

March 25, 2019

U.S. Copyright Office  
Library of Congress  
101 Independence Ave. SE  
Washington, DC 20559

*Re: Docket no. 2018-8, Noncommercial Use of Pre-1972 Sound Recordings That Are Not Being Commercially Exploited*

To whom it may concern,

On March 21, 2019, Public Knowledge (represented by Meredith Rose) met with Regan Smith and Anna Chauvet to discuss the above-captioned proceeding. In that meeting we reiterated our concern that the steps in the proposed safe harbor go beyond the scope of Congress' directive, particularly in the absence of any formal legislative record speaking to the issue. Of particular concern were the requirements to conduct multiple, duplicative searches; a Google search will itself search across multiple platforms. However, in the NPRM as formulated, a user who receives a negative result on Google—which, again, has in turn search Spotify, Deezer, Tidal, and a number of other major platforms—would then be required to manually re-conduct their search on each individual platform. If the SoundExchange database can serve as a reasonable proxy for non-interactive services, then a major search engine can serve as a reasonable proxy for interactive services in all cases, not *just* when returning a positive result.

Moreover, we found the \$75 NNU fee to be overly burdensome—particularly for a use which is, by definition, noncommercial—and without articulated justification within the NPRM.

These burdens add up, particularly when users are seeking to use multiple works at once. Many categories of recordings (such as folk,

news reporting, and drama) are valuable to scholars primarily when placed in context alongside other contemporaneous or otherwise companion works. The cumulative effect of these burdens will be to chill use of the exception among all but the most well-resourced and well-funded users.

We appreciate the opportunity to share our views with the Copyright Office in this matter.

Sincerely,

Meredith Rose  
Policy Counsel