



February 27, 2019

Via email at [regans@copyright.gov](mailto:regans@copyright.gov) and [achau@copyright.gov](mailto:achau@copyright.gov)

Regan A. Smith  
General Counsel and Associate Register of Copyrights  
Anna Chauvet  
Assistant General Counsel  
U.S. Copyright Office  
Library of Congress  
101 Independence Ave. SE  
Washington, DC 20559-6000

RE: Summary of the February 25, 2019 Ex Parte Meeting regarding the  
Notice of Proposed Rule Making for Noncommercial Use of Pre-1972 Sound Recordings that are  
not Being Commercially Exploited, Docket No. 2018-8

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Dear Ms. Smith and Ms. Chauvet,

On February 25, 2019, the following individuals from the music industry (Music Participants) participated in a meeting with Regan Smith, Anna Chauvet and Jason Sloan of the Copyright Office concerning the above referenced matter: Mitch Glazier, Ken Doroshow, Susan Chertkof, Vicky Sheckler (phone), Jessie Richards (phone), Tom Cleese (phone) and Morna Willens (phone) from the Recording Industry Association of America (RIAA); Richard Burgess (phone) from the American Association for Independent Music (A2IM); David Jacoby (phone), Andrea Finkelstein (phone), Jennifer Jacobsen, and Jennifer Goodman (phone) from Sony Music; Scott Bauman (phone), Amy Isbell, and Laura Pasek (phone) from Universal Music Group; and Tracie Parry and Rick Marshall from Warner Music Group.

During this meeting, the Music Participants noted that any use of a pre-72 recording on YouTube or any other user uploaded content service that is searchable, findable, or publicly available should be considered commercial use and described as such in the guidelines the Office intends to publish separately from the regulation (e.g., in a circular or as part of the Compendium). The Music Participants asked that the final guidelines clarify that the relevant inquiry is whether the user *or* the platform is monetizing the use, whether directly or indirectly. In addition, The Music Participants inquired as to why the good faith, reasonable search checklist did not include a search of YouTube. The Music Participants noted that Congress expressly stated that a good faith, reasonable search should include user-generated services.

Ms. Regan Smith and Ms. Anna Chauvet

February 27, 2019

Page 2

The Music Participants asked that the final rule obligate users to include the name of the current or last known rights owner of the pre-72 sound recording at issue if the name of the rights owner is known to them or can be discovered using reasonable efforts. For example, they noted that if the user has a pre-72 record that includes the rights owner information on the label, that information should be included in the Notice of Noncommercial Use.

The Music Participants inquired into the rationale and standard for the proposed ban on filing fraudulent notices of non-commercial use and opt-out notices. They offered to propose penalty language to address the Copyright Office's concerns about malicious bad actors that are abusive filers and to give the Copyright Office discretion to address those problems.

Finally, the Music Participants commented on a number of other items in the Notice of Proposed Rulemaking, noting that they did not think a renewal procedure was appropriate, that they were concerned with the fees for opt-out notices, that requiring services to provide APIs seemed unnecessary and inappropriate, that ISRC should be an optional field in the pre-72 schedules that rights owners are required to file (and is subject to a parallel rulemaking), and that the SoundExchange ISRC Lookup database should be a mandatory part of the good faith, reasonable search. The Music Participants also noted concerns with having a proposed use of a pre-72 greatest hits album on just one notice of noncommercial use and with the ability of a user to refile for the same use multiple times. Finally, the Music Participants suggested that the Copyright Office consider a rule that required users to preserve evidence of their good faith, reasonable search for at least 3 years from the date of the noncommercial use.

The Music Participants appreciated the ability to meet with the Copyright Office on these matters.

Sincerely,

A handwritten signature in cursive script that reads "Susan Chertkof". The signature is written in dark ink and is positioned above the typed name and title.

Susan Chertkof  
Senior Vice President, Legal and Regulatory Affairs  
Recording Industry Association of America