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Comment on Orphan Works:

There is another class of orphan works that was not mentioned in the Notice of Inquiry as posted at:

<http://www.copyright.gov/fedreg/2005/70fr3739.html>

there exists a whole class of machine readable copyrighted works where the work and the machine needed to read the work are no longer sold. The one I know about are old computer programs and video games.

There is an analogy that was mentioned in the Notice of Inquiry, old movies. There are people who have created computer programs to emulate old hardware on current hardware just to use the old copyright works. Just as Hollywood would never release a 50 year old movie to theaters, video game developers would not release a new game for the Commodore 64, a computer that has not been sold in fifteen years. Hollywood might reuse the script and film it in color in wide screen, current standards, but what happens to the original in Black and White? What happens to programs that can only be used on modern hardware by emulating the old hardware?

The computer/video game industry has undergone huge changes over the last thirty years. It is often unclear who owns the copyright on a game written twenty years ago for the Commodore 64. There is no real market to fund the preservation or development on current hardware. The attitude of the times was make it and move on to the next project. The original source code has long since been destroyed, like all the unused film of a eighty year old movie has been destroyed.

It is the hope that the Copyright Office or Library of Congress can come up with a way of enthusiast of old machine readable entertainment to legally use it via emulation. How long after the hardware is no longer made and the company that created the software ceased operations would it be fair to put the work in the public domain. 120 years for this class of orphan works seems unreasonable. The interest in these works would always be too small to support a commercial market. The technology has moved on and the experience is only of interest to people reliving a moment of their youth.

It is my opinion that when the original machines used to read the program is no longer sold the works should go in the public domain. At that time the market has spoken and the author of work can not be damaged by loss of sales of his work. There is no longer a market to support the reader. Computers are an unusual market that requires special handling of copyrighted works. The long copyrights lead to destruction of the history of the industry.

