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

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From: Justin Kerk

Comment:

As an enthusiast and collector of old computer and video game software, I would urge the

Copyright Office to make special consideration of the unique nature of computer software

when formulating policy on orphan works. The software and game industry is very fast-paced,

so software tends to have very short commercial lifespans; practically nothing from, say, 20

years ago is still being sold. Much of that software was copyrighted to individuals who have

moved on to other industries or short-lived start-ups that are now long dissolved and often

have no obvious single person to obtain permission from.

The situation is complicated by the storage media used - old computer disks and tapes

degrade much more rapidly than, say, books. Many are already unreadable even twenty years

later; it's very unlikely most of them would survive the remaining 75 years of copyright

protection, to say nothing of the mechanical disk drives needed to read them.

Many games in particular had little commercial success or were produced in limited numbers

and are now difficult or impossible to find working copies of. I have personally donated

money to groups that try to hunt down and make backup copies of these games before they

disappear entirely. I remember the story of one circuit board for a rare arcade game that

was found in someone's garage, where cats had been using it as a litter box; fortunately the

game code was still able to be extracted. While nobly intentioned, the act of copying these

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old games is still technically illegal under current copyright law because no computer or

video game is old enough to have passed into the public domain. Since many of the old

companies have long since ceased to exist and cannot be found, loosening restrictions on

orphaned works would greatly assist in the preservation of games and other old software.