BEFORE THE UNITED STATES COPYRIGHT OFFICE

REPLY COMMENTS OF THE LIBRARY COPYRIGHT ALLIANCE ON NONCOMMERCIAL USES OF PRE-1972 SOUND RECORDINGS

The Library Copyright Alliance (LCA) appreciates the opportunity to reply to the comments the Copyright Alliance submitted in response to the Notice of Inquiry concerning the noncommercial use of pre-1972 sound recordings.

LCA notes that the Copyright Alliance is in agreement with our position that the section 1401(c) procedures **do not** apply to libraries and archives employing the section 108(h) exception incorporated by section 1401(f)(1)(B). The Copyright Alliance suggests that "the Copyright Office should make clear that the regulations and interpretation of terms in Section 1401 apply only to the application of provisions in that section." It adds that "any conclusions made in determining what constitutes a 'good faith, reasonable search' for commercial exploitation of a pre-72 sound recording does not have any bearing on the meaning or scope of the 'reasonable investigation' requirement within Section 108(h)…" We concur.

Conversely, LCA strongly disagrees with the Copyright Alliance's "presumption that the exception for certain noncommercial uses of pre-72 sound recordings should only be used when a rights owner cannot be identified or located." The Copyright Alliance bases this "presumption" on a misinterpretation of one sentence in a section-by-section discussion of the Music Modernization Act that was not adopted by any committee and has no official status. Indeed, even the American Association of Independent Music and the Recording Industry Association of America interpret this sentence differently--not as creating a presumption of when section 1401(c) **could** be used, but rather as a description of when it most likely **would** be used.

In any event, nothing in the language of section 1401(c) remotely indicates that it could be employed only as a "last resort" by a potential user who "has tried and was unsuccessful in identifying and locating the rights owner of the work" it is seeking to use. Moreover, requiring a potential user to determine that a work is an "orphan" before employing section 1401(c) would be so burdensome that section 1401(c) would hardly be used. Accordingly, contrary to the Copyright Alliance's suggestion, the Copyright Office should not make this so-called presumption "clear to users."

December 11, 2018