

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

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of)	
POLYGRAM HOLDING, INC.,)	
a corporation,)	
DECCA MUSIC GROUP LIMITED,)	
a corporation,)	
UMG RECORDINGS, INC.,)	Docket No. 9298
a corporation,)	
and)	
UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP.,)	
a corporation.)	

**NOTICE OF INTENT TO RELEASE
IN CAMERA INFORMATION**

This is to advise Warner Communications Inc. ("Warner") and UMG Recordings, Inc. ("UMG") that, consistent with section 21(d)(2) of the Federal Trade Commission (FTC) Act, 15 U.S.C. § 57b-2(d)(2), and FTC Rule of Practice 3.45(a), 16 C.F.R. § 3.45(a), the Commission intends to include in the Opinion to be placed on the public record of this proceeding certain

information based, in whole or part, on various exhibits, testimony and filings that the Administrative Law Judge received on the *in camera* record of this proceeding.

In making a determination to release *in camera* information in the course of an adjudicative proceeding, the Commission balances the potential harm of such release to the protected party against the substantial interest in making publicly available the factual background underlying a Commission decision. *Orkin Exterminating Co.*, 108 F.T.C. 147 (1986). Public knowledge of such information both permits improved evaluation of the fairness and wisdom of a given Commission decision and provides clearer guidance to affected parties. *Id.* See also *RSR Corp.*, 88 F.T.C. 206 (1976); *id.*, 88 F.T.C. 734, 735 (1976). Accordingly, the *in camera* standard requires that there be a “clearly defined, serious injury” to the submitter sufficient to outweigh the public interest in disclosure. See *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

The Commission intends to include in its Opinion citations to three *in camera* exhibits. In each case, the *in camera* information at issue has also been derived from and is attributed to other public exhibits in this proceeding, and the *in camera* exhibits are cited merely for secondary support.¹ Under these circumstances, the Commission does not believe that there is any disclosure of confidential information or any injury to Warner or UMG. To the extent that the information contained in the Commission’s Opinion constitutes a general or conclusory reference to the cited *in camera* exhibits, the Commission does not believe such a reference discloses any confidential information or will result in any injury to Warner or UMG. Commission Rule 3.45(d), 16 C.F.R. § 3.45(d), makes clear that the granting of *in camera* status does not preclude mere “references . . . to *in camera* or other confidential information or general statements based on the content of such information.”

Nonetheless, to the extent, if any, that the citation of these *in camera* exhibits would constitute a disclosure, the potential harm resulting from such a limited disclosure, if any, is clearly outweighed by the value of making public to the greatest extent possible the factual evidence underlying the Commission’s decision in the matter. Such disclosures are directly relevant and material to an understanding of the factual basis for the opinions issued in this proceeding. 15 U.S.C. § 57b-2(d)(2); *Orkin Exterminating*, 108 F.T.C. at 147.

¹ The Commission intends to cite both JX11 at UMG001790 (*in camera*) and JX10-F (public) to refer to an underlying marketing rights agreement. Second, the Commission intends to cite JX100 (*in camera* transcript of corporate witness’ testimony at investigational hearing) at 72-73, and 91-92, together with public exhibits including Initial Decision Finding of Fact (IDF) 220, to summarize and discuss certain factual conclusions made by the Administrative Law Judge in this proceeding. Third, the Commission intends to cite CX-603-P and -Z-18 (*in camera*) and IDF 217-218 in summarizing and discussing certain factual conclusions made in those IDFs.

Furthermore, the disclosure, if any, of such limited information is not intended to reverse or otherwise modify the *in camera* status of the underlying exhibits, testimony or filings, which remain protected to the extent provided by the applicable *in camera* determinations of the Administrative Law Judge in this matter. For these reasons, the Commission does not believe that the limited disclosure, if any, of *in camera* information to be made in its decisional documents would provide sufficient knowledge to competitors that its release would impose a clearly defined, serious injury on Warner or UMG that would outweigh the public interest in such disclosure. See *Orkin Exterminating Co.*, 108 F.T.C. at 147; *General Foods Corp.*, 95 F.T.C. at 355.

Accordingly, such information will be placed on the public record of this proceeding -- as part of the decisional documents in this matter -- no sooner than ten calendar days after Warner and UMG receive this notification.

By direction of the Commission.

SEAL:

A handwritten signature in black ink, appearing to read "Donald S. Clark", with a long horizontal flourish extending to the right.

Donald S. Clark
Secretary

ISSUED: July 11, 2003