

Short Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201

Item 1. Commenter Information

This is a comment by Michael Horton.

Item 2. Proposed Class Addressed

Proposed Class 23: Abandoned software – video games requiring server communication.

Item 3. Statement Regarding Proposed Exemption

I support a copyright exemption for abandoned video games requiring server communication for several reasons. First, it allows consumers to keep playing games that they have purchased without resorting to piracy or using hacks that may install malware into their gaming systems.

Second, it allows for greater preservation of video games by individuals and organizations alike. As games become more and more dependent on servers for Digital Rights Management (DRM) and multiplayer functionality, the more complex and troublesome preservation becomes. Multiplayer, for example, is practically impossible to preserve in modern games because many games do not allow non-developers to host their own servers, even on the PC. In several cases, the multiplayer component of a game is crucial to progression in the single player component. For example, the Xbox 360 game *Chromehounds* is essentially unplayable without the multiplayer. The game focuses on the customization of giant robots; a great many parts for customization are unlocked by interacting with other players online in a persistent universe. Without a way to create a new *Chromehounds* server, no one will ever be able to experience the game as it was designed. This reflects the growing reality of modern gaming: if the servers are not online, the game will not work.

Games that require online activation/recurring checks are also dependent on servers being active. Once they are abandoned, it is impossible to install or run them without downloading third-party hacks to bypass the activation requirements. Without a copyright exemption for bypassing server checks and activation, game preservation will largely be dominated by software pirates and individual users, because no reputable organization would risk running afoul of the law or being sued for copyright infringement/violations. Since game publishers generally do not care about game preservation except when it can be done cheaply and profitably, obtaining legal permission and technical support for most titles will likely be very difficult, if not impossible. A copyright exemption for abandoned games grants individuals and organizations the peace of mind to proceed with a preservation project and frees up resources (particularly time and money) that would be better utilized deciphering and discovering ways to preserve the functionality and data of these highly complex pieces of software.

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