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To: Julie L. Sigall
Associate Register for Policy & International Affairs

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From: Matthew Vaughan

Comment:

Everything I know about this history of copyright says that it was considered a necessary evil to ENCOURAGE the publication, and hence availability, of new ideas by giving authors the incentive of a LIMITED time of exclusive profit as a REWARD for publishing. It was not intended to give authors perpetual rights to secret away or have exclusive control over their creations. The limited exclusivity was only so that they would be encouraged to publish, not so they could hide their works away or prevent others from using their ideas. I think these feelings were very wise in their time, and are equally applicable - and important - today.

Over the years (mainly starting in the 1970s), copyright has been supplanted by greedy publishers, to the point where today, I almost think we'd be better off with no copyright at all than with our current laws. (Same with patents. Trademarks, at least, still seem fairly sane in the U.S., though in Europe I would say trademark law is totally out of control.)

(You might notice that the dot-com boom occurred in an environment in which new ideas flowed with little regard for intellectual property. And the dot-com bust occurred just as companies started to exert their control over patents and copyrights, so that ideas no longer flowed freely, startups needed big legal funding to fend off lawsuits, and everyone started to operate in an environment tinged with fear of infringement - or went bankrupt fending off lawsuits or paying damages. Some companies now operate solely by legal threats using both copyrights and patents as their weapons, often creating no new ideas whatsoever. Is this how we want things to be? Because it is still suppressing innovation and progress, and causing financial damage today. Freedom to copy ideas may result in "infringement" of intellectual "property", but it also results in flowering creativity and massive progress. Per our country's founders, copyright and patent laws should ONLY be used in the service of these greater ends, which are clearly more important than individual profit! Right now, copyright and patent law are doing the opposite: suppressing the goals they were originally created to promote.)

I would encourage reigning in our out-of-control copyright and patent laws generally, and any change that makes access to "orphan" works easier would be a welcome move in the right direction.

In general, I'd prefer copyright to return to a very limited duration, say 25 years maximum from creation date of the work. Possible extensions (to perhaps 50 years maximum) should be tied to the requirement that the work be made available to the public in a reasonable manner, or, better yet, require some annual payment by the copyright holder to maintain their extended copyright. Obviously an "absent" author of an "orphan" work would not be paying such extended payments nor would they be actively publishing their work, hence their work would automatically become public domain after the initial 25 years. (There would be no need for special provisions or exceptions addressing "orphan" works in this scenario.)

I also like the idea that anyone from the public could "buy" an extended-copyright work into the public domain by paying to the author, via the copyright office, an amount equal to the work's "value" as declared by the author. The author, in turn would pay a percentage of that self-assessed value annually to the copyright office

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to maintain the extended copyright. A higher declared value would be harder to "buy out", but would require higher annual payments. The author gets to decide based on the balance between these considerations what works best for them. Both authors and the public could benefit from such an arrangement.

In addition, I find the whole idea of banning technologies that can potentially be used to copy abhorrent. Are we also going to ban pen and paper, cameras, photocopy machines, tape recorders, personal computers, VCRs, and every other potentially infringing technology? How about the human eye, ear and brain? The whole direction is nonsensical, and disgusting. Is the Copyright office not there to serve the people of the United States of America, and the country's best interests overall? I think it has forgotten that. (So too has the Patent and Trademark Office.)