From: [redacted]
To: FN-OMB-IntellectualProperty
Subject: Intellectual Property and Risks to the Public
Date: Monday, March 22, 2010 12:24:25 PM

To whom it may concern:

I posted the following to my web journal on Fri. Feb. 26, 2010 (http://oninoshiko.deviantart.com/journal/). I am emailing you a copy of it as my comments in regard to your request. Both as a programmer and an artist, I do think something should be done about "intellectual property," but maybe not what you might expect.

'Ok, I realize some here are not USAians, but a lot are, and this post is directed at all of us (it's not that I don't value the input from those of you outside the USA, but this post deals with politics and USAian copyright law).

I got this information from PJ (It's on her news picks, so I'm not linking to that), over at Groklaw (I don't always agree with her, but I do always think she is a good read), the current administration wants input into what can be done about "intellectual property" law in the USA. I would encourage all USAians to respond to this request, especially from here on DA. This is something that as artists should hit really close to home, but before I provide links to the request I want to make my position known (I am not a lawyer, nor have I consulted with one on this, so any commentary on the current law is my personal understanding and not legal advice. It also has no validity outside the USA).

First "intellectual property" is a bit of an over-broad term encompassing three vastly different sections of law, trademark law, patent law, and copyright law. Each of these sections of law are vastly different, they have different properties and are supposed to cover different things. Trademarks cover the names that someone does business under, patents cover new inventions, and copyrights cover creative arts (this last one should be really important stuff for us here). The problem is that by mixing these topics under one term you start to confuse people into thinking things that apply to inventions apply to works of art (or that they should). Because of this I will not use the term here again, I will instead address each of these separately.

Trademark law relates to the names under which businesses conduct their business. Without getting into vast detail, it prevents two entities (companies or people) from marketing similar goods under the similar names. So you can't sell computer equipment under the name "Microsoft." I don't even think you can use the name "Mike Rowe Soft," even if you happen to be Michael Rowe. On the other hand Apple computer can use their name to sell computers, despite the prior existence of Apple Records (the Beatles' Record label) because these are in two separate industries. Apple Records actually sued them and lost multiple times (because of iTunes and the iPod, this is actually a bit of a mess today). Trademarks have to be registered, and can last as long as the entity is using it unless it falls into common usage.

Patents are for inventions. They offer the inventor a 20 year monopoly on producing whatever is described (this was originally 14 years but was extended twice). At the conclusion of that period the design information is publicly available through the

United States Patent and Trademark Office (USPTO), and anyone can produce it. The idea is that the sort-term monopoly will spawn long-term competition. Patents generally do not apply to most fine-arts (although there are probably some "Rube Goldburg machines" that could qualify for both). The US permits them to cover software (despite the fact that all software can be broken down as mathematics) and in software it ends up covering the idea rather then the expression of it. This is why the PNG image format was originally important, Unisys had a patent (expired in 2003) on the compression algorithm use in GIF images, almost everyone who worked with them was violating the patent, and owed them $5000 (which was what they where licensing it for). They where kind enough to never actually prosecute anyone though. (Patents are a real minefield, with all kinds of nuances. Just like there are doctors specializing in brain surgery there are lawyers who do nothing but patent law)

Copyrights are what we probably care about most. Copyrights provide an copyright holder (artist or corporation) the exclusive right to copy a work for a limited (in theory) period of time. That period is presently the artist's life plus 70 years for copyrights owned by an individual. For copyrights owned by a corporation, the copyright lasts (presently) for the shorter of 95 years from registration, or 120 years from creation. When a copyright expires, it is said to "enter the public domain," meaning anyone can reproduce it or use it in derivative works. Copyright originally lasted for 28 years from publication, with the option to renew for another 28 years. This has been repeatedly extended by congress such that, no works have been required to enter the public domain since 1923.

I assert that the public domain is what is at the greatest risk, it's already been eroding faster then Niagara Falls, and it's important. It's vitally important. It's what allows us to do new animated versions of "Macbeth" (imagine trying to track down the successors-in-intrest to Shakespeare (or did Francis Bacon write them?), Homer, or Aesop). let's look at how our art would be different if our modern "in perpetuity" copyright law applied to the works we take for granted as being public domain. Disney would not exist: "Pinocchio" (1940) (based on "The Adventures of Pinocchio" (1883) by Carlo Collod), "Cinderella" (1950) (was based on a folk tale published in "The Pentamerone" (1664) (also in "Mother Goose Tales" (1697) and "Grimm's Fairy Tales" (1812))), "Alice in Wonderland" (1951) (from "Alice's Adventures in Wonderland" (1865) by Rev. Charles Lutwidge Dodgson (aka Lewis Carrol)), "The Jungle Book" (1967) (based VARY loosely on "The Jungle Book" (1894) by Rudyard Kipling). That is a lot of things from my childhood that would be gone. That's also a lot of awards won.

If you care about art and culture, the public domain is how we as citizens get to use our culture to create new and wonderful works. I would encourage everyone here to send an email to Victoria Espinel at intellectualproperty@omb.eop.gov as she requested at "The White House Blog - Intellectual Property and Risks to the Public"'

Thank you,

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