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To European Commission
Attn. mr. Hernández-Ros
Head of Unit DG INFSO E4, Information Market
ec-digital-libraries@cec.eu.int

Re: Online Consultation i2010 Digital Libraries

Amsterdam, 19 January 2006.

Dear mr. Hernández-Ros,

First, I would like to thank the Commission for giving me this opportunity to contribute, and for acknowledging the value of digital libraries.

I participated earlier in the Consultation on the Review of EU Legislation on Copyright and Related Rights¹, where some of the following was also discussed. I am the webmaster of a website² that tries to encourage the creation of so-called text adventures, a type of computer game that had its heyday in the 1980s. I am also a volunteer for Project Gutenberg³, the online literary archive whose goal is to distribute as much ebooks to as much people for as long as possible.

These two volunteer 'jobs' allow me to approach preservation through digitization and distribution from two opposite angles.

Example 1: when works die young

Back in the 1980s, text adventures were commercially produced and sold by the thousands; nowadays, a small band of amateur author-programmers continues the tradition.

As I wrote in my earlier reply, in order to capture the style and methodology of Dutch text adventures of the nineteen eighties, I started trying to collect the actual games of that era. My method was to buy games and play them myself, presuming my heavily degraded purchases could still be played on my equally degraded equipment, but also to ask the original authors to re-release their games using some freeware license, or even commercially.

Trying to convince former text adventure authors produced mixed results. On the one hand, I got the author of the very first Dutch text adventure to re-release this game: Ronald

¹

http://forum.europa.eu.int/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/legislation_copyright/collin_branko_enpdf/_EN_1.0_&a=d

² <http://www.tekstadventure.nl>

³ <http://www.gutenberg.org>

van Woensel wrote *Dracula*⁴ in 1982, and re-released it as freeware on his own website twenty years later. That is an exceptional long time for software to survive. And of course, it did not. Mr. Van Woensel could only restore a later version of the game, and has put up a call on his website for people who may still possess a copy of an older version to contact him; so far without success.

Several other authors re-released their games. One was willing to consider that, but was having personal problems, and I did not hear from him again.

The most influential Dutch game author of the 1980s, and not just of text adventures, was probably John Vanderaart. He worked for or with a company called Radarsoft. They produced some educational software, but mostly 'puzzlers'. A lot of action adventures left their 'house', and several text adventures.

I called Radarsoft, which still exists to this day, and asked them to re-release their old portfolio. The manager, Edwin Neuteboom, was willing to co-operate, as long as I got permission from all the authors of each game.

Unfortunately, when I contacted John Vanderaart, he was not even willing to discuss my idea. Not because he disliked licensing his game, or transferring rights, but merely because he had left that part of his life behind him.

John Vanderaart and Wijo Koek wrote the first computer game I ever bought, *Hollanditis*. This was the time when the Netherlands and other European countries were asked to place cruise missiles in their back-yard as part of a NATO plan; and when the government was going to go ahead, the country erupted in protests: *Hollanditis*.

A curious theme for a game, but an ever more curious thing about it was that the authors did not take sides. The player could choose to go for two outcomes: to stop cruise missiles from being stationed in the Netherlands, or to speed up the process. The player-character, as the virtual puppet is called, was the epitome of neutrality: a Swiss detective.

It is very hard to have a consumer of art experience this moral ambiguity to the fullest, but I have seen it done in several text adventures.

This game, and others like it, are lost for ever. Except that they aren't, because there are people willing to break the law in order for these games to live on. There are several locations on the internet where I could download these games if I wanted to.

Of course, such a thing would be illegal, but illegal does not necessarily mean immoral. Immoral is when one lets a once published work die.

Example 2: when copyrights refuse to die

I am also a volunteer for Project Gutenberg. As you know, Project Gutenberg is a digital library and archive of the world's literature. It has existed for well over thirty years, and is the oldest project of its kind. The reason that other digitization initiatives have come and gone, while Project Gutenberg lives on, is because it gets things right.

Project Gutenberg offers its ebooks in a format that is often ridiculed, but that is at the height of accessibility; a text format that founder Michael Hart dubs Plain Vanilla Text. It

⁴ <http://www.tekstadventure.nl/database/dracula.html>

welcomes others to use and distribute most of its ebooks the way they see fit. (Five million ebooks downloaded each month⁵ seem to indicate that people have found purposes for these texts.) When necessary, it format shifts its catalogue in order to keep the books up to date with modern computing systems. The fact that its base preservation format is so simply, helps.⁶

At the onset of this winter, I biked past a curious antique book shop in Amsterdam's Sarphatti Park. The way the book shop works, is as follows; books are placed on the window sill. If you like a book, you take it, and deposit fifty cents in the letter-box.

A book I saw there was "De Wonderbaarlijke Luchtreizen van Doctor Fast" (*Doctor Fast's Wonderful Voyages through the Air*) by Flemish author Prosper Melis. According to the catalogue of the Dutch national library, Melis had died in 1870. The book, however, was published in 1929, with a second and last edition in 1937. None of this I knew when looking at the book itself. Until recently, US Americans were obliged to register their works with the US Copyright Office, and to print the publication date of a work on the work itself. If they did not fulfil that obligation, the work automatically remained in the public domain.

When I got home, and looked up these things, I also noted that the edition I had seen had been illustrated by Elza van Hagendoren. According to the database of the Dutch national library, this artist is still alive. Since the book was published 59 years after the author's death, and since the copyright attached to it will persist until 70 years after the artist's death, the duration of the combined copyrights will be over 200 years. Surely that was never the intention of copyright law?

The problem here is not so much that the rules allow these excesses; the problem is that it is difficult to determine the copyright status of a work in the European Union, far more so than in the US. You have to know the name, birth date, place of birth, and death date of the author and the place and date of publication of the work in question, and you have to know these things for all distinct contributors and their contributions. This makes copyright determination extremely fuzzy.

Digital born is still-born

With DRM forbidding the most trivial forms of copying and usage of works, and with laws backing DRM, the challenge that faces Europe when it comes to preservation of works lies not in preserving analogue works; although vulnerable, these will manage to survive for much longer when a little care is applied to them.

The true challenge for Europe will be to preserve its heritage of digital born works. When an archivist is not allowed to unwrap the DRM package, even if the work itself is already in the public domain, DRM has become a Write Your Own Copyright Law Kit for publishers that will be used for locking out works forever.

Suggestions

Here are some suggestions on how to solve some of the problems outlined above:

⁵ An approximation based on the 2 million downloads off our main server.

⁶ The method of preserving digital works by keeping multiple copies around has recently required a cool acronym: LOCKSS, for Lots Of Copies Keeps Stuff Safe. See: <http://lockss.stanford.edu>.

- Draw lines in the sand. Clarity helps everyone. For instance, provide, through legislation, a clear cut-off date for economic rights. If anything, this will make sure that a work does not remain burdened by copyright for what seems to be forever. Or make registration a requirement for pursuing economic rights after a certain period. If this means that Berne needs to be renegotiated (which I doubt, as the USA have similar plans in this area, for instance through the concept of orphan works), the E.U. should actively pursue these renegotiations. A concept of orphan works should be considered.
- Encourage initiatives such as Creative Commons. There are many authors who prefer to have their contributions to our cultural heritage live on over the minute chance that they still might derive some income from the work by keeping it locked up.⁷ Creative Commons allows them to make legally binding choices that are clear both to authors and readers.
- Do not accept the fact that there are authors who are willing to let their work die. The sole purpose of copyright law can be stated as follows: to foster a vibrant public domain (that which all works at some point in time must return to). If other people than a work's author are willing to help let a work live on, encourage that behaviour, even if it does not stem from recognized archives and libraries.
- Do not allow different types of economic rights to overlap. If a work returns to the public domain, an author's estate should not be able to hijack it's principal features through for instance trademarks. I am not making this up: the estate of Arthur Conan Doyle has registered trademarks for the use of Sherlock Holmes in fiction⁸, even though most Sherlock Holmes stories are now in the public domain.
- Discourage false claims of ownership. Make sure that DRMed works can always be legally accessed even when the publisher has lost interest in the work.
- Do not use terminology that confuses the issues; copyrights do not 'protect' works, they burden them, as I hope I have shown here.

Thank you for your attention.

Yours faithfully,

Branko Collin.

⁷ Teleread Blog: Accelerando author contemplates giving book to Project Gutenberg. See: <http://www.teleread.org/blog/?p=3523>

⁸ <http://www.sherlockholmesonline.org/LicensingInfo/>