

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

Time Warner Inc.

File No. 971-0070

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated investigations of certain acts and practices of Time Warner Inc. ("Time Warner"), and it now appearing that Time Warner, hereinafter sometimes referred to as "Proposed Respondent" is willing to enter into this Agreement Containing Consent Order ("Consent Agreement") to cease and desist from these practices and providing for other relief;

IT IS HEREBY AGREED by and between Proposed Respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Time Warner is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Warner Music Group Inc. is a wholly owned subsidiary of Time Warner, and is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Warner-Elektra-Atlantic Corporation is a wholly owned subsidiary of Time Warner and is a corporation organized and existing under the laws of the State of New York with its principal place of business at 111 N. Hollywood Way, Burbank, California.
2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.
3. Proposed Respondent waives:
 - a. any further procedural steps;
 - b. the requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and

- d. any claim under the Equal Access to Justice Act.
4. Proposed Respondent shall submit an initial compliance report within sixty (60) days of the date it signs this Consent Agreement, pursuant to Commission Rule 2.33, 16 C.F.R. § 2.33, signed by the Proposed Respondent setting forth in detail the manner in which the Proposed Respondent has to date complied or has prepared to comply, and will comply with the Decision and Order. Such reports will not become part of the public record unless and until the accompanying Consent Agreement and Decision and Order are accepted by the Commission for public comment.
 5. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision and Order, in disposition of the proceeding.
 6. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
 7. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondent, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Decision and Order in disposition of the proceeding, and (2) make information public in respect thereto. When final, the Decision and Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and Decision and Order to Proposed Respondent's Counsel by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.14.(a), shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.
 8. By signing this Consent Agreement, Proposed Respondent represents and warrants that it can accomplish the full relief contemplated by this Consent Agreement, and that all


parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to the Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the Decision and Order.

9. Proposed Respondent has read the Proposed Complaint and Decision and Order contemplated hereby. Proposed Respondent understands that once the Decision and Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after the Decision and Order becomes final.

Signed this 29th day of March, 2000

TIME WARNER INC.

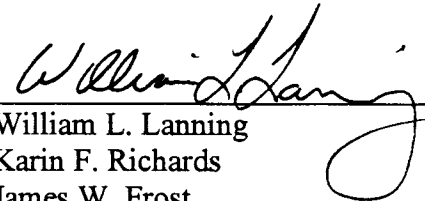
By: _____
Christopher P. Bogart, Esq.
Executive Vice President and
General Counsel
Time Warner Inc.



Robert D. Joffe, Esq.
Cravath, Swaine & Moore
Counsel for Time Warner Inc.

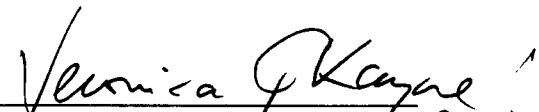
George S. Cary, Esq.
Cleary, Gottlieb, Steen & Hamilton
Counsel for Time Warner Inc.

FEDERAL TRADE COMMISSION

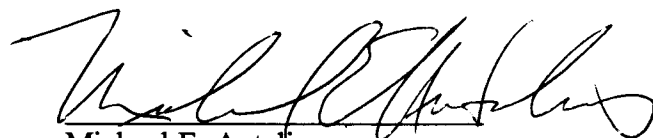
By: 

William L. Lanning
Karin F. Richards
James W. Frost
Attorneys
Bureau of Competition

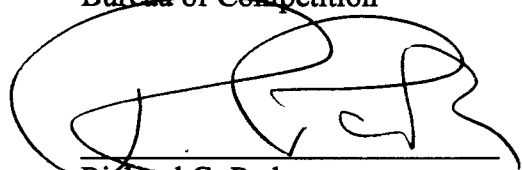
Approved:



Veronica G. Kayne (by PJO)
Assistant Director
Bureau of Competition



Michael E. Antalics
Acting Deputy Director
Bureau of Competition



Richard G. Parker
Director
Bureau of Competition

Signed this 29th day of March, 2000

TIME WARNER INC.

By: _____

Christopher P. Bogart, Esq.
Executive Vice President and
General Counsel
Time Warner Inc.

Robert D. Joffe, Esq.
Cravath, Swaine & Moore
Counsel for Time Warner Inc.

George S. Cary, Esq.
Cleary, Gottlieb, Steen & Hamilton
Counsel for Time Warner Inc.

FEDERAL TRADE COMMISSION

By: _____

William L. Lanning
William L. Lanning
Karin F. Richards
James W. Frost
Attorneys
Bureau of Competition

Approved:

Veronica G. Kayne
Veronica G. Kayne
Assistant Director
Bureau of Competition (by R102)

Michael E. Antalics
Michael E. Antalics
~~Acting~~ Deputy Director
Bureau of Competition

Richard G. Parker
Richard G. Parker
Director
Bureau of Competition

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of Time Warner Inc.
--

Docket No. C-
DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Respondent, Time Warner Inc., and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and issues the following Order:

1. Proposed Respondent Time Warner Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Warner Music Group Inc. is a wholly owned subsidiary of Time Warner Inc., and is a corporation organized and existing under the laws of the State of

Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Warner-Elektra-Atlantic Corporation is a wholly owned subsidiary of Time Warner, and is a corporation organized and existing under the laws of the State of New York with its principal place of business at 111 N. Hollywood Way, Burbank, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered that, as used in this Order, the following definitions shall apply:

- A. “Time Warner” or “Respondent” means Time Warner Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Time Warner, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “WMG” means Warner Music Group Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by WMG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “WEA” means Warner-Elektra-Atlantic Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by WEA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Commission” means the Federal Trade Commission.
- E. “Record Clubs” means the divisions of The Columbia House Company and BMG Music Service that operate as club-based direct marketers of prerecorded music, and manufacture or have manufactured for them product pursuant to a club license.
- F. “Product” means prerecorded music in physical or electronic format that is offered for sale or sold in the United States, including, but not limited to, compact discs (“CDs”), audio DVDs, audio cassettes, albums and digital audio files (*i.e.*, digital files which are delivered to the consumer electronically, to be stored on the consumer’s hard drive or other storage device). “Product” does not include prerecorded music in physical or other electronic format manufactured or distributed by or for Record Clubs pursuant to Record Club licenses.
- G. “Dealer” means any person, corporation, or entity that in the course of its business offers for sale or sells any Product in or into the United States, including, but not limited to,

wholesale distributors, retail establishments, and Internet retail sites, but excluding Record Producers.

- H. “Record Producer” means any person, corporation or entity that in the course of its business produces sound recordings for recording artists and manufactures Product from such sound recordings.
- I. “Cooperative Advertising or Other Promotional Funds” means any payment, rebate, charge-back or other consideration provided to a Dealer by WMG in exchange for any type of advertising, promotion or marketing efforts by that Dealer on behalf of WMG. This term also includes advertising, promotion, or marketing efforts by WMG on behalf of one or more identified Dealers. Examples of cooperative advertising include, but are not limited to, free goods provided to a Dealer by WMG, and payments for newspaper advertisements, radio and television advertisements, internet banner advertisements, posters and signs within a Dealer’s retail stores, pricing or positioning of Products within a Dealer’s retail stores, and point-of-purchase merchandising.
- J. “Media Advertising” means any promotional effort by a Dealer outside of the Dealer’s physical location or Dealer-controlled internet site, including but not limited to, print, radio, billboards, or television.
- K. “In-Store Promotion” means any promotional effort conducted in or on the physical premises of a Dealer or a Dealer-controlled internet site, including but not limited to, signs, bin cards, end caps, hit walls, listening posts, internet banner advertisements, and promotional stickers.
- L. “Advertised or Promoted” means:
 - (1) any form of advertising, promotion, or marketing efforts by WMG on behalf of one or more of its Dealers;
 - (2) any form of Media Advertising efforts including, but not limited to, print, radio, billboard, or television; and
 - (3) any form of In-Store Promotion efforts including, but not limited to, signs, bin cards, end caps, hit walls, listening posts, internet banner advertisements and promotional stickers.

II.

It is further ordered that for a period of seven (7) years, WMG, directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any WMG Product in or into the United States of America in or affecting “commerce,” as defined by the Federal Trade Commission Act, shall cease and desist from directly or indirectly adopting, maintaining, enforcing or threatening to enforce any policy,

practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level at which any WMG Product is Advertised or Promoted.

III.

It is further ordered that WMG, directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any WMG Product in or into the United States of America in or affecting “commerce,” as defined by the Federal Trade Commission Act, shall not directly or indirectly:

- A. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price at which any WMG Product is offered for sale or sold;
- B. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level of the WMG Product in any In-Store Promotion or Media Advertising where the Dealer does not seek any contribution from WMG for the cost of said Media Advertising or In-Store Promotion;
- C. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level of the WMG Product in any In-Store Promotion or Media Advertising if WMG’s contribution exceeds 100% of the Dealer’s actual costs of said Media Advertising or In-Store Promotion;
- D. Agree with any Dealer to control or maintain the resale price at which the Dealer may offer for sale or sell any WMG Product;
- E. For a period of five (5) years, announce resale or minimum advertised prices of WMG Product and unilaterally terminate those who fail to comply because of such failure. Notwithstanding the foregoing, nothing herein shall prohibit WMG from announcing suggested list prices for WMG Product.

IV.

Nothing herein shall prohibit WMG from providing Cooperative Advertising or Other Promotional Funds on the condition that such funds are passed through in whole or in part to the consumer (hereinafter “Pass-Through Funds”). WMG shall maintain records that specifically identify by title or collection of titles the amount of Pass-Through Funds provided to each Dealer and the date said amount was provided. Whenever WMG provides Pass-Through Funds to a Dealer, WMG shall specifically notify the Dealer in writing either that these funds are intended to be passed through to the ultimate consumer in whole, or that the Dealer may determine what

portion of the funds are to be passed through, provided that some portion of the funds must be passed through to the ultimate consumer. The documents described in this Paragraph IV shall be provided to the Commission upon request.

V.

It is further ordered that for a period of seven (7) years:

- A. WMG shall amend all policy manuals applicable to the distribution of WMG Product to state affirmatively that WMG does not maintain or enforce any plan, practice or policy of the type prohibited in Paragraph II of this Order, and not otherwise permitted by Paragraph IV of this Order.
- B. In each published full catalogue or published full price list in which WMG states suggested list prices or codes indicative of such prices, WMG shall state affirmatively that it does not maintain or enforce any plan, practice or policy of the type prohibited in Paragraph II of this Order, and not otherwise permitted by Paragraph IV of this Order.

The documents described in this Paragraph V shall be provided to the Commission upon request.

VI.

It is further ordered that within 10 days after this Order becomes final, WMG shall mail by first class mail a letter containing the language attached as Exhibit A to:

- A. All of its directors, officers, distributors, agents and sales representatives in the United States, and
- B. All Dealers to which WEA sells directly and that are engaged in the sale of any WMG Product in or into the United States of America.

VII.

It is further ordered that for a period of seven (7) years WMG shall mail by first class mail a letter containing the language attached as Exhibit A to:

- A. Each new director, officer, distributor, agent, and sales representative of WMG in the United States, and
- B. Each new Dealer to which WEA sells directly which is engaged in the sale of any WMG Product in or into the United States of America,

within thirty (30) days of the commencement of such person's employment or affiliation with WMG or WEA.

VIII.

It is further ordered that annually for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice to Time Warner require, Time Warner shall file with the Commission a verified written report setting forth in detail the manner and form in which Time Warner has complied and is complying with this Order.

IX.

It is further ordered that this Order shall terminate twenty (20) years after the date on which this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

EXHIBIT A
[COMPANY LETTERHEAD]

Dear [Recipient]:

WEA announces several important changes in policy. All of these changes will be reflected in the new Policy Manual.

WEA has dropped its Minimum Advertised Price (“MAP”) policy effective _____. Cooperative advertising and other promotional funds will not be conditioned upon the price at which WMG product is advertised or promoted. As many of you know, the Federal Trade Commission has conducted an investigation into WEA’s MAP policies. To end the investigation expeditiously and to avoid disruption to the conduct of its business, WEA has voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement relating to MAP and other related matters.

WEA’s customers can advertise and promote our products at any price they choose. WEA will not withhold cooperative advertising or other promotional funds on the basis of the price at which WMG product is advertised in the media or promoted in your stores. WEA may announce suggested retail prices, but retailers remain free to sell and advertise WMG product at any price they choose.