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**UNITED STATES COPYRIGHT OFFICE**



**Long Comment Regarding a Proposed  
Exemption Under 17 U.S.C. § 1201**

Check here if multimedia evidence is being provided in connection with this comment

**ITEM A. COMMENTER INFORMATION**

These comments are respectfully submitted by Public Knowledge. Public Knowledge is a nonprofit organization dedicated to representing the public interest in digital policy debates. Public Knowledge promotes freedom of expression, an open internet, and access to affordable communications tools and creative works.

Interested parties are encouraged to contact Meredith Rose (mrose@publicknowledge.org) as Public Knowledge’s authorized representative in this matter. Public Knowledge’s contact information is as follows:

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**ITEM B. PROPOSED CLASS ADDRESSED**

Proposed Class 8: Computer Programs—Video Game Preservation.

**ITEM C. OVERVIEW**

See Public Knowledge “Round 1” comments.

**ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION**

See Public Knowledge “Round 1” comments.

**Privacy Act Advisory Statement:** Required by the Privacy Act of 1974 (P.L. 93-579)  
The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office Web site and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

## ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES

While MADE more thoroughly rebuts Opponents' specious arguments of rampant piracy, Public Knowledge would like to remind parties that the commercial success of video games does not exempt them from the principles of public access provided by libraries and archives. Opponents object that "proponents' real goal is to allow a public audience – and not just serious scholars – to play online video games."<sup>1</sup> We humbly remind Opponents that libraries and archives, among their many insidious functions, also encourage "non-serious" scholars and members of the public to use copyrighted material in the following manners:

- Read, borrow, and enjoy copyrighted books (including those on the bestseller lists), in a variety of formats including print, CD audiobook, and in-person performance, at no cost;
- Watch copyrighted, blockbuster movies shortly after their departure from theaters, at no cost;
- Borrow and listen to CDs of copyrighted popular music, at no cost;
- Read copyrighted, paid-subscription news services, same day, at no cost;
- Access and use copyrighted software for a host of functions otherwise requiring a sale and license, at no cost;
- Print and photocopy images of copyrighted artwork, at nominal cost.

Video games are--and should remain--governed by the same public access principles applied to books, movies, and other copyrighted work.

Putting aside the superficiality of Opponents' argument that only "serious scholars" should be entitled to access archived games, Opponents ignore two key factors. First, many libraries already circulate disc copies of console-based video games, *including* those with online components, and Opponents fail to offer any evidence that this circulation has displaced the retail market for these games. Second, if the market for a given game no longer exists (as in the case of video games covered by the proposed expansion of this class), then the question of market displacement is moot.

Video games developers are not uniquely entitled, among creators, to discontinue access to their work, at will, for all time. The dual policy goals of preservation and access to historical works mandate that they be treated of a kind with other forms of media, and preserved in their entirety.

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<sup>1</sup> Opponents' comments