

FROM: Graham Mainwaring

Date: Thu, 24 Feb 2005 08:45:13 -0500

Comment:

Hi - I just wanted to mention an issue that may not have come to your attention. I'm sure this is not as critical or compelling as some of the other problems you are considering, but it's important to me.

I am currently 36 years old, which makes me a member of the so-called "Generation X." Like many of my generation, I wasted countless hours (and quarters) playing arcade video games such as Pac-Man, Asteroids, Centipede, and so forth. Through the 1980s and early 90s, there were thousands of different games produced. Many of these have now become quite scarce, particularly the early classics that never achieved "blockbuster" success.

Today's desktop computers are on the order of a thousand times faster than the microprocessors used in the classic games. Because of this, it is now possible for software to adequately perform tasks that previously required hardware. Emulation software has been written that allows you to play the game, even if you can't find an actual physical example of the original game.

Of course, the games are all copyrighted. Back when they were popular, knock-offs were a real problem and game developers vigorously protected their copyright interests. Occasionally, a crooked operator would be prosecuted for making illegal copies. But most of the time, we put in our quarters, played our games, and everyone was happy.

Today, many of the original game developers are out of business, or have been bought and sold so many times that it's hard to know who now owns the copyright. A few of the games still have a clear copyright owner, but in most cases, nobody really knows who owns it any more.

An underground network has developed on the Internet, similar to the networks that distribute music files. With sufficient persistence, anyone can get copies of these games. These copies originate from owners of the physical vintage games. In some cases, the last known surviving example of a game has been preserved for posterity by dumping its ROMs and distributing them on the Internet.

Two key questions arise from all of this:

1. In cases where it is impossible to find the current copyright owner, what should be done? The answer so far is to distribute the material on the Internet, but keep it hidden and underground in case legal problems arise. Needless to say, this is not a very acceptable solution.

2. In other cases, the copyright owner can be found, but takes the "dog in the manger" position: They have no intention of ever re-releasing the game, or otherwise making use of the copyrighted material or making it available; but at the same time, they refuse to license the game under any terms whatever.

I believe that a good solution to both problems would be to create a new type of fair use for inactive copyrights. If a copyrighted work has been "out of print" for more than, say, 10 years, non-commercial copying for personal use should be permitted.

Thanks for your attention,

-Graham