusts and facilitate fair competition<sup>6</sup>. The FTC is the major consumer protection division of the U.S. government, charged with protecting consumers from unfair trade or business practices. The FTC is involved in regulating advertising, marketing, fair credit reporting, and recently has been involved with determining what constitutes reasonable security in computing systems.

Any business should be aware of consumer protection laws to ensure that they are being fair in their advertising and dealings with customers. Any business who electronically stores and or transmits personally identifiable information or private information should be aware of the FTCs recent regulation of reasonable security as it relates to electronically stored or transmitted information.

## Privacy Laws

One of the most difficult areas to keep up with, both legally and practically, is internet privacy and data security. Laws and regulations related to internet privacy, use of personal data and keeping data secure existed in a patchwork landscape that is constantly evolving to keep up with changes in hacking, new exploitations and new technologies. Different regulations and practices exist from place to place. Laws regulations and industry best practices are developed internationally, nationally and locally. It would be impossible to list all such privacy rules here. As such, I have listed just a handful of major laws in the table below. You should always consult with the laws in the area(s) in which you are located and/or do business.

Summary of Privacy Laws <sup>7</sup>		
Name	When Effective	Where it Applies
The General Data Protection Regulation (GDPR)	May 25, 2018	To anyone located in the EU or the EU economic areas and anyone who process data of EU residents.
The Cyber Security Law; ] Regulation on the Protection of Children's Personal Information Online	May 1, 2017	businesses in China or collecting Data from Chinese Visitors
Information Technology Act 2010; Information Technology Rules of 2011	2011	Business and persons located in India
General Data Proteciton Law	August 15, 2020	businesses in Brazil and those who collect data from Brazilian citizens or residents
Federal Law on Protection of Personal Data Held by Private Parties		Mexican law doesn't restrict it (all persons collecting personal data)
Data Protection Act		Data collected in Russia
The California Consumer Privacy Act of 2018	2020	Those located in California and those who have collected data from at least one person located in CA

#### Intellectual Property Laws

Intellectual Property (IP) law deals with the rights of ownership of intellectual property, how to register intellectual property and the enforcement of protections against misuse of such property. Intellectual property includes: patents, trademarks, trade names, trade dress, copyrights, and trade secrets. The unauthorized use of intellectual property can lead to law suits and hefty fines.

The holder of a patent may exclude others from making, manufacturing, using and importing the same item that is the subject of the patent<sup>8</sup>. In the United States, one obtains such an exclusionary right by way of filing and receiving a patent from the United States Patent and Trademark Office. This exclusive right lasts for 20 years measured from the date the patent was filed<sup>7</sup>. Patents may be issued for utility (inventions of new processes, manufacture, composition or improvements to existing such invention), design (ornamental) or plant (discovery or new asexual reproducible

plants)<sup>7</sup>. There are international patents that may be issued as well. Although certain programs or software processes could be patentable and at times are (Disney patent much of its CGI work in both Tangled and Brave<sup>9</sup>), patents are not often sought by computing professionals due to the fast-paced nature of the technology industry. The exclusionary right offered by patents is not best taken advantage of in sectors where a new invention becomes obsolete after 2-5 years. However one should always check with the policies of a particular company and based upon how unique the invention is and how widely applicable.

A Trademark is an identifiable mark that can be attached to a product or service that reliably tells a consumer where that good or service came from<sup>8</sup>. Trademarks are useful in giving confidence to consumers choosing from a variety of products. The apple icon would be an example of a trademark. The general concept of a trademark has been extended to include trade names, such as the iPhone, iPod, iPad names and trade dress, such as the unique packaging on apple products. Trademarks can be registered federally and locally in states.

A copyright protects the works of original authorship<sup>8</sup>. Almost any intellectual idea fixed in a tangible medium can be copyrighted. A copyright attaches the moment such a work is written whether published or not, registered or not. To the extent that computer code is original, it could be copyrighted.

Trade Secrets generally refer to anything that a company possess that is valuable, be it customer lists, procedures, secret recipes, etc. that give it an advantage over competitors. Trade Secrets are kept secret and enforced based upon how well a company does at protecting the secret from public dissemination. Such protection usually involves confidentiality agreements and need-to-know type policies.

All of the intellectual property rights must be enforced by the holder. The USPTO and state equivalents don't typically involve themselves in such policing. However, various statutes attach hefty fines to misappropriation of such intellectual property rights. For example a registered copyright that is violated can bring statutory damages of up to \$10,000 without even proving that the violation hurt the holder of the copyright<sup>10</sup>.

One way to avoid litigation and claims of misappropriation is to seek or be granted a license to use someone else's IP. If this sounds familiar, it should. Software is rife with open source licenses that allow anyone to use the software provided that they give credit and meet the particular terms and conditions of that particular open source licensing scheme. These are often referred to as "Copy left." Such schemes, such as the MIT open source license and the various GNU licenses, vary in terms of how they must be credited and what rights are preserved to the creator<sup>11</sup>.

Many of the professional codes discussed earlier in this chapter call out respect of intellectual property. Most companies have policies regarding intellectual property created by their employees and policies regarding use of other companies or persons intellectual property. Before you borrow work from another make sure you understand what your basis for using the property is (either permission or an exemption). The world of computing operates in a unique space in that it has both extreme enforcement as well as a general open use environment. Some companies, such as Disney intentionally release their new coding innovations after a year (after they have gained the advantage over their competition) or two so that new programmers will be familiar with them<sup>9</sup>. Some companies protect their intellectual property like life itself and finally others generally allow anyone to use their software right away (the open source community).

# **ADA Compliance**

The Americans with Disabilities Act was enacted by congress in 1990 to protect persons with disabilities against discrimination. It applies to government actors and to employers with 15 or more employers as well as to public accommodations. Public accommodations are defined in the act as follows:

- Places of Lodging (e.g., inns, hotels, motels) (except for owner-occupied establishments renting fewer than six rooms);
- Establishments serving food or drink (e.g., restaurants and bars);
- Places of exhibition or entertainment (e.g., motion picture houses, theaters, concert halls, stadiums);
- Places of public gathering (e.g., auditoriums, convention centers, lecture halls);
- Sales or rental establishments (e.g., bakeries, grocery stores, hardware stores, shopping centers);
- Service establishments (e.g., laundromats, dry cleaners, banks, barbershops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals);
- Public transportation terminals, depots, or stations (not including facilities relating to air transportation);
- Places of public display or collection (e.g., museums, libraries, galleries);
- Places of recreation (e.g., parks, zoos, amusement parks);
- Places of education (e.g., nursery schools, elementary, secondary, undergraduate, or postgraduate private schools);
- Social service center establishments (e.g., day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies); and

 Places of exercise or recreation (e.g., gymnasiums, health spas, bowling alleys, golf courses).<sup>12</sup>

According to the Department of Justice, the agency that enforces the ADA, websites can be public accommodations. Furthermore the ADA has provided guidelines for making a website accessible. However, it is important to note that this is an evolving issues as their currently are no guidelines on what may or may not make a website a public accommodation.<sup>12</sup>

#### **Tort Law**

Tort Law law generally deals with remedying personal injuries be it bodily, emotionally or economically. Tort law is based in common law, which means most of the legal obligations coming out of tort law are caselaw based rather than statutory. The most common tort is negligence. One can only be found guilty of negligence if he or she had a duty to another and performed that duty inadequately.

These duties come from numerous sources. Generally, everyone has a duty to perform the activities he does reasonably carefully and with an eye as to not injuring others. Heightened duties can attach based upon contractual agreements or activities that one engaged in. Certain activities, including those that are considered abnormally dangerous attach a heightened duty of care. Fiduciary relationships (one in which there is a trusted close relationship between individuals) require a higher duty of care. Common fiduciary relationships include financial advisor/advisee, agent/principal, attorney/client, trustee/beneficiary, guardian/ward, corporate officer/stockholders and other confidential advisors.

Since computers are used in all sectors, in performing one's job it is important to be aware of any fiduciary responsibilities one may have and any heightened duties of care due to the inherently dangerous nature of the tasks on is performing.

#### Contract Law

As alluded to earlier, individuals have a right to enter into contracts. However, once you enter into a contract, you then have obligations and responsibilities. Not only must you perform the tasks agreed upon, but there are certain obligations that are assumed under contract law. For example it is assumed that you will engage good faith efforts to perform the tasks agreed upon and that you would cure any breaches if able to do so. If another is in a position to breach a contract you are generally obligated to try to seek the same services elsewhere and mitigate your damages.

One of the most common features of a contract is the shifting or assigning of responsibilities from one party to another. For example, a retail company may hire

(Through a contract) a payment processing company. In this contract the retail company is likely to shift its responsibilities for PCI compliance to the credit card processor.

Contract law is important in computing because contracts usually form the main source of duties and obligations that a software company has, regardless of what sector they operate in. In general, a software company contracts with a customer to create a software project. The functional and non-functional requirements flushed out by the company and the customer provide a series of expectations regarding what the software will and will not do as well as who is responsible for ensuring certain obligations are met. Some expectations are assumed based upon the context. The software requirement may not state that passwords need to be encrypted, but this would be assumed based upon industry norms.

# Industry specific requirements

In addition to the general laws mentioned above. There are numerous industries that have additional regulations, which must be complied with. There are far too many laws that apply to list them all here, but some sectors that have numerous regulations include:

- Healthcare (The Healthcare Insurance and Portability and Accessibility Act—HIPAA, Health Information Technology for Economic and Clinical Health Act—HITECH, Federal Drug Administration Act—FDA requirements, Centers for Medicare & Medicaid)
- Financial/Banking Industry (This includes Securities Exchange Act requirements, Fair Credit Reporting Acts, Red Flag Rules, Sarbanes Oxley and the Gramm-Leach-Bliley Act, Payment Card Industry Data Security Standard—PCI DSS just to name just a few in this sector).
- Government Contractors (Federal Acquisition Regulations (FAR); Agency Supplemental Regulations; Defense Acquisition Reg<sup>13</sup>)
- Government Sectors (Rules specific to each sector including also being state actors which means the Constitution applies in terms of not infringing on individuals rights)
- International Companies (Treaties and Conventions on Intellectual Property; Human Rights Laws; European Union Privacy Laws, etc.)

In your job you may interact with numerous laws without even knowing it. Since corporations and businesses operate at the behest of the state, they typically are not interested in violating the law. Most businesses you work for will have guidelines and policies that already align with their legal requirements. That being said as you rise to

management and are tasked with insuring that such policies are in alignment its good to have at least a general understanding of the legal landscape. If tasked with drafting new policies, it is a good idea to consult with either the company's attorney or an independent law firm.

# Societal Responsibilities

As a citizen not only of your particular State, but the world at large you have certain implicit responsibilities. Which responsibilities you consider to be important and which you weigh in your daily decisions, largely depends upon your own culture, system of values and ethical outlook.

At times in your career you will be faced with decisions that do not involve illegality or violation of your professional obligations, but that none-the-less weigh on you. As an educated individual you are in a small elite class that privileges you above most of the world. You have access to a computer, to knowledge, to basic necessities that others might not. Furthermore you are uniquely situated to understand the benefits and dangers of the computing age. This positioning gives you he opportunity to aid humanity by making the most out of the limited resources you were given, and by alerting others of dangers to which they may be completely unaware.

Some of the types of choices you may be faced with involve balancing of personal or local interest against larger interests such as:

- Maximizing Profit
- Environmental Pollution
- Providing a working wage
- Expediting Projects
- Sharing credit
- Personal Advancement
- Bending Rules
- Keeping in Budget
- Making Claims about Products or Services
- Including a Feature that makes the product more accessible

# Balancing Interests

With so many responsibilities it can feel like an overwhelming pushing and pulling on your mind and goodwill. Luckily, most of the time such responsibilities align and do not create a conflict, but when there is a genuine conflict it is important to have a process for balancing interests and deciding upon a course of action that is reasonable and ethical.

The law provides some guidelines when it comes to balancing obligations. In the legal system certain laws control over other ones. For example, federal law often preempts state law and state law preempts local law unless that local law creates a heightened right rather than a lesser one. Similarly the Constitution reigns supreme above them all. Case law is rife with examples of how to resolve conflicts of legal obligations. If you find yourself faced with a dilemma between two laws, make sure to see which preempts and if needed consult with an attorney before acting.

Contract law generally allows actors to shift and clarify responsibilities and share them as they see fit. For example, a recreation facility may ask you to sign a waiver of liability when you engage in an inherently dangerous sport. This allows you and the facility to specify that the facility would not be responsible for injury between you and other participants. There are limits on such waivers that are based upon reasonableness. Similarly, companies usually specify who is ultimately responsible for complying with certain requirements. Contracts allow a lot of lee way here, but there are certain responsibilities that cannot be contracted around.

For responsibilities that may be shared or offset, it is a good idea to negotiate those in advance so as to not have an impossible conflict in the future. Many negotiation techniques help to split risks, rights and responsibilities in a manner that keeps the same bottom line, but helps create peace of mind for those involved by shifting items to the party more able to handle the burden. Some laws even contemplate offsetting responsibilities. For example mining laws today allow companies to mine, but require them to clean up the site afterwards so as to not leave a hazardous environment for those in the surrounding areas.

Many areas currently operate in an evolving landscape. Characteristics that signify that there may be change up ahead are ones that have become forefront in society. There may be no regulation as of yet, but the public is starting to see regulation as necessary. For example, social media starting in and around 2017 (after the 2016 election), tech companies that have investments in every industry that are starting to seem too powerful (like the robber barons of old), and the threat of global warming. Any field or

sector that is evolving is one in which the social responsibilities may reign above any other legal or professional ones.

Ultimately, one of the main reasons to have a solid ethical system of values is to help you balance various responsibilities when there are no other guidelines telling you which responsibility is more important to meet.

# Conclusion

Individuals in our society must balance innumerable obligations when making decisions. These obligations include familial, societal, legal and professional responsibilities. Often such responsibilities are aligned, but when they are not it is important to have a system in place for determining what the appropriate course of action is.

Being aware of the myriad responsibilities one has is a huge step towards ensuring the one meets his/her obligations. It is much easier to run afoul of a responsibility when one does not know or understand the obligation. A responsible professional knows his/her obligations to his profession, workplace and society at large.

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