UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of	)	
SONY BMG MUSIC ENTERTAINMENT, a general partnership.	)	FILE NO. 062-3019
	)	AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of SONY BMG Music Entertainment ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between SONY BMG Music Entertainment, by its duly authorized officer, Daniel M. Mandil, and counsel for the Federal Trade Commission that:

1. Proposed respondent SONY BMG Music Entertainment is a Delaware general partnership with its principal office or place of business at 550 Madison Avenue, New York, New York 10022.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

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; and

   c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this 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 in disposition of the proceeding.

5. This 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 complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the 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 order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules 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 order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean SONY BMG Music Entertainment, its successors and assigns, and its officers, agents, representatives, and employees.

2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

3. "Clear[ly] and prominent[ly]" shall mean that:

   A. On or affixed to product packaging, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

   B. On the screen of a consumer's computer, the disclosure shall be unavoidable and shall be presented prior to the consumer installing any content protection software

or, if the disclosure is related to Internet connectivity, prior to causing any transmission to respondent about consumers, their computers, or their use of a covered product through Internet servers. The disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. The disclosure shall be in understandable language and syntax.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used on any advertising, product packaging, or computer screen.

4. "Content protection software" shall mean "XCP," "MediaMax," and any other software residing on a CD that acts to limit a consumer's ability to copy or distribute the CD's audio files or other digital content.

5. "Covered product" shall mean any audio compact disc (CD) intended for commercial release for which SONY BMG controls the master files used to produce the CD.

6. "Enhanced connectivity" shall mean a software feature on a covered product (usually contained in a media player) that permits or causes a computer playing the product while connected to the Internet to communicate information over the Internet about the consumer, the consumer's computer, or his/her use of the covered product.

7. "Operating system" means the computer system software responsible for managing and controlling the computer's hardware and computer resources and its basic operations, including providing a platform on which to download, install, and run any software program.

8. "Product packaging" means the physical container in which the covered product is delivered to a consumer, such as a jewel case or digipak, or material attached to or surrounding the physical container, such as shrinkwrap.

9 "Uninstall" means: (a) removing a software program from a computer; (b) removing all files, registry keys, and components that were added to the computer when such software program was initially installed; (c) removing all files, registry keys, and components that were subsequently generated by such software program; and (d) restoring all files, registry keys, and components that such software program caused to be altered.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product that contains content protection software, in or affecting commerce, shall clearly and prominently disclose:

A. On the front of the product packaging, that important consumer information regarding limits on copying and use can be found on the rear of the product packaging; and

B. On the product packaging, that the software: (1) will install on consumers' computers, if that is the case; (2) will limit the number of physical copies that can be made from the product, if that is the case, and the number of permitted copies; and (3) allows the direct transfer of the product's audio files or other digital content only to playback devices that use secure Windows formats or the Sony ATRAC format, if that is the case.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product that contains content protection software, in or affecting commerce, shall not install or cause to be installed any such software on the hard disc drive of a consumer's computer unless respondent clearly and prominently discloses on his/her computer screen the information required to be disclosed under Part I of this order, and the consumer indicates his/her assent to install such software by clicking on a button or link that is clearly labeled or otherwise clearly represented to convey that it will activate the installation, or by taking a substantially similar action.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product that contains content protection software, in or affecting commerce, shall:

A. Clearly and prominently disclose on the product packaging that the software will prevent consumers who decline to install the content protection software from listening to or accessing the product's audio files via computer, if that is the case; and

B. Clearly and prominently disclose on the computer screen that the software will

prevent consumers who decline to install the content protection software from listening to or accessing the product's audio files via computer, if that is the case; and obtain the consumer's assent to install such software by clicking on a button or link that is clearly labeled or otherwise clearly represented to convey that it will activate the installation, or by taking a substantially similar action.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product with enhanced connectivity manufactured prior to the date that this order becomes final, in or affecting commerce, shall not:

A. Use any information about consumers, their computers, or their use of the covered product collected over the Internet for any marketing purpose, and respondent shall destroy such data within three days of its receipt; and

B. Use any information about consumers, their computers, or their use of the covered product collected over the Internet to deliver any marketing messages.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product with enhanced connectivity, in or affecting commerce, shall:

A. Clearly and prominently disclose on the product packaging that the software will prevent consumers who decline to permit transmission of information over the Internet about them, their computers, or their use of the product from listening to or accessing the product's audio files via computer, if that is the case; and

B. Prior to causing transmission via the Internet of information about consumers, their computers, or their use of the product:

1. Clearly and prominently disclose on their computer screen that such information will be transmitted to respondent and/or that images or promotional messages will be transmitted to their computers; and

2. Obtain the consumer's assent to its transmission by clicking on a button or link that is clearly labeled or otherwise clearly represented to convey such assent, or by taking a substantially

similar action.

VI.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce, shall not install or cause to be installed on a consumer's computer any content protection software that prevents the consumer from readily locating or removing the software, including but not limited to by: (1) hiding or cloaking files, folders, or directories; (2) using random or misleading names for files, folders, or directories; or (3) misrepresenting the purpose or effect of files, directory folders, formats, or registry entries.

VII.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce, shall:

A. Not install or cause to be installed on a consumer's computer any content protection software unless respondent provides a reasonable and effective means for consumers to uninstall the software;

B. For a period of two years after the date that this order becomes final, continue to provide free of charge to consumers a program and a patch that uninstalls XCP and MediaMax content protection software and removes the "privilege escalation vulnerability" associated with any covered product that contains MediaMax 5.0 content protection software, respectively; and

C. For a period of two years after the date that this order becomes final, post a notice on its website with information for consumers about the uninstall programs and security patch referred to in Part VII.B. of this order. This notice shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. This notice shall be in understandable language and syntax.

D. For a period of 12 months after the date that this order becomes final, continue its current program of purchasing Internet browser premium keywords ("keyword buys") to give consumers notice of the security vulnerability associated with any covered product that contains XCP or MediaMax 5.0 software and of the steps that they should take to protect their property.

Provided, that, the means that respondent provides to consumers to uninstall software

pursuant to this Part need not erase information or data stored on the computer regarding whether the consumer has reached the limit of permitted copies of the covered product, or other comparable content protection data, so long as: (1) prior to installing the software, the respondent has clearly and prominently disclosed on the consumer's computer screen that uninstalling the software will not erase information or data stored on the computer regarding whether the user has reached the limit of permitted copies of the product, or other comparable content protection data, if that is the case; and (2) the information or data that is not erased does not impair, hinder, or otherwise adversely affect the operation or performance of the computer or its operating system.

VIII.

IT IS FURTHER ORDERED that, to provide redress to consumers, respondent shall:

A. Fully comply with the XCP and MediaMax exchange and compensation program terms contained in the class action settlement approved by the court in *In re SONY BMG CD Technologies Litigation*, No. 05 CV 9575 (NRB) (S.D.N.Y.) (May 24, 2006);

B. 1. For a period of 180 days after December 31, 2006, continue to accept claims and provide exchange and compensation benefits in a manner that is substantially similar to the program referred to in Part VIII.A. of this order.

2. For a period of 180 days after December 31, 2006, post a notice on its website with information for consumers about the exchange and compensation benefits described in Part VIII.B.1 of this order. This notice shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. This notice shall be in understandable language and syntax.

C. Continue to provide the exchange and compensation benefits contained in Sections III.B.1 and 2 and III.C. of the settlement described in Part VIII.A. of this order to consumers who purchased CDs containing the XCP content protection software before December 31, 2006;

D. 1. At the request of any consumer who purchased any covered product that contains XCP content protection software, reimburse the consumer up to $150 spent to repair his or her computer as a result of damage to the computer that was a direct result of that consumer's efforts to uninstall XCP prior to the issuance of the current version of the SONY BMG uninstaller. Any claim for compensation must be submitted within 180 days after the date that this order becomes final and on a form to be made available on SONY BMG's website no later than the date that this order becomes final. In considering such claims, respondent may require reasonable proof as to

the validity of the claim; and

2. For a period of 180 days after the date that this order becomes final, post a notice on its website with information for consumers about its repair reimbursement program. This notice shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. This notice shall be in understandable language and syntax.

IX.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product that contains MediaMax content protection software, in or affecting commerce, shall:

A. Prior to the release to retailers of any covered product that contains MediaMax 3.0 or 5.0 content protection software, clearly and prominently disclose on the product packaging that:

1. The software will install on consumers' computers;

2. The software will limit to three the number of physical copies that can be made from the product;

3. The software allows the direct transfer of the product's audio files or other digital content only to playback devices that use secure Windows formats or the Sony ATRAC format; and

4. The software will prevent consumers who decline to install the content protection software from listening to or accessing the product's audio files via computer.

B. Prior to the release to retailers of any covered product that contains MediaMax 5.0 content protection software, clearly and prominently disclose on the product packaging that:

1. The CD will establish an Internet connection through which it will transmit to respondent information about consumers, their computers, or their use of the covered product and that respondent will transmit targeted images or promotional messages to consumers, if that is the case; and

2. The CD will create a security vulnerability that consumers can eliminate with a patch that they can download, free of charge, from respondent's

website, and include the website address.

C. For a period of two years after the date that this order becomes final, expand its financial incentives to retailers program pursuant to the class action settlement referred to in Part VIII.A. of this order to include the return of any covered product that contains MediaMax 5.0 software.

X.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, for five (5) years after the last date of sale or distribution of any covered product containing content protection software or enhanced connectivity software features, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Copies of all different versions of disclosures on product packaging, End User License Agreements, and associated disclosures for such products required by this order; and

B. All tests, reports, studies, surveys, demonstrations, or similar credible evidence in its possession or control that contradict, qualify, or call into question respondent's representations about the nature, purpose, function, or effects of content protection software included in such product on users' use of such product or on their computers, including complaints and other communications with consumers or with governmental or consumer protection organizations.

XI.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to compliance with this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action

is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XIII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

XIV.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____ 2006.

SONY BMG MUSIC ENTERTAINMENT

By:

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DANIEL M. MANDIL
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LYDIA B. PARNES
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