STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

AVC NO. 06-038

In the Matter of:

SONY BMG Music Entertainment,

Respondent.

FILED

(32) DEC 21 2006

Doris Anne Sadler
CLERK OF THE
MARION CIRCUIT COURT

ASSURANCE OF VOLUNTARY COMPLIANCE

APPROVED this _____ day of DEC 21 2006 2006.

Judge, Marion County Circuit Court

In the Matter of:

SONY BMG Music Entertainment,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE OR DISCONTINUANCE

This Assurance of Voluntary Compliance or Discontinuance ("Assurance") is entered into by the Attorneys General of the States of Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and by the Attorney General for the District of Columbia ("the States"), acting pursuant to their respective consumer protection statutes,[1] and SONY BMG Music Entertainment ("SONY

[1] **ALABAMA:** Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et seq.*; **ALASKA**: Unfair Trade Practices and Consumer Protection Act, AS 45.50.471, et seq.; **ARIZONA:** Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*; **ARKANSAS:** Ark. Stat. Ann., § 4-88-101 et seq.; **CONNECTICUT:** Conn. Gen. Stat. § 42-110a, *et seq.*; **DELAWARE**: Consumer Fraud Act, 6 Del.C. §2511, *et seq.;* **DISTRICT OF COLUMBIA:** District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*; **FLORIDA:** Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; **IDAHO:** Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*; **ILLINOIS:** Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*; **INDIANA:** Ind. Code Ann. §24-5-0-5-1; **IOWA:** Iowa Consumer Fraud Act, Iowa Code section 714.16; **KENTUCKY:** Consumer Protection Act, Ky. Rev. Stat. §§ 367.110 to 367.990; **LOUISIANA:** Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§51:1401 to 51:1420; **MAINE:** Maine Unfair Trade Practices Act, 5 M.R.S.A. sections 207 and 209; **MARYLAND:** Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-101, *et seq.*; **MASSACHUSETTS**: Massachusetts Consumer Protection Act, G.L. c. 93A; **MICHIGAN:** Michigan Consumer Protection Act, MCL 445.901 *et seq.*; **MISSISSIPPI:** Consumer Protection Act, Section 75-24-1, *et seq.*, Mississippi Code Annotated of 1972; **MONTANA:** Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann. §§ 30-14-101 to 30-14-142; **NEBRASKA:** Consumer Protection Act, Neb.

BMG"). SONY BMG understands that additional States may determine to enter into this Assurance, and may do so by a process agreed to by SONY BMG, which requires that any such additional State indicate its intention to enter into this Assurance on or before January 4, 2007.

I. BACKGROUND

SONY BMG AND THE USE OF DIGITAL RIGHTS MANAGEMENT SOFTWARE

1. SONY BMG, a joint venture formed in 2004 between SONY Corporation of America and Bertelsmann AG, distributes, markets, and sells audio compact discs ("CDs," as further defined below).

2. Between January and November 2005, SONY BMG distributed 79 CD titles that contained one of two Windows-compatible Digital Rights Management ("DRM") software programs: (1) eXtended Copy Protection ("XCP"), licensed to SONY BMG by First 4 Internet, Ltd., a U.K. company ("First 4 Internet"); or (2) MediaMax Version 5.0, licensed to SONY

Rev. Stat. §§ 59-1601, *et. seq.* (Reissue 2004) and Neb. Rev. Stat. § 87-301, *et seq.* (Reissue 1999; Cum. Supp. 2004; **NEVADA:** Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 41.600, 593.360, *et seq.*; **NEW JERSEY:** New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; **NEW MEXICO:** Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-1 to 57-12-22; **NEW YORK:** N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12); **NORTH CAROLINA:** N.C.G.S. § 75-1.1, *et seq.*; **NORTH DAKOTA:** N.D.C.C. §§ 51-15-01, *et seq.*; **OHIO:** Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*; **OKLAHOMA:** Oklahoma Consumer Protection Act, 15 OS §751, *et seq.*;**OREGON:** Oregon Unlawful Trade Practices Act, Oregon Revised Statutes 646.605, *et seq.;* **PENNSYLVANIA:** Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1, *et seq.*; **RHODE ISLAND:** R.I. Gen. Law, § 6-13.1-1, *et seq.*; **SOUTH DAKOTA:** Deceptive Trade Practices and Consumer Protection, SDCL Ch. 37-24; **TENNESSEE:** Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. Sec. 47-18-101, *et seq.*; **VERMONT:** Consumer Fraud Act- 9 Vt. Stat. Annot. ch. 63; **VIRGINIA:** Virginia Consumer Protection Act, Va. Code §§ 59.1-196, *et seq.*; **WASHINGTON:** Unfair Business Practices Consumer Protection Act, RCW 19.86 *et.seq.*; **WEST VIRGINIA:** W.Va. Code, § 46A-6-101, *et seq.*; **WISCONSIN:** Wis. Stat. Ann. §§ 100.18 and 100.20; and **WYOMING:** Wyo. Stat. § 40-12-101.

BMG by SunnComm International Inc., an Arizona company ("SunnComm"). DRM software, in this context, refers to computer programs designed to limit the copies or transfers, through the use of a computer, of the copyrighted music on a CD. The software at issue has no effect on non-computer-based players.

3. XCP and MediaMax version 5.0 and the initial versions of their associated uninstall programs rendered users' computers vulnerable to different security exploits.

4. In 2003, Bertelsmann Music Group, a predecessor to SONY BMG, began distributing CDs that included a DRM program called MediaMax version 3.0, which also was licensed to SONY BMG by SunnComm.

XCP

5. In April 2005, SONY BMG began selling the first of 52 titles that included XCP on the CDs.[2] Approximately 5 million SONY BMG CDs that contained XCP were shipped to retail, and, of these, consumers purchased approximately 3 million. These CDs can be played on computers with CD-ROM drives as well as on stereos or other non-computer-based devices with CD playing capabilities.

6. SONY BMG used XCP to protect its intellectual property and that of artists and songwriters from what is known in the industry as "casual piracy" – the copying of CDs by consumers who then distribute physical copies to others or make the audio files available to others via peer-to-peer file-sharing networks. XCP prevents users from making unlimited digital copies of a CD and controls the means by which the music can be played on a Windows-based

[2] The list of XCP CD titles is available at http://www.sonybmgcdtechsettlement.com/pdfs/XCPTitles.pdf.

computer. In an effort to prevent consumers from avoiding or disabling these control functions, First 4 Internet designed XCP to hide, or "cloak," a number of the program's files and operations. XCP is able to do this by means of a driver. A driver is a specific type of computer software, typically developed to allow interaction between the operating system and hardware devices such as CD-ROMs. The driver used in XCP, called "aries.sys," prevents users from viewing files that begin with the prefix "sys" through standard Windows graphic tools such as Windows Explorer or Add/Remove Programs.

7. Because of First 4 Internet design measures, XCP creates a security vulnerability on Windows-based computers on which the software is installed by creating the possibility that malicious code, such as viruses, worms, or Trojans, may use the prefix sys to hide from the consumer and from security software.

8. Consumers attempting to remove XCP from their computers running Windows operating system could not do so using the standard "Add/Remove Program" applet in the Windows Control Panel. Sophisticated users may have been able to locate XCP on their computers and attempt to remove it manually. Removing XCP manually can result in the disabling of the CD-ROM drive, which would prevent the consumer from listening to, or using, any CD on their computer until additional remedial measures are taken. In addition, certain third-party anti-virus and anti-spyware software attempted to remove XCP from consumers' systems, which in certain instances also resulted in disabling the CD-ROM drive.

9. SONY BMG did not provide an XCP uninstaller program on the CDs containing the XCP DRM software. Initially, SONY BMG required consumers to obtain an XCP uninstaller by email. SONY BMG required these consumers to provide information including the CD title,

location purchased, and email address for the consumer. After a consumer provided this information, SONY BMG provided the consumer with a unique link to download the uninstaller. This link could only work for that particular consumer.

10. The original XCP uninstaller, designed by First 4 Internet, created an additional security vulnerability. Once the uninstaller patch was executed on a computer it created the possibility that a consumer who inadvertently visited a malicious website (i.e., a site designed to force the installation of viruses or other malicious code) could inadvertently download, install, and run additional programs without the consumer's knowledge or consent.

11. Since December 4, 2005, SONY BMG has provided through its website a new uninstaller for XCP that can be downloaded from the Internet, for free, without the consumer providing any personal information. This uninstaller has been tested and confirmed to be safe and effective.

12. In November 2005, SONY BMG instituted a recall program for all CDs containing XCP. This program, which remains ongoing, allows consumers to return XCP CDs, and receive replacement CDs without copy protection, at no charge. The recall program also provides financial incentives for retailers to return unsold XCP CDs to SONY BMG. In addition, SONY BMG voluntarily ceased shipping XCP CDs from warehouse stock to retailers, and destroyed unsold warehouse stock of CDs with XCP. Despite SONY BMG's efforts, approximately 3 million of these CDs have not been returned.

MediaMax 5.0

13. SONY BMG released CDs containing MediaMax 5.0 beginning in May 2005. A total of 27 titles were produced with the MediaMax 5.0 software. 6.9 million CDs containing MediaMax 5.0 were distributed by SONY BMG.[3]

14. MediaMax software presents consumers with an End User License Agreement ("EULA") at the time the MediaMax CD is first placed in a computer. But, because of SunComm design measures, MediaMax 5.0 installs several files on consumers' hard drives prior to the presentation of a EULA, i.e., the program installs 13 MediaMax files consisting of 15.8 megabytes.

15. MediaMax also installs a driver meant to interfere with copying from protected CDs. Even if a consumer declines the EULA, the downloaded file or files remain on the computer and the driver remains loaded unless and until the consumer re-boots the computer. In some situations the MediaMax driver is activated despite the consumer not consenting to the EULA.

16. Consumers attempting to remove MediaMax 5.0 from their computers running the Windows operating system could not do so using the standard "Add/Remove Program" applet in the Windows Control Panel.

17. SONY BMG did not provide a program to uninstall MediaMax 5.0 on the CDs containing the MediaMax DRM software.

18. Because of SunComm design measures, MediaMax 5.0 also created a security vulnerability on computers running the Windows operating system. MediaMax installed into a directory that allowed any subsequent user of the computer to modify its contents – even if the

[3] The list of MediaMax CDs (both version 5.0 and version 3.0) is available at http://www.sonybmgcdtechsettlement.com/pdfs/MMTitles.pdf.

user was not designated as the computer's administrator. This could make it easier for malicious users who had local access to a computer to obtain enhanced privileges on that machine, potentially running dangerous programs that they otherwise would not have been able to run.

19. SONY BMG provided via the Internet a SunnComm-developed patch to eliminate the security vulnerability associated with MediaMax 5.0 and a SunnComm-developed uninstall program. The SunnComm uninstaller also created a vulnerability similar to the original MediaMax 5.0 vulnerability. Since December 8, 2005, SONY BMG has made available at no charge, through its website, a SunnComm-developed patch for MediaMax 5.0 and a SunnComm-developed uninstaller that have been confirmed to be safe and effective.

MediaMax 3.0

20. Bertelsmann Music Group, a predecessor to SONY BMG, first released CDs containing MediaMax 3.0 in 2003. A total of 35 titles were released with MediaMax 3.0. Since 2003, approximately 10.3 million CDs containing MediaMax 3.0 software were distributed by SONY BMG or its predecessor.

21. In November 2005, SONY BMG ceased the manufacturing of CDs containing either version of MediaMax.

22. No security vulnerabilities have been reported in MediaMax 3.0. However, a small portion of the software (less than with 5.0) installs on the hard drive prior to presentation of the EULA, and, as with MediaMax 5.0, no uninstaller is provided with the CD.

Enhanced CDs

23. "Enhanced CD" is an industry term indicating that the CD contains bonus content in addition to music, such as music videos or links to special Internet-based content. All of the 52

CD titles that contained XCP, and six of the 27 titles that contained MediaMax 5.0, also contained a particular enhanced CD function referred to as the "banner." The banner function is technologically unrelated to the DRM software. The banner is a small area on the user's computer screen that initially will display an image of the artist found on the CD. If the user is connected to the Internet, an updated image (e.g., a more current picture of the artist) may be supplied and will appear in the banner space. The banner function involves the user's computer sending to SONY BMG (or, in the case of MediaMax CDs, to SunnComm) the Internet Protocol address ("IP address") of the computer contacting the server. This is generally the IP address of a proxy server belonging to the consumer's Internet provider, but can be an IP address associated with the consumer's own computer. The banner function also results in sending the server a numerical identifier associated with the title of the SONY BMG CD being played on the computer's CD-ROM drive. A "privacy audit" conducted by an outside consultant has confirmed that the banner functionality was not being used to collect personal information or to monitor listener habits.

Information on the CD Packaging

24. The States contend that SONY BMG fails to disclose on the CD packaging certain material terms and conditions of the CDs containing XCP or MediaMax DRM software. Specifically, the States contend that SONY BMG does not disclose the following:

- On CDs with DRM, the fact that DRM software must be installed on a consumer's computer in order to fully use the CD on a Windows-based computer, and that the CD does not include any program to uninstall or deactivate the software;

- The precise nature of the limitations that the DRM software places on the consumer's ability to make copies of the music;
- On XCP CDs, the fact that the XCP software cloaks files on a consumer's computer;
- On MediaMax CDs, the fact that some MediaMax software components automatically install and are not removed even if a consumer fails to accept the EULA; and
- On enhanced CDs, the fact that information is transmitted to and from SONY BMG or SunnComm simply as a result of the consumer playing the CD on his or her Internet-connected computer.

The States contend that, without disclosure of this information, consumers do not have the opportunity to make an informed decision before choosing to buy a CD and, because many retail stores limit a consumer's right to obtain a refund of an opened CD, that this failure to disclose provides consumers with little or no choice but to keep a CD they may not have otherwise purchased.

EULA Terms

25. The States contend that SONY BMG also fails to disclose material information in the EULA. Specifically, the States contend that SONY BMG:

- Does not fully disclose the true nature and effect of the DRM software, when it is described as "a small proprietary software program. . . intended to protect the audio files embodied on the CD, and . . . facilitate your use of the digital content;"

- Fails to disclose the "cloaking" used by XCP or the pre-EULA installation of certain files by MediaMax;
- Does not fully describe the MediaMax installation process, when it is stated that, "[a]s soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install . . . ;" and
- Fails to disclose that information may be transmitted to and from the consumer's computer across the Internet when the CD is played in the computer.

The EULA further includes several provisions that the States contend unfairly restrict a consumer's use of the music CD and limit the consumer's legal rights, including:

- A "hold harmless" clause that purports to hold SONY BMG harmless for any damage arising out of the use of the CD;
- The right for SONY BMG to revoke a consumer's use of the CD if that consumer fails to install software updates;
- The loss of use of the CD if the consumer files for bankruptcy, including a provision requiring the consumer to delete any electronic copies of the music on his or her computer; and
- A waiver of a consumer's right to a trial by jury for any issue arising from the use of the CD, and an agreement that any legal dispute will take place in New York courts.

The States contend that because these provisions are disclosed only after the CD has been opened and likely cannot be returned to a retailer, consumers may be bound to these terms if they

want to listen to the CD on their computer, without having had the opportunity to make an informed decision in purchasing the CD.

26. SONY BMG previously has taken steps to provide relief for consumers regarding the issues raised by the XCP and MediaMax CDs. SONY BMG has provided additional relief pursuant to a court-approved nationwide settlement of consumer class action litigations. The class action settlement includes an ongoing program under which consumers with XCP CDs can receive cash and free downloads and consumers with MediaMax CDs can receive free downloads. In order to address additional concerns of the States, the States and SONY BMG agree that it is appropriate to enter into this Assurance.

II. DEFINITIONS

1. "**Clear and Conspicuous**" or "Clearly and Conspicuously" means (a) in a written statement or communication, material that is presented in such a font, size, color, location, word choice, and contrast against the background in which it appears, compared to the other matter with which it is presented, so that it is readily understandable, noticeable, and readable, or (b) in an oral statement or communication, material that is presented in such speech and word choice so that it is readily audible, noticeable, and clear. If the statement or communication modifies, explains, or clarifies other information with which it is presented, it must be presented so that it is in close proximity to the other information so that it is easily noticeable and readily understandable and it must not be obscured in any manner. A statement may not contradict any other information which is presented.

2. "**Compact Disc**" or "**CD**" refers to compact discs used primarily to store musical content in standard "Redbook" audio format. This includes standard music CDs and the "Redbook" audio CD side of a DualDisc.

3. "**Computer**" means any general purpose programmable computing device with a central processor and a memory capable of computing functions and storing or receiving information, including, but not limited to, desktop devices, laptop or portable devices, personal digital assistants, minicomputers or other such devices.

4. "**DRM**" or "Digital Rights Management" software means any software residing on a CD and that, when installed on a computer, player or machine, acts to limit, control, track or otherwise manage an end user's use of the CD's musical content.[4]

5. "**EULA**" means an End User License Agreement for DRM software.[5]

6. "**Patch**" means a small piece of software designed to update or fix problems with a computer program.

7. "**Retailer**" **or** "**Distributor**" means any individual, partnership, corporation, association, or other group, however organized, known by SONY BMG to sell or distribute SONY BMG CDs.

8. "**SONY BMG**" means SONY BMG Music Entertainment, its subsidiaries, predecessors, successors (including, without limitation, its parents and affiliates to the extent that the recorded music business carried out through SONY BMG may in the future be carried out by SONY

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[4] The States take no position in this Assurance concerning the propriety of limiting the numbers of copies of CDs consumers may make.

[5] The States take no position in this Assurance concerning the propriety of requiring consumers to execute EULAs as to DRM software.

Corporation of America, Bertelsmann AG, or an affiliate thereof) and current and former assigns, agents, representatives, shareholders, officers, administrators, directors, board of directors, attorneys, servants, and employees.

9. "**XCP**" means the version of eXtended Copy Protection software developed by First 4 Internet and utilized on commercial CDs in public release beginning in or about April 2005.

10. "**MediaMax**" means versions 3.0 and 5.0 of the Digital Rights Management software developed by Sunncomm International, Inc. and utilized by SONY BMG on commercial CDs.

III. ASSURANCES

CDs SUBJECT TO THIS ASSURANCE

1. The terms of this Assurance shall apply to all CDs sold or distributed by SONY BMG for which SONY BMG controls the masters. The terms of this Assurance shall not apply to any CDs for which SONY BMG does not control the masters, i.e., where SONY BMG is primarily acting as a contractor to facilitate the distribution or sale of a CD, whose content a third party controls. SONY BMG agrees, however, to make a good faith effort to ensure that CDs for which SONY BMG does not control the masters adhere to the terms and conditions of this Assurance.

SOFTWARE INCLUDED ON FUTURE CD RELEASES

2. SONY BMG shall not manufacture, distribute, or otherwise place into the stream of commerce any CD containing DRM or other software, designed for installation on the hard drive of the user's computer, that employs any technology or any method to hide or cloak any files, directories, or registry entries in such a manner that a user cannot locate them through standard and ordinary methods available on the computer operating system. Methods of hiding or

cloaking files that are prohibited include, but are not limited to, creating random or deceptive files names, directory folders, formats, or registry entries; and misrepresenting the purpose or effect of files directory folders, formats or registry entries. Standard and ordinary methods, as referred to in this Assurance, include methods normally made available to the consumer to view files, including hidden files, without specific knowledge or expertise by the consumer. Standard and ordinary methods do not include concealing files from the graphical interface of the Microsoft Windows operating system, regardless of security settings, such that a consumer can only view the files through the command prompt.

3. SONY BMG shall not include DRM software on any CDs SONY BMG manufactures, distributes, or otherwise places in the stream of commerce unless the software complies with all of the terms of this Assurance.

4. On CDs that SONY BMG manufactures, distributes, or otherwise places in the stream of commerce in the future, SONY BMG shall not include DRM software that is downloaded or copied to the hard drive unless the software complies with all of the following requirements:

A. The user must be provided with a Clear and Conspicuous option to decline the installation of the files;

B. If the user declines the software installation, no files may be installed on the hard drive; and

C. All of the material terms and conditions of the functions and features of the software must be Clearly and Conspicuously disclosed immediately prior to installation on the hard drive of any software. Material terms and conditions include, but are not limited to:

1) The fact, if true, that computer files must be installed on a consumer's computer in order for the consumer to listen to, copy, or transfer the music via that computer;

2) The fact, if true, that any software to be installed on the hard drive may consume system resources when the CD is not in use on the computer;

3) The fact, if true, that the CD includes any form of DRM software, and the general limitations that the DRM software imposes on the use of the CD (i.e., the limited number of copies that the DRM software permits a consumer to make);

4) The fact, if true, that playing the CD in a computer may cause information, including but not limited to an IP address, to be transmitted across the Internet;

5) The specific file formats, if limited, to which the musical content can be converted using the DRM software and a reference to a hyperlink for more information about conversion to other file formats, if applicable;

6) The fact, if true, that a consumer will be required to accept the terms and conditions of a license agreement prior to being able to listen to or otherwise access the CD on a computer;

7) A reference to a hyperlink or other source where consumers may obtain any recommended updates or patches, including, but not limited to, security patches; and

8) Any other material terms or conditions.

5. For the first 12 months of distribution of any CDs with DRM software intended for installation on the hard drive, distributed after the effective date of this Assurance, a summary, plain-English version of the disclosures required by Paragraph III.4 above shall also be Clearly and Conspicuously presented on a printed insert, of the type referred to in the music industry as a blow-in card.

XCP AND MEDIAMAX SOFTWARE

6. SONY BMG shall not manufacture, distribute, or otherwise place into the stream of commerce CDs containing XCP software.

7. SONY BMG shall not manufacture any additional CDs containing MediaMax software..

8. SONY BMG shall destroy any existing CDs containing MediaMax software that are currently in wholesale stock.

9. SONY BMG shall continue, for 12 months from the date of this Assurance, its current voluntary program of providing financial incentives to retailers for the return of XCP CDs. SONY BMG shall expand the incentive program to include identical incentives for the return of MediaMax 5.0 CDs.

10. SONY BMG shall continue, for at least 12 months from the date of this Assurance, its program of using "keyword buys" " and "bannering" on capable CDs to give consumers notice of the known forms of security vulnerabilities to their computers and of information consumers can obtain regarding the protection of their property. The "keyword buys" and "bannering" shall also disclose to consumers any known loss of functionality that can occur following use of XCP or Media Max CDs, including, but not limited to, the disabling of a CD-ROM drive. SONY BMG shall consider in good faith any suggestions the States may offer concerning possible

adjustments to the specific terms of the keyword buys program and the language displayed to consumers in connection with the relevant links and landing pages. SONY BMG shall adopt procedures to monitor and ensure that such keyword buys result in consumers receiving a Clear and Conspicuous link on the first page of returned results. The return result shall provide a warning of the security vulnerabilities and direct consumers to additional information on XCP and MediaMax patching and removal. SONY BMG shall adopt procedures to monitor and ensure that banner ads function properly and provide consumers with a Clear and Conspicuous warning of known forms of security vulnerabilities and the website address to obtain additional information on XCP and MediaMax patching and removal.

11. SONY BMG shall continue, for a period of at least two years from the Effective Date of this Assurance, to provide Clear and Conspicuous and easily navigable instructions on its website for uninstalling XCP and MediaMax and for implementing any patch that has been distributed. The uninstall and patching instructions shall be clearly written and easy to access, follow, and perform. To the extent that accessing the instructions requires clicking on one or more hyperlinks, the first link shall be Clearly and Conspicuously identified on the homepage of the SONY BMG website, as shall a link to the list of affected CDs. Online technical support shall continue to be provided to assist consumers in the process of uninstalling or patching the software or with any related questions or concerns. SONY BMG shall also continue, for a period of at least two years from the date of this Assurance, to maintain on its website a list of the affected XCP and MediaMax CDs. After the end of the two year period, SONY BMG may in its discretion relocate or remove links from its website to the patch, uninstaller or list of affected CDs. To the extent that this paragraph or other provisions of this Assurance require SONY

BMG to post or provide information via the Internet, it shall constitute full compliance with this Assurance if the information is provided in detail on the class action settlement website (www.sonybmgcdtechsettlement.com), the website of the appropriate software licensor or another website, provided that a Clear and Conspicuous link leading to the information is provided on the homepage of SONY BMG's website.

DISCLOSURES TO CONSUMERS ON CD PACKAGING

12. For any CD released after the Effective Date that contains DRM software, the outer packaging must Clearly and Conspicuously disclose, at a minimum:

A. which operating systems are required to play the CD or use the DRM software;

B. the fact, if true, that to play, copy, or transfer the contents of the CD on a computer, DRM software must be installed on the hard drive, and will require the consumer to accept the terms of a EULA;

C. the number of copies, if limited, that can be made of the CD; and

D. the specific compatible file formats, if limited, to which the musical content may be converted using the DRM software, and the URL of the website that consumers can visit for additional information about conversion to other file formats, the DRM software, or other features of the CD. The identified website will include information regarding items (A) through (C) above, as well as, where applicable, customer service contact information and information about the specific file formats to which the CD audio files may be converted for personal use.

If a EULA must be accepted, the outer CD package shall also disclose any limitations on use of the CD if the user declines the EULA, and shall provide SONY BMG's website and tell the consumers that they may find the full terms and conditions of EULA on the website.

EULA TERMS

13. SONY BMG shall not include any of the following terms and conditions in any EULA for DRM software on CDs released after the Effective Date, and shall not enforce the following terms and conditions in any existing EULA included with software on existing CDs:

A. A limit on a user's ability to transfer music to any media player or portable device, provided, however, that such a prohibition may be included in the EULA if notice of this restriction is Clearly and Conspicuously disclosed to the consumer on the CD jewel case;

B. A prohibition on the private resale of the CD, provided, however, that SONY BMG shall be permitted to require a consumer to delete or destroy all copies of the musical content prior to resale;

C. A prohibition against removing or deleting any DRM files SONY BMG places or will place on the person's computer;

D. A requirement that the user waive or limit any rights or causes of action against SONY BMG for any damage arising out of the normal and proper use of the CD;

E. A provision allowing SONY BMG to terminate the license agreement for a person's failure to timely update any music or DRM files SONY BMG places or will place on the person's computer; or

F. A provision allowing SONY BMG to terminate the license agreement upon a person's filing of a voluntary or involuntary bankruptcy petition.

INSTALLATION AND REMOVAL OF SOFTWARE

14. All DRM software distributed by SONY BMG on CDs for installation on computers running Microsoft's Windows operating system shall be configured to automatically appear in the "Add/Remove Program" applet in the Windows Control Panel, which shall allow a consumer to remove the software in its entirety. The DRM software shall be Clearly and Conspicuously identified as software distributed by SONY BMG on a CD. All DRM software distributed by SONY BMG on CDs for installation on computers running any other operating system shall be removable through that system's standard software removal process.

15. The uninstall methods described in paragraph III.14 above shall include (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, provided that (a) the uninstall process need not erase information or data stored on the computer that is essential to core purposes of the content protection, such as information regarding whether the user had reached the limit of permitted copies of the covered product prior to uninstalling the content protection; and (b) the uninstall methods shall be designed so as to remove files and registry entries, disable drivers or terminate processes to a commercially reasonable standard, which may include allowing the survival of small amounts of code or data that do not impair the operation of the computer or operating system.

16. SONY BMG shall not require that a consumer accept and install software as a condition of accessing the music content of the CD on a computer, unless the requirements of this Assurance are followed.

PERSONAL IDENTIFYING INFORMATION

17. SONY BMG shall not manufacture, distribute, or otherwise place into the stream of commerce CDs that gather, collect, or store any personal identifying information without the consumer's express consent via an "opt-in" method. "Express consent" shall mean a consumer's unambiguous acknowledgment and agreement with SONY BMG's use of personal identifying information that is objectively verifiable and obtained through the use of an electronic acknowledgment that requires the consumer to affirmatively click on a check box or button acknowledging receipt of an explanation of the use, and acceptance of the explanation. For purposes of this paragraph "personal identifying information" includes a person's name, address, telephone number, email address, or other information disclosing the identity of a person, and any information regarding the CDs listened to by an identifiable person, or any websites visited on an identifiable person's computer, but does not include an IP address. Prior to obtaining a consumer's express consent, SONY BMG shall Clearly and Conspicuously disclose its privacy policy which shall include all material information regarding SONY BMG's collection and use of personal identifying information.

RELEASES OF ENHANCED CDS AFTER THE EFFECTIVE DATE

18. With respect to Enhanced CDs released 90 days or later after the Effective Date, SONY BMG must provide notice prior to causing either transmission or receipt of any information across the Internet. Enhanced connectivity either may require an affirmative act by the consumer

(e.g., user must click a hyperlink) or may occur in the background (e.g., CD "pings" the Internet whenever user is online). If the connection requires an affirmative act, it shall be sufficient to disclose the option of connecting by using clear, simple language on-screen at the point of connection, such as a text hyperlink or a floating dialog box that would appear when a cursor moved over the text hyperlink. If the connection occurs in the background, one of two types of notice must be provided, with the choice between them at SONY BMG's discretion: either (a) a terse, plain-English notice of the fact of such connectivity shall be provided Clearly and Conspicuously on the CD packaging (e.g. "Automatic Internet Connection"), and in the EULA and/or other on-screen disclosures that are presented to the user prior to the first playback or ripping of the CD on a computer, or (b) an on-screen notice shall be provided, in the EULA acceptance process, whereby the user has the option to decline or turn off the background Internet connection. Whether the connection requires an affirmative act or occurs in the background, basic information about any collection and use of consumers' information shall be disclosed, to the extent required by law and consistent with the level of disclosure ordinarily found on major consumer websites, in the EULA and/or in a privacy policy. Any privacy policy shall be readily accessible to the consumer via an Internet link on the on-screen user interface or by comparable means. Whether the connection requires an affirmative act or occurs in the background, the consumer shall have the option through the software to terminate the Internet connection and disallow any further connection.

LANGUAGE OF DISCLOSURES REQUIRED BY ASSURANCE

19. All disclosures required in this Assurance shall be made in English and shall be available in Spanish and any other language the CD is marketed in, in the same Clear and Conspicuous

manner as required above, provided, however, that outside packaging disclosures generally may be in English only, unless the CD is marketed primarily to a non-English-speaking audience, in which case the outside packaging disclosures may at SONY BMG's discretion be either in English or in English and in the language of the target audience, provided that all of the disclosures on a particular CD are made in full in both languages. Disclosures made in electronic form may always be in English as the primary language at SONY BMG's discretion, provided that the user has the option to select a different language. Technical computer terminology that does not readily translate into languages other than English may always appear in English only.

SECURITY REVIEWS

20. SONY BMG shall obtain an assessment and report ("Assessment") from a qualified, objective, independent, third-party professional, using procedures and standards generally accepted in the computer security profession, within one hundred and eighty (180) days after the signing of the Assurance, and annually thereafter for the next five (5) years, that:

A. confirms that, as to any CD with DRM software released during the period under review, prior to the release SONY BMG obtained reasonable assurances from an independent outside expert that the software would not in ordinary use create any security vulnerability on consumers' computers;

B. sets forth any specific administrative, technical, and physical safeguards that SONY BMG has implemented and maintained during the reporting period to protect the security and integrity of computers and systems with which any DRM-protected CDs distributed by SONY BMG interact;

C. confirms that a "privacy audit," similar in scope to the one available on SONY BMG's website as of the date of this Assurance, has been performed within the preceding year, and summarizes the findings and any recommendations of that audit;

D. explains how the safeguards that have been implemented meet or exceed the protections required by this Assurance;

E. certifies that SONY BMG's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and, for annual reports, has so operated throughout the reporting period;

F. identifies all non-DRM software that has been distributed on SONY BMG CDs during the reporting period and, for any software program that requires installation on a computer's hard drive in order for the user to access the music files on the CD, describes the nature and function of the software, ensures that such software complies with the same requirements that are imposed on DRM software by this Assurance; and

G. identifies by name and title the individual at SONY BMG responsible for receiving and reviewing the Assessment and for coordinating SONY BMG's software security efforts on matters covered by this Assurance.

21. Each Assessment shall be prepared by a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA), or a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit,

Network, Security (SANS) Institute. SONY BMG shall provide the Assessments upon request to any signatory to this Assurance. Any of the firms previously retained by SONY BMG as experts in this matter are acceptable to the States for the performance of the Assessments.

NOTICE OF SECURITY FLAWS

22. SONY BMG shall notify consumers of all security flaws in DRM software covered by this Assurance that cause any material security risk or material potential for damage to consumers' computers, including material vulnerability to viruses or malware, damage to data or file integrity. Notice must be provided in the most expedient time possible and without unreasonable delay. Notice may be delayed (1) if law enforcement determines that notification impedes a criminal investigation, or (2) to determine the scope of the flaw and take reasonable steps to prepare and distribute a patch or otherwise restore the integrity of the DRM software. At a minimum, notice shall be made by (1) email if SONY BMG has an email address for the subject persons; (2) conspicuous posting of the notice on SONY BMG's consumer website; (3) banner ads to all enhanced CDs that both contain the flaw and have banner functions; and (4) notification to major computer security providers. Notwithstanding any provision of this paragraph or this Assurance, SONY BMG may reasonably conclude, by reference to computer security industry norms, that a particular flaw in DRM software is not material and thus does not require disclosure or patching.

FUTURE TESTING OF DRM SOFTWARE

23. SONY BMG shall adopt and implement policies and procedures to fully examine and test future DRM software for security vulnerabilities, as well as compliance with this Assurance. These policies and procedures shall include, at a minimum:

A. SONY BMG shall retain an independent, third-party expert to test any future DRM software for security flaws, compatibility conflicts, unauthorized installations, or other behavior in conflict with this Assurance, prior to manufacturing CDs with the software;

B. Promptly upon learning of any credible report of a security risk or other harm caused by SONY BMG's DRM software, SONY BMG shall promptly perform its own tests and/or submit the DRM to an independent third party expert for further testing;

C. If testing confirms any potential material security risk or other harm, SONY BMG shall take or cause the software vendor to take immediate remedial action to correct, fix, or patch, the DRM software as well as to notify consumers of the risks associated with the DRM software, pursuant to the notice requirements above; and

D. SONY BMG shall maintain copies of all results from DRM testing for at least three (3) years, and shall, upon request of the States, provide copies of those results to the Attorneys General.

IV. REFUNDS

1. SONY BMG shall continue to provide the same consumer incentives required by the court-approved, nationwide class action settlement, In re SONY BMG CD Technologies Litigation, No. 05 CV 9575 (NRB)(S.D.N.Y.) (May 24, 2006) ("Class Action"), through June 30, 2007, for any consumer who returns an XCP or MediaMax 5.0 CD, provided that the person has not already obtained relief for that CD. In providing such incentives, SONY BMG shall not

be required to use the same administrator as established in the Class Action and may administer the incentive distribution internally.

2. For a period of 180 days following the Effective Date of this Assurance, SONY BMG shall provide restitution to consumers who used XCP CDs in their computer and experienced the disabling of his or her CD-ROM drive. At the request of any consumer who purchased a SONY BMG CD containing XCP or MediaMax and experienced such damage, and who resides in one of the participating States, SONY BMG shall refund the consumer the greater of $25.00 or actual out-of-pocket expenses to repair or replace his or her computer up to a maximum of $175.00. Any claim for compensation must be submitted on a form, to be made available on SONY BMG's website and subject to the approval of the States. The form when submitted must (i) be sworn to under penalty of perjury (provided that notarization will not be required), (ii) be accompanied by proof of purchase of XCP (which may be in the form of a receipt, UPC code, evidence that proof of purchase was accepted in the Class Action, or any other credible evidence of such purchase), (iii) be accompanied by documentation of out-of-pocket repair expense if seeking greater than $25.00, (iv) include a credible basic description of the nature of the harm allegedly caused by the installation (provided that technical detail will not be required) and approximately when the harm occurred, (v) require the consumer to certify that no previous claim for restitution has been made as to the same computer, and (vi) grant a complete release to SONY BMG, including its affiliates, for the specific damage caused by such CDs and for which compensation is to be given. SONY BMG may, in its discretion, accept or reject any claim for compensation that fails to meet all of requirements (i) through (vi) above, including where the alleged harm described is contrary to the known harm examined by SONY BMG's experts.

Copies of any rejections shall be provided to the States. SONY BMG shall publicize this claims process on its website and via continued bannering and keyword buys as described in Paragraph 10 above.

3. SONY BMG shall confirm that its expert(s) have investigated fully and identified any other possible damage that could occur to a consumer's computer based upon the installation of XCP or MediaMax. If the expert determines that other possible damage may occur, i.e., other than the disabling of a CD-ROM drive due to the application of third-party antivirus software, SONY BMG shall provide restitution to such consumers for any such damage on the same terms described above.

V. PAYMENT

SONY BMG shall pay to the states $4.25 million for attorneys' fees and investigative costs, consumer education, litigation, enforcement, or local consumer aid funds; public protection funds; or consumer protection purposes as allowed by each State at the discretion of each State Attorney General.[6] This payment shall be made to the Commonwealth of Massachusetts and provided to the Massachusetts Attorney General no later than by January 4, 2007. The Massachusetts Attorney General will hold the payment for the States, and shall promptly distribute payments to the States consistent with an agreement among the States for the uses set forth in this paragraph.

[6] The payment to the Commonwealth of Massachusetts shall be deposited into the Local Consumer Aid Fund, pursuant to G.L. c. 12, § 11G.

VI. RELEASE

By execution of this Assurance, each State that is a party to this Assurance releases SONY BMG, all of its past and present subsidiaries, affiliates, predecessors and successors (collectively referred to as "Released Parties") from all civil claims, causes of action, damages, fines, costs and penalties under the States' consumer protection statutes, arising from any security- or disclosure-related conduct that is the subject of this Assurance, as identified in Sections I and III of this Assurance, and occurring prior to the Effective Date of this Assurance.

VII. GENERAL PROVISIONS

1. This Assurance shall be governed by the laws of the States. Nothing in this Assurance shall be deemed to permit or authorize any violation of the laws of any State or otherwise be construed to relieve SONY BMG of any duty to comply with the applicable laws, rules and regulations of any State, nor shall anything in this Assurance be deemed to constitute permission to engage in any acts or practices prohibited by these laws, rules or regulations.

2. Nothing in this Assurance shall be construed to authorize or require any action by SONY BMG in violation of applicable federal, state or other laws. SONY BMG agrees that this Assurance constitutes an obligation of SONY BMG, legally enforceable by the States in accordance with its terms.

3. This Assurance shall be effective on the date that it is executed by all parties ("Effective Date") and SONY BMG shall have ninety days from the Effective Date to implement the permanent injunctive terms contained herein.

4. The respective Attorneys General, without further notice, may make application to any appropriate state court for an order approving this Assurance, which shall be considered an

Assurance of Voluntary Compliance or an Assurance of Discontinuance as provided by the States' respective laws, or otherwise file this Assurance in any appropriate state court. In the event of any court filing of any kind by an Attorney General pursuant to this paragraph, the respective Attorney General shall give contemporaneous notice to SONY BMG, either by formal service of process or by informal delivery of the papers to SONY BMG or its counsel.

5. Nothing in this Assurance shall be construed as a waiver of any private rights of any person.

6. This Assurance does not constitute an approval by the States of any of SONY BMG's products, practices, or past conduct, and SONY BMG will not make any representation to the contrary. Conversely, nothing in this Assurance will be deemed to be an admission by SONY BMG of any wrongdoing or any kind or nature.

7. Notices, Compliance Reports, and other correspondence to SONY BMG or the States as required by this Assurance will, unless notified otherwise, be provided to the parties at their addresses listed in the signature blocks below.

8. The undersigned representative for each party certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Assurance and to legally bind the party he or she represents to the Assurance.

9. In the event any law or regulation is enacted or adopted by the federal government or by any of the States which is inconsistent with the terms of this Assurance, so that SONY BMG cannot comply with both the statute or regulation and the terms of this Assurance, the requirements of the law or regulation, to the extent of the inconsistency and after written notice

by SONY BMG, shall replace any provision contained in this Assurance so that compliance with the law or regulation shall be deemed compliance in these jurisdictions with this Assurance.

10. Upon the written request of any State, SONY BMG agrees to provide business records or documents and sworn testimony sufficient to enable the States to monitor compliance with this Assurance, and to make any requested information available within thirty days (30) of the request, at the Office of the requesting Attorney General or at any other location that is mutually agreeable in writing to SONY BMG and the Attorney General of the State. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

SIGNATURES

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, consent to the form and content of this Assurance and to its entry:

Signed this 20th day of December 2006.

SONY BMG Music Entertainment

By: _____

Daniel M. Mandil
Executive Vice President and Global General Counsel

DATED: December 21, 2006

STEVE CARTER
ATTORNEY GENERAL OF INDIANA

By: _____

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