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

Date: 03/16/2005  
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
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.