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 PUBLIC SUBMISSION

## Class\_08\_InitialComments\_David

Posted by the **U.S. Copyright Office** on Dec 19, 2017

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Hello!

I have been programming for over three decades now. Video games are actually what got me into programming, and I am writing on behalf of The MADE (Museum of Art and Digital Entertainment)'s position to extend their DMCA exemption to network based/online software. Already, they have demonstrated resurrecting one of the first Massively Multiplayer Online software titles Habitat (source code available publicly here: <https://github.com/Museum-of-Art-and-Digital-Entertainment/habitat> ) which had not been in a usable state since QuantumLink (later known as AOL) discontinued service the 1990s.

By extending the DMCA exemption to similar titles, it would facilitate similar preservation efforts.

It is my understanding that the US Copyright Office, currently erroneously takes the position that by extending the exemption, it might facilitate more piracy. This is not the case. Indeed, the reality is that as every piece of software is written differently, every attempt at preservation must itself be different, so there is no categorical "master key" to unlock all online software titles for preservation. By extending the DMCA Exemption, in effect you will be leaving the door open for more archivists to toil, but it will not meaningfully change the threat model of pirates, who have always operated with a disregard for copyright law anyway.

For example, another preservation effort was done among the Phantasy Star Online community to re-implement the network server portions so that individuals could continue playing it, after SEGA had taken such services offline.

Here is the fan site: <https://ephinea.pioneer2.net>

Here is a codebase to facilitate such after end-of-commercially-supported-life preservation:  
<https://github.com/Solybum/Aselia>

In other words, by extending the DMCA exemption to online software, you don't facilitate piracy, moreover, you don't even automatically preserve the games in a playable state. There is still a significant amount of development effort that is required in order to re-implement such things, often requiring forms of reverse engineering, partnering with the original developers (if they are alive and amenable to such things, as some thankfully were in the NeoHabitat restoration effort) and so on.

By extending the DMCA exemption to online titles, you leave the door open not to pirates, who will disregard your policies regardless, but to future generations to be able to interact and understand prior art in a form that is closer to how it may have been presented, even long after maintaining the original server software may have been considered no longer commercially viable.

In well funded businesses, sometimes the form of "Software Escrow" takes place so that large organizations can maintain working build infrastructure for business partners in the event that something catastrophic happens to the partner. One of my previous employers, NCC Group, offers such services to Fortune 500 companies. By extending the DMCA exemption to preserve online software to organizations such as The MADE, you will be ensuring that even without the sorts of clout and finances that Fortune 500 organizations have, some forms of art and games may be able to be preserved in the most maintainable way possible.

Thank you for your time and consideration. I hope that you will side with preservation organizations such as The MADE in your decision making process. As it is, they are currently underfunded a 501(c)3 non-profit reliant upon donations and grants and currently only open to the public three days a week. Even then, The MADE are one of only 17 organizations globally (list documented here:

[https://en.wikipedia.org/wiki/List\\_of\\_video\\_game\\_museums](https://en.wikipedia.org/wiki/List_of_video_game_museums) ) which are even attempting such museum work and of those I believe they are the only ones actively trying to extend their preservation efforts in manners such as demonstrated with NeoHabitat. Moreover, while they boast to having something around 5,300 physical copies of existing prior art aka video games, last I checked the list of published video games was closer to 90,000. Which is to say, even among some of the core organizations devoted to preserving this sort of art, they have at best, only managed to preserve approximately 1/16th of extant examples, and that is only assuming they continue to receive enough funding to keep their doors open and maintain their collection.

By extending the DMCA Exemption, you will not guarantee that preservation efforts will be perfect, but you will at least not inhibit such efforts unduly. I hope I have presented my perspective in a manner that is easy to understand. Feel free to reach out if you have any questions and I will do my best to help elucidate my position further.

Kind regards,

Christian Charles David

**Comment ID**

COLC-2017-0007-0116

**Tracking Number**

1k1-903y-kuit

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