

Superior Court of the District of Columbia
CIVIL DIVISION

500 Indiana Avenue, N.W., Room JM-170
 Washington, D.C. 20001 Telephone: 879-1133

Electronic Privacy Information Center

Plaintiff

vs.

Civil Action No. **03-0009729**

Sony BMG Music Entertainment, LLC

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon your exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government you have 60 days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear **below**. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W. between 9:00 am. and 4:00 pm., Mondays through Fridays or between 9:00 am. and 12:00 Noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Tracy D. Rezvani

Name of Plaintiff's Attorney

FINKELSTEIN, THOMPSON & LOUGHRAN

Address

1050 30th St., N.W., Washington, DC 20007

(202) 337-8000

Telephone

By

Deputy Clerk

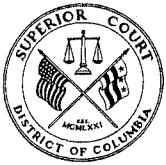
Date **December 23, 2005**

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

IMPORTANT: IF YOU FAIL TO SERVE AND FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN **AND** SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT *FAIL TO ANSWER WITHIN THE REQUIRED TIME*

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (628-1 161) or the Neighborhood Legal Services (682-2700) for help or come to Room JM 170 at 500 Indiana Avenue, N.W., for more information concerning where you may ask for such help.



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

ELECTRONIC PRIVACY INFORMATION CENTER

Vs.

C.A. No. 2005 CA 009779 B

SONY BMG MUSIC ENTERTAINMENT LLC

INITIAL ORDER

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order, and any General Order issued **by the judge** to whom the case is assigned. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(o).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive reading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge as an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Civil Assignment Office (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

Chief Judge Rufus G. King, III

Case Assigned to: Judge ROBERT E MORIN

Date: December 28, 2005

Initial Conference: 9:30 am, Friday, April 07, 2006

Location: Courtroom 517

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Electronic Privacy Information Center)
1718 Connecticut Ave., NW, Suite 200)
Washington, DC 20009)

Plaintiff,)

v.)

Sony BMG Music Entertainment, LLC)
550 Madison Avenue,)
New York, NY 10022)

Defendant.)

RECEIVED
Civil Clerk's Office

No. _____

DEC 23 2005 COMPLAINT

Superior Court of the
District of Columbia
Washington, D.C.

05-0009779

Plaintiff, Electronic Privacy Information Center ("EPIC"), by his undersigned attorneys,
brings this action on behalf of the General Public of the District of Columbia, and alleges the
following:

INTRODUCTION

1. This action, brought on behalf of the residents of this jurisdiction, seeks damages and declaratory and injunctive relief on behalf of persons who reside in the District of Columbia.
2. In 2003, Sony BMG began to distribute CDs that contain software that Sony BMG refers to as Digital Rights Management ("DRM") to the public. This DRM software on the Sony BMG CDs includes MediaMax created by SunnComm Technologies, Inc. ("MediaMax CDs") and Extended Copy Protection ("XCP") created by First 4 Internet ("XCP CDs").
3. SunnComm introduced MediaMax in 2002 and First 4 Internet, LTD ("First 4") introduced its XCP software in 2003. On information and belief, Sony BMG intended that most of its CDs sold in the United States would incorporate one of these technologies.

4. Sometime thereafter First 4 and Sony BMG Music ("Sony") entered into an agreement under which First 4 would produce a customized version of its XCP software for Sony's use on its compact discs ("CDs") worldwide. According to First 4, XCP was an end-to-end solution to protect the rights of record labels and artists against the unauthorized copying of CD content." Sony was the first major record label to agree to use the XCP software. Sony is one of the world's largest outlet of music, video and games.

5. In March 2005, Sony began encoding numerous music titles that it sold worldwide with the XCP software. While Sony publicly touted this development as merely a "speed bump" for consumers seeking to illegally share its music, in reality it was something far more ominous. Sony and First 4 created an anti-burning (copying of CDs) scheme that would make permanent and irreversible alterations to the core Windows operating system which could be later used by "hackers" or Sony to take control of the user's computer without the user's knowledge or consent.

6. Similarly, Sony also uses SunnComm Technologies, Inc.'s (SunnComm) MediaMax software on a certain subset of its CDs. However, unlike XCP, MediaMax installs files on the users' computers even if they click "no" on the EULA, and it does not include a way to fully uninstall the program. The software transmits data about users to SunnComm through an Internet connection whenever purchasers listen to CDs, allowing the company to track listening habits -- even though the EULA states that the software will not be used to collect personal information and SunnComm's website says "no information is ever collected about you or your computer."

7. In encoding their CD disks with XCP and MediaMax software, Sony has placed its intellectual property above the personal information of personal computer users here in the District of Columbia. To date, nearly 5 million copies of the XCP encoded CDs, and nearly 20 million of the MediaMax encoded CDs, have been sold. Millions of consumers, including District of Columbia residents, have played these disks on their personal computers and thus have had their systems unwittingly compromised.

8. At this date, several viruses have been reported that exploit the weakness that was created by the surreptitious installation of the XCP on their computers. District of Columbia residents are at risk from these viruses (and others to come) that will destroy software and steal personal information.

9. Sony has taken concerted action to cover up its actions under the guise of trying to fix the problem. Sony even initially refused to disclose which titles it sold that were encoded with the DRM spyware although websites soon popped up disclosing a majority of the titles.

10. The public backlash to this campaign has been swift and severe. Sony initially stated that it planned to have all major new releases copy protected in 2006. Due to the backlash, and news of the virus piggy-backing on the XCP technology embedded by their CDs, Sony has since opted to "halt" or "suspend" the production of new CDs bearing the XCP technology. There has been no suspension of, or affirmative statement against, the use of the MediaMax software.

11. First 4's Managing Director was upbeat about the market potential of XCP and was quoted as saying "Right now we're focusing on the music sector, where there's a real burning desire for this technology, excuse the pun! But there are other types of data that need to

be protected, and our technology can be applied to video, for example, and to games. We've got lots of plans for the future. So it's all exciting times really."

PARTIES

12. Plaintiff Electronic Privacy Information Center ("EPIC") is a non-profit organization located at 1718 Connecticut Avenue NW, Suite 200, Washington DC 20009.

13. EPIC is registered in the District of Columbia and has its principal place of business in the District of Columbia. EPIC was founded in 1994 to focus attention on developing civil liberties issues and to protect privacy and constitutional values.

14. Defendant Sony BMG Music Entertainment, LLC is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 550 Madison Avenue, New York, NY 10022. Sony is one of the largest distributors of pre-recorded audio discs in the world. During the relevant time period, Sony has distributed CDs in this jurisdiction under various labels including, but not limited to, Arista, Columbia, Epic, Epic Associates, Sparrow, Delicious Vinyl, RCA Records, Sony Classical, Sony Broadway, Sony International, Masterworks Dinner Classics, and Masterworks.

15. Non-defendant First 4 Internet, Ltd., is a corporation organized and existing under the laws of the United Kingdom with its principle place of business in Wales, United Kingdom. First 4 is a developer of digital rights management software including the XCP1 Burn Protect. A customized version of this software was produced for Sony for use on its CDs, including CDs sold in the District of Columbia.

16. Non-defendant SunnComm Technologies, Inc., ("SunnComm"), traded as SCMLPK, is a Nevada corporation with its principle place of business at 668 N. 44th Street, Suite

248, Phoenix, AZ 85008. SunnComm's MediaMax software, distributed by MediaMax Technology Corp. (OTCBB:MMXT) was installed on over 20 million Sony CDs worldwide. In response to public outcry of the secret installation of their software by Sony, Sony's website (<http://cp.sonybmg.com/>) directs consumer's to an FAQ on Sunncomm's website. <http://www.sunncomm.com/support/sonybmga/>

JURISDICTION & VENUE

17. Jurisdiction of this Court is founded on D.C. Code § 11-921. Moreover, Count I of this Complaint arises under the District of Columbia Deceptive Trade Practices Act, D.C. Code § 28-3904. This Court, therefore, has subject matter jurisdiction over that count under D.C. Code § 28-3905(k)(1).

18. Venue is proper in this District. The claims asserted in this complaint arise, in part, within this District. Plaintiff represents residents who have purchased Sony's CDs bearing the XCP and MediaMax DRM technology in this District. Defendant transacts business in this District and has caused injury within the District.

SUBSTANTIVE ALLEGATIONS

19. In 2003, Sony BMG began to distribute CDs that contain software that Sony BMG refers to as Digital Rights Management ("DRM") to the public. The use of the technology is complex, hidden, and insidious. The XCP was installed on 52 titles encompassing nearly 5 million CDs. The MediaMax software has been installed on over 20 million CDs of approximately 140 most popular titles.

20. The Sony DRM software installs itself without the users' knowledge or consent the moment someone attempts to play a CD on their Windows-based computer. This occurs

even if the CD is simply copied to the computer for the user's own personal use or for use on an MP3 player. Since most users have "autorun" features enabled on the computers, once a CD is inserted and the disc tray is closed, the CD plays and the software self-installs without any further action by the user.

XCP by First4Internet.

21. When a computer user places the Sony BMG XCP CD in a Windows based computer, the software is designed such that the user is first required to agree to a pop-up multi-page Sony BMG End-User License Agreement ("EULA"). According to the EULA, a user cannot utilize the audio files or the digital content of the CD on the computer unless the user agrees to the EULA, making it a contract of adhesion. Attached hereto as Exhibit A and incorporated hereby by reference is a true and correct copy of the XCP EULA. After clicking "agree" on the EULA pop-up, Sony's own media player will load, allowing the consumer to listen to the CD. If the consumer clicks "disagree", the CD will eject from the computer.

22. The user is then told that the XCP software automatically installs player software into the user's computer that will allow the user to play, save and copy the audio files on the CD.

23. While the user is led to believe the Sony BMG's XCP software is installing the player software into the user's computer, it is actually installing software, known as a "rootkit", into the user's hard drive. The Sony BMG XCP software also installs a CD drive filter driver that intercepts calls to the computer's CD drive.

24. A "rootkit" is often used by virus writers. A rootkit takes partial control of a computer's operating system at a very deep level in order to hide the presence of files or ongoing processes. Rootkits, while not intrinsically malicious, are viewed with deep suspicion by many

in the software development community. They are extraordinarily difficult to find and remove without specific instructions, and attempts to modify the way they act can even damage the normal functioning of a computer.

25. The rootkit is used to hide login, processes, files and logs and may include software to intercept data from terminals, network connections, CD drives, and keyboards. The rootkit is invisible to the operating system and antivirus and security software, and is frequently used by unauthorized third-parties, after gaining access to a computer system to hide their activities. Specifically, the Sony BMG rootkit is a system filter driver which intercepts all calls for process, directory or registry listings, and then modifies what information is visible to the operating system in order to hide every file, process, or registry key beginning with the characters "\$sys\$."

26. Installation of a rootkit on a computer undermines the security of that computer. Malicious software coders have discovered that they can effectively render their programs invisible by using names for computer files similar to ones cloaked by the Sony BMG technology.

27. Installation of a rootkit on a computer causes impairment to the integrity or availability of data, a program, a system or information.

28. Sony BMG failed to disclose that the XCP software, in the rootkit, automatically connects the user's computer via the internet to a server owned or operated by Sony BMG or its affiliated, without the user's consent. Once a user's computer is connected to the Sony BMG website, the software sends an identification code associated with each XCP CD that is played on that computer to the Sony BMG website. The Sony BMG server then automatically checks for

updates to the album art and lyrics for that album. This process uses the bandwidth that would otherwise be available to the user's computer for other tasks.

29. Sony deliberately hides the files that it installs on the user's computer. During the installation of its media player, Sony creates and installs components of the XCP technology in a folder it names "C:Windows/System32/\$sys\$filesystem". Unbeknownst to the consumer, Sony also installs a file named "Aries.sys", in the same folder, which conceals the XCP files and the folder in which they are installed, such that the owner of the computer performing a search of the file system would not be able to locate and remove the XCP technology. Essentially, the Aries.sys driver masks any folder or file name on a consumer's computer that begins with the characters"\$sys\$", which are the first characters of the folders, files, and registry entries associated with the XCP technology invisible. During the installation process, Sony installs yet another hidden file named, "\$sys\$drmserver.exe" which is also cloaked and constantly consumes system memory, resulting in a reduction in a consumer's available system resources.

30. The Aries.sys file is not required to play Sony's copy protected CDs; rather its purpose is to conceal the copy protection software installed by Sony. In fact, renaming or deleting the Aries.sys file will uncloak the XCP files.

31. The software installed by Sony BMG includes a set of computer instructions that is designed to modify, damage, destroy, record, and/or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information.

32. This network connection used by the DRM technology provides Sony BMG with the ability to record each time a CD with XCP software is played and the Internet Protocol (or

“IP”) address of the computer playing it, without receiving permission from the computer user.

No two IP addresses are alike and IP addresses provide the means to determine information about the person who used the particular IP address. Users are assigned an IP address by their Internet service provider or system administrator. Many users are issued frequently changing “dynamic” IP addresses that make it difficult to track them individually, but others have fixed, “static” addresses that permit Sony BMG to ascertain their identities and associate listening habits with particular individuals across many different CDs containing the DRM software.

33. Sony BMG does not disclose the possibility of this use of DRM software in its packaging, the installation process, or its EULA. Instead the EULA states, “the SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.”

34. In late October, Mark Russinovich, chief software architect at Sysinternals, posted a description of how he traced some mysterious processes and hidden files on his computer back to Sony’s “Get Right with the Man” CD. It turned out that these processes and files were part of Sony's digital rights management technology designed to thwart illicit copying.

35. In the case of the First 4 Internet software, Russinovich found that attempts to remove it manually rendered the CD drive of the computer inoperable. Other functions of the technology have the software “phoning home” to Sony or First 4 with details of user’s music-listening habits. It also interferes with more than 250 programs that could allow copying of CD content to a portable media player or backup disc.

36. No disclosure of the rootkit or of the risk that the user is exposed to is included in the EULA. Moreover, Sony and First 4 have repeatedly changed their EULA and FAQ sections

of their websites by disclosing only whatever information had thus far become public—but no more.

37. As part of its frequently asked questions (“FAQ”), Sony included the following:

I have heard that the protection is really malware/spyware. Could this be true?

Of course not. The protection software simply acts to prevent unlimited copying and ripping from discs featuring this protection solution. It is otherwise inactive. The software does not collect any personal information not is it designed to be intrusive to your computer system. Also, the protection components are never installed without the consumer first accepting the [EULA]....

38. Despite the FAQ, the XCP technology remains hidden and active on a consumer’s computer at all times after installation, even when Sony’s media player is not active. Moreover, these hidden files and folder are installed within the consumer’s Microsoft Windows “System32” subfolder, such that a consumer may confuse that software with essential files needed to run the computer’s operating system.

39. First 4 Internet CEO Mathew Gilliat-Smith concedes that the software is put on PCs "to make it more difficult for the consumer to find the protection files." Jefferson Graham, *Some Sony CDs' piracy protection called spyware*, USATODAY.com, November 9, 2005 at http://www.usatoday.com/tech/news/2005-11-09-sony-usat_x.htm?POE=TECISVA (last visited December 23, 2005).

40. Unbeknownst to users the rootkit is installed by the software on a Sony BMG CD, the rootkit degrades the performance of the user’s computer.

41. On information and belief, the XCP software causes additional damage to users’ computers.

MediaMax by SunnComm

42. MediaMax can be found on many Gold, Platinum and Double-Platinum selling albums, totaling over 140 commercially released CD titles across more than 30 record labels.

43. Ironically, SunnComm, the creator of MediaMax, describes itself as a company whose top mission is “to develop entertainment technology that guards the content ownership rights of publishers, artists, and record companies *without getting in the way of the listening experience.*” (emphasis added).

44. MediaMax has different, but similarly troubling problems. It installs on the users' computers even if they click "no" on the EULA, and does not include a way to uninstall the program. Unlike XCP, MediaMax can install on the Mac system as well as Windows.

45. The software transmits data about users to SunnComm through an Internet connection whenever purchasers listen to CDs, allowing the company to track listening habits -- even though the EULA states that the software will not be used to collect personal information and SunnComm's website says "no information is ever collected about you our your computer."

46. The MediaMax CDs' EULA states: “As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install a small proprietary software program (the “SOFTWARE”) onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted.” This statement is not true, since by the time this message is displayed, over eighteen files are already installed and, as noted above, those files remain on the hard disk indefinitely, even if the agreement is declined. Attached hereto as Exhibit B and incorporated herein by reference is a true and correct copy of the MediaMax EULA.

47. Sony BMG's MediaMax CD EULA states that "[T]he SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise."

48. On information and belief, the MediaMax software causes additional damage to users' computers.

49. The MediaMax software also transmits the user's computer's IP address to servers controlled by Sony BMG or its agents, without receiving permission from the computer user.

50. When a MediaMax-protected CD is inserted into a computer running Windows, the Windows Autorun feature launches a program from the CD called PlayDisc.exe. Like most installers, this program displays a license agreement, which you may accept or decline. But before the agreement appears, MediaMax installs around a dozen files that consume more than 12 MB on the hard disk. Most are copied to the folder C:\Program Files\Common Files\SunnComm Shared\. The only difference detected thus far between accepting and rejecting the EULA is that acceptance causes the software to launch every time the OS starts up. The software files remain installed on the hard disk even if the EULA is declined. Like a virus, there is no meaningful uninstaller provided with the installed software.

51. These files remain installed even if you decline the agreement. One of them, a kernel-level driver with the cryptic name "sbcphid", is both installed and launched. This component is the heart of the copy protection system. When it is running, it attempts to block CD ripping and copying applications from reading the audio tracks on SunnComm-protected discs. MediaMax refrains from making one final change until after you accept the license—it doesn't set the driver to automatically run again every time Windows starts. Nevertheless, the

code keeps running until the computer is restarted and remains on the hard disk indefinitely, even if the agreement is declined.

52. The Sony license agreement (which is identical to the agreement on XCP CDs) states that the software will not be installed until after you accept the terms:

As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install a small proprietary software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted.

53. While the agreement partially describes the protection software, it fails to disclose important details about what the software does. Yes, the MediaMax driver tries to "protect the audio files embodied on the CD," but it also attempts to restrict access to any other CD that use SunnComm's technology. You only need to agree to installation on one album for the software to affect your ability to use many other titles.

54. MediaMax thus prevents users from using other programs (like iTunes) from accessing other SunnComm protected CDs

55. MediaMax also "phones home" without the consumer's consent every time they play the CD. When a CD is played, a request is sent to a SunnComm server that includes an ID along with the request that identifies the CD. The request by itself identifies the operating system you are running as well as your IP address. The request seems to be for SunnComm's "Perfect Placement" feature, which can insert ad content while viewing the CD.

56. Sony (and SunnComm) EULA explicitly states that MediaMax does **not** collect information about consumers:

[T]he SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.

57. SunnComm's customer care web page is equally explicit:

Is any personal information collected from my computer while using this CD?

No information is ever collected about you or your computer without you consenting.

58. Yet like XCP, the MediaMax software "phones home" to SunnComm every time a consumer plays a protected CD. SunnComm also gets to observe their computer's IP address, which is transmitted to every Internet server a consumer connects to. If a user has a fixed address, SunnComm can piece together the messages from their computer to find out all the protected discs they listen to and how often they play them. In the case of a university student, knowing the address is enough to let SunnComm track down the user's name, address, and telephone number.

59. SunnComm's "Perfect Placement" program is a source of great revenue for its clients in that it allows record labels to "[g]enerate revenue or added value through the placement of 3rd party dynamic, interactive ads that can be changed at any time by the content owner."

60. Sony refers users to the SunnComm website for questions about SunnComm DRM systems. See "Consumer Advisory," Sony BMG, at <http://www.sonybmg.com/mediamax/advisory.html> (last visited Dec.8, 2005). The SunnComm site informs users that they must have an Internet connection in order to play the purchased CD. #13, "Frequently Asked Questions," Sunncomm, at <http://www.sunncomm.com/support/faq/> (last visited Dec. 8, 2005).

61. If users repeatedly request an uninstaller for the MediaMax software, they are eventually provided one. But they first have to provide more personal identifying information. Worse, security researchers recently determined that SunnComm's uninstaller creates significant security risks for users, as the XCP uninstaller did. The uninstaller suffers from a design flaw. When a user visits the SunnComm uninstaller web page, the user is prompted to accept a small software component—an ActiveX control called “AxWebRemoveCtrl” created by SunnComm. When activated, it removes most of the files in the shared folder, but leaves the core copy protection module (sbcphid.sys) active and resident.

62. On information and belief, the ActiveX uninstaller leaves behind numerous other software flaws that can be exploited by others.

63. The ActiveX uninstaller also exposes a user's computer to additional risks by enabling malicious third parties to download and install over the internet because the ActiveX uninstaller fails to restrict such access only to Sony BMG or First4Internet. Such malicious code could severely damage a user's computer, including but not limited to erasing a user's hard disk.

64. Sony BMG does not cause the ActiveX control to be removed from user's computers following completion of the uninstallation process.

Both XCP and MediaMax DRM Software are Spyware.

65. Industry experts liken the MediaMax software and the XCP software to “spyware” or “malware” as they can open security vulnerabilities through “rootkits”.

66. The Anti-Spyware Coalition (“ASC”) describes spyware as technologies deployed without appropriate user consent and/or implemented in ways that impair user control over: (1)

material changes that affect a user's experience, privacy, or system security; (2) use of the user's system resources, including what programs are installed on the user's computer; and/or (3) collection, use, and distribution of a user's personal or other sensitive Information. Computer Associates defines spyware as "[a]ny product that employs a user's Internet connection in the background without their knowledge, and gathers/transmits into on the user or their behavior." As discussed below, the MediaMax software used by Sony BMG on many of its CDs meets the ASC's definition of spyware.

67. Sony BMG's XCP software meets the ASC standards for spyware because the rootkit is placed on the computer without the user's consent and it changes the user's system security because the rootkit makes the user's computer more vulnerable to other types of malware.

68. Computer Associates has classified the Sony BMG XCP rootkit as a form of spyware known as a "Trojan," noting that the "SCP.Sony.Rootkit modifies you[r] operating system at a low level, represents a large threat to both corporate and consumer users system integrity." Computer Associates also has noted that "[t]he Rootkit functionality hides files and enables hackers and other spyware to hide files with impunity."

69. Computer Associates categorized Sony BMG's patch as a "Trojan" and noted that the Sony BMG software, even when patched with Sony BMG's update, continues to "represent a threat to the user's control over their system. . . ."

70. "This is spyware, pure and simple," says Sam Curry, vice president of security software maker Computer Associates.

71. Government agencies and private technology companies have identified the Sony CD programs, XCP and MediaMax, as dangerous for the security of a user's computer. On or around November 12, 2005, Microsoft, Inc., the maker of the Windows operating system stated that "Rootkits have a clearly negative impact on not only the security, but also the reliability and performance of their systems" and Microsoft's Anti-Malware Engineering team informed consumers that "in order to help protect our customers we will add a detection and removal signature for the rootkit component of the XCP software."

72. The United States Computer Emergency Readiness Team (US-CERT), part of the Department of Homeland Security that is charged with the task of "protecting the nation's Internet infrastructure" by coordinating "defense against and responses to cyber attacks across the nation" has stated that the XCP rootkit "can pose a security threat" and that "one of the uninstallation options provided by Sony BMG also introduces vulnerabilities to a system."

73. With Russinovich's discovery of the DRM technology on Sony BMG's CD's, several antivirus companies issued warnings that the First 4 tool could let virus writers hide malicious software on computers, if the coders piggybacked on the file-cloaking functions. Unfortunately, the risk is no longer hypothetical. As the Washington Post recently reported, within days, unknown attackers sent millions of junk emails containing a virus crafted to exploit the flaws and seize control of vulnerable computers.

Sony BMG Misrepresented The DRM Technology to Consumers

74. In addition to the material misrepresentations and omissions set forth above, Sony BMG has made numerous additional misrepresentations and omissions of material facts.

75. Sony BMG's EULAs state that the MediaMax and XCP software installed on a user's computer will not be used to collect any personal information. As set forth above, this is untrue.

76. Sony BMG's EULAs state that the MediaMax and XCP software will remain on the user's computer until it is removed or deleted. Neither the MediaMax nor the XCP software allows a user to use the standard "add/remove program" function on the Windows operating system to remove the program. Sony BMG's MediaMax and XCP CDs and its software fail to provide information about how to remove the program or even how to contact Sony BMG to resolve any problems with the program.

77. The above website directs users to another site, <http://updates.xcp-aurora.com/>, where users can obtain a software update to remove the rootkit component of the XCP technology. As of the filing of this complaint, the website states that the cloaking component "is not malicious and does not compromise security."

78. Sony BMG uses its website to advertise and promote the sale of its CDs. On its website, Sony BMG falsely denied that its software is spyware and that it posed a security risk. Sony BMG also made the false claim that the software does not collect any personal information nor is it designed to be intrusive to the user's computer system. Sony BMG has failed to make efforts to publicize the flaws in its XCP software and uninstaller, apart from statements on its websites and statements to the press. Therefore, many XCP CD purchasers are unaware of the security and other risks cause by the software.

79. Sony BMG has failed to publicly disclose or address the risks associated with MediaMax software and its uninstaller. Therefore, many MediaMax CD purchasers are unaware of the security and other risks caused by the software.

80. As set forth above, the MediaMax CD EULA and the SunnComm Sony BMG support website misleadingly represent that the software will not be used to collect personal information about the user without his or her permission.

81. If purchasers seek more information about the software that has been installed on their computer, they are directed to the SunnComm Sony BMG customer care website, which, up until November 28, 2005, falsely told users that “No information is ever collected about you or your computer without you consenting” and also stated: “Is any personal information collected from my computer during the digital key delivery process? No, during the digital key delivery process, no information is ever collected about you or your computer.” *See* <http://www.sunncomm.com/support/faq> (November 28, 2005). Sometime after this misrepresentation came to the public’s attention, the SunnComm website no longer claims that personal information is not collected about the user, as it did previously.

82. Sony and First 4 were quick to quibble over the legal definition of “rootkit”. Matthew Gilliat-Smith, the CEO of First 4, defended his software by arguing it is not a rootkit because it does not gather information from the unsuspecting user's computer, and transmit that information over an unmonitored Internet connection back to a stealth host. Historically, such behavior has been attributed to malicious rootkits, and some experts do contend that this behavior is what defines a rootkit, as opposed to a Trojan or any other form of malware that hides itself. Other experts' definitions in the past contend that a rootkit should run at a deeper level of

the operating system, perhaps even as a "protected mode" process; XCP software simply deflects Windows API calls to itself. However, when pressed, Gilliat-Smith conceded that the measures his company uses to achieve XCP's level of stealth are indeed the same "hook and redirect" system used by rootkits.

83. Sony repeatedly misrepresented to the public the nature of the XCP and MediaMax software that were embedded in their CDs. On or around November 4, 2005, on National Public Radio's "Morning Edition" program, Thomas Hesse, President of Sony BMG's global digital business division, when asked about the XCP controversy, responded "Most people, I think, don't even know what a rootkit is, so why should they care about it?" In the same program, Mr. Hesse also denied that Sony BMG's software communicated with Sony BMG, saying "No information ever gets gathered about the users' behavior, no information ever gets communicated back to the user, this is purely about restricting the ability to burn MP3 files in an unprotected manner."

84. On or around November 8, 2005, Sony BMG publicly and falsely stated, on the <http://cp.sontbmg.com/xcp> website, that the XCP software's rootkit "component is not malicious and does not compromise security."

85. Sony's updated Frequently Asked Questions site claims that XCP "is not a monitoring technology." "Frequently Asked Questions," Sony BMG, at <http://cp.sonybmg.com/xcp/english/faq.html#contentprotection> (last visited Dec. 20, 2005). Nevertheless, Sony admits that the software "uses standard web techniques to communicate with a SONY BMG web server to display additional web content related to the specific CD title — not to monitor your online activity or collect personal information." *Id.*

86. On or around November 15, 2005, Sony BMG posted the following message on its website: “We currently are working on a new tool to uninstall First4Internet XCP software. In the meantime, we have temporarily suspended distribution of the existing uninstall tool for this software. We encourage you to return to this site over the next few days. Thank you for your patience and understanding.” Sony BMG failed to disclose the problems associated with the old uninstaller. As of the filing of this complaint, no new uninstaller has been made available.

87. Sony BMG fails to disclose the security risks created by the MediaMax software and the MediaMax uninstaller, and their potential harm to a user’s computer. Therefore, users who hope to prevent and/or limit security and privacy risks must rely on the research and publication efforts of independent security experts and consumer advocates.

88. On its support website (<http://cp.sonybmg.com/xcp/English/home.html>), Sony BMG stated, until approximately November 16, 2005, that its XCP software simply acts to prevent unlimited copying and ripping from discs featuring the technology. Sony BMG created the false impression that the only effect of software included on CDs would be to restrict the ability to create copies of CDs or the quantity of CDs that a user can copy.

89. As of December 20, 2005, Sony’s site provides no additional information on what information is collected, how it is stored, and what other uses may be made of it.
<http://cp.sonybmg.com/xcp/english/faq.html#contentprotection> (last visited Dec. 20, 2005).

Sony BMG’s Uninstall Programs Created a Greater Security Risk and Further Violated User’s Privacy.

90. In response to critics for embedding and cloaking the XCP technology, Sony initially supported its decision to embed its CDs with XCP and later backpedaled saying that the hidden files can be uncloaked. Sony and First 4 released a patch on their website that only disabled the XCP's ability to *hide*. But customers had an exceedingly difficult time getting any help from Sony in the un-installation process. Moreover, the un-installation process required the user to release personally identifiable information for marketing use by Sony.

91. Additionally, the patch contains a design flaw that could cause a computer to crash as it is installed.

92. Sam Curry says that the patch doesn't solve the problem. The software is still spyware, he says, because the files cannot be uninstalled without going through a laborious process. Some bloggers have complained of the software slowing down PCs. "The behavior of this is bad on all counts," Curry says.

93. Soon after the patches were released on the web, Russinovich disclosed (on his weblog: <http://www.sysinternals.com/Blog/>) his investigation into why Sony BMG's XCP uninstaller kit is difficult to locate from its Web site, and why signing up for the uninstaller requires the user to install an ActiveX control. Specifically, he stated that he is most curious about an encrypted packet which the control sends back to the Web site, which his investigation revealed contains data compiled from users' computers hardware signatures.

94. On or around November 16, 2005, Sony BMG announced, on the <http://cp.sonybmg.com/xcp> website, that it shared the security concerns of consumers regarding the XCP discs, and offered to exchange new CDs for CDs with XCP software. Sony BMG did

not indicate the nature of extent of the security risks associated with the XCP software. Sony BMG also affirmed that the XCP software was not a “monitoring technology.”

95. As the Washington Post reported on November 17, 2005, Sony has since issued a recall of nearly 5 million CDs equipped with the XCP technology and announced a buyback of CDs already in the hands of consumers. *See also* <http://cp.sonybmg.com/xcp/index.html>

96. Within hours of announcing the buyback plan, researchers at Princeton University found that even the patch the company released to remove the software contains security problems. The patch leaves behind coding that allows any webpage the user visits to download, install and run programs on the computer. Other research, released by Internet Security Systems, showed that the underlying program itself contained security holes that hackers could use to attack Windows.

97. Sony’s most recent attempts at addressing its public relations and legal nightmare has been to finally withdraw the spyware-like uninstall-request process, which included the download of an ActiveX control since it proved to be its own security risk. This ActiveX control is designed so that any web page can ask it to download an executing code from an arbitrary website location or URL. If a user visits a malicious website, the site can use the flawed ActiveX control to download, install, and run malicious or dangerous software code on the user’s computer without the user’s knowledge or consent. Such code could severely damage a user’s computer, including but not limited to erasing a user’s hard disk. The uninstaller fails to remove the vulnerable ActiveX control from the user’s computer following completion of the uninstallation process.

98. Until approximately November 15, 2005, in order to obtain an uninstaller from Sony BMG, a user was required to navigate an extensive request process and disclose more personal information to Sony BMG. First, the user was required to go to the Sony BMG support website and fill out a form stating: a country where the CD was purchased; the artist's name; the album title; the store name; and the user's e-mail address. After submitting the form, the user was directed to a website which states that the user will receive an e-mail with a "Case ID." The user then received an email with a link to a confidentiality notice, which had to be accepted before software could be uninstalled. Next, the user received an e-mail that directed the user to install the patch and then visit another website if the user still wanted to uninstall the DRM software.

99. Sony BMG states that the information collected by Sony BMG before providing the uninstaller is subject to its Privacy Policy, <http://www.sonybmg.com/privacypolicy.html>. The Sony BMG Privacy Policy states, *inter alia*, that Sony BMG "may share the information we collect from you with our affiliates or send you e-mail promotions and special offers from reputable third parties in whose products and services we think you may have an interest. We may also share your information with reputable third-parties who may contact you directly." Sony continues to reserve the right to use and distribute, for marketing purposes, the personal information of consumers who contacted Sony in order to remove the privacy-invasive and security-risking software from their systems. See "Privacy Policy," Sony BMG, at <http://www.sonybmg.com/privacypolicy.html> (last visited Dec. 8, 2005).

9. Sony has claimed that the software installed on users' computer is necessary to prevent unauthorized duplication; however, Sony reserves the right to use the information sent from

users' computers for purposes not specified.

100. On information and belief, if the Sony BMG software was uninstalled using the uninstaller available until November 15, 2005, the user was no longer able to receive the full use and value of the XCP CD on his or her computer. Therefore, Sony BMG required the user to either accept the malicious software or lose the full use and value of the XCP CD. Sony BMG did not disclose this fact to users prior to purchase.

101. Sony promised and then released a stand-alone uninstaller available at <http://cp.sonybmg.com/xcp/english/updates.html>.

102. In Italy, the Association for Freedom in Electronic Interactive Communications advocacy group has asked the government to investigate Sony's use of the software. Microsoft Corp. has labeled the software a threat and including it in upcoming "malicious software removal tool" to remove Sony's and First 4's software. "We have analyzed this software and have determined that in order to help protect our customers, we will add a detection and removal signature for the rootkit component of the XCP software to the Windows AntiSpyware beta, which is currently used by millions of users," Jason Garms, group program manager of the Anti-Malware Technology Team, said on Microsoft's Technet blog. (<http://blogs.technet.com/antimalware/archive/2005/11/12/414299.aspx>).

103. Defendant's behavior has drawn the scrutiny of Attorneys General from Illinois and New York. According to a November 23, 2005 statement from Eliot Spitzer's office, the New York Attorney General's office dispatched investigators who, disguised as customers, were able to purchase affected CDs in New York music retail outlets – and do so more than a week

after Sony BMG recalled the disks. The investigators bought CDs at stores including Wal-Mart, BestBuy, Sam Goody, Circuit City, FYE, and Virgin Megastores.

104. Finally, on or about November 21, 2005, the State of Texas, as well as the Electronic Frontier Federation (a nonprofit group advocating digital rights), filed suit against Sony BMG for the use of the XCP spyware. The EFF suit also included Sony's use of MediaMax. When Sony offered a program to uninstall the XCP, it refused to use its marketing prowess to widely publicize its recall program to reach the XCP-infected customers, has failed to compensate users whose computers were affected, and has not eliminated the outrageous terms found in its End User Licensing Agreement (EULA). Sony has failed to date to address the MediaMax DRM at all.

The Interest of the General Public

105. For the foregoing reasons, the General Public of the District of Columbia has an interest in this litigation. However, other reasons are present impacting the General Public.

106. Sony has refused to highly publicize its XCP recall program and has thus far ignored the backlash over the MediaMax software.

107. Both the XCP and MediaMax CDs include outrageous, anti-consumer terms in their "clickwrap" EULAs. For example, if purchasers declare personal bankruptcy, the EULA requires them to delete any digital copies on their computers or portable music players. The same is true if a customer's house gets burglarized and his CDs stolen, since the EULA allows purchasers to keep copies only so long as they retain physical possession of the original CD. On information and belief, the XCP and MediaMax CDs are disseminated with identical EULAs. These provisions include:

- a. Restrictions on the user's ability to use the digital content on the CD in the event that the consumer chose to leave the United States;
- b. Restrictions on resale and transfer of the digital content on the CDs;
- c. Restrictions on user's ability to use the digital content on the CDs at work;
- d. Restrictions on user's ability to use and retain lawfully-made copies of the digital content on the CDs in the event that the original CD is stolen or lost;
- e. Restrictions on user's ability to use the digital content on the CDs following a bankruptcy;
- f. Conditioning the user's continued use of the digital content on the CDs on acceptance of all Sony BMG software updates;
- g. A purported \$5.00 limit on Sony BMG's entire liability to the purchaser of the CDs;
- h. Restrictions on user's ability to examine and test his or her computer to understand and attempt to prevent the damage caused by the rootkit;
- i. A reservation of rights by Sony BMG to use "technological 'self-help'" measures against the computers of users who desire to make use of the digital content on the CDs "at any time, without notice to [the user]."
- j. Restrictions on the user's ability to seek redress in the District of Columbia courts, under the law of the District of Columbia, and the purchaser's ability to seek a trial by jury;
- k. A disclaimer of all warranties, including implied warranties of merchantability, satisfactory quality, non-infringement, and fitness for any particular purpose.

108. On or around November 16, 2005, Sony BMG issued a public statement announcing that it would recall XCP CDs and allow customers to exchange the XCP CDs for CDs that would not contain any DRM.

109. As of the filing of this complaint, Sony BMG has not offered to refund the purchase price of the XCP CDs.

110. As of the filing of this complaint, Sony BMG has not offered to recall, replace, or refund the purchase price of MediaMax CDs.

111. As of the filing of this complaint, Sony BMG has not compensated or offered to compensate consumers for the damage it has caused to their computers.

112. Through the actions set forth above, Sony BMG has damaged its customers, including District of Columbia residents, to an extent to be determined at trial, caused them actual injury, and caused them to lose money and property.

113. Investigation into the scope and extent of the effects and damage caused by Sony BMG's software is ongoing. Plaintiff, on behalf of District of Columbia residents, reserves the right to amend these allegations as new information is discovered.

114. Because Plaintiff has reason to believe that defendant has engaged in, and will continue to engage in the unlawful practices set forth above, he, on behalf of the District of Columbia, has reason to believe that defendant has caused, and will continue to cause damage and adverse effects to residents of this District. For these reasons, Plaintiff acts for the benefit of the General Public.

COUNT I
(Violation of D.C. Consumer Protection Procedures Act)

115. Plaintiff incorporates by reference all the paragraphs in this complaint as if fully restated herein.

116. This cause of action is brought pursuant to the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28-3901 et seq. (“DC CPPA”).

117. Plaintiff brings this action under D.C. Code § 28-3905(k)(1) which provides that:
a person, whether acting for the interests of itself, or its members, *or the general public*, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia and may recover or obtain the following remedies:

(A) treble damage, or \$ 1,500 per violation, whichever is greater, payable to the consumer;

(emphasis added).

118. Section 28-3904 of the DC CPPA indicates that it is a violation, whether or not any consumer is in fact misled, deceived or damaged thereby, to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (e) misrepresent as to a material fact which has a tendency to mislead; or
- (f) fail to state a material fact if such failure tends to mislead;
- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered;
...
- (r) make or enforce unconscionable terms of sales or leases; in applying this subsection, consideration shall be given to the following, and other factors:
...
 - (5) that the person has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical

or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors;

...

- (x) sell consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Code, or by operation or requirement of federal law.

Defendant's conduct violates these and other provisions of the DC CPPA in that Defendant, among other things:

- (a) made misrepresentations and/or material omissions regarding its collection and use of consumers' personal information;
- (b) falsely advertised its CDs and their attendant software as not collecting personal information;
- (c) made and/or attempted to enforce unconscionable terms in its end user license agreement, knowingly taking advantage of consumers' inability to read the agreement until after purchase and with no substantial ability to decline the terms;
- (d) sold goods in a manner not consistent with D.C. Code § 28:2-314, since the CDs were not fit for the ordinary purposes for which CDs are used.

119. Defendant's conduct as described herein was a false and deceptive trade practice within the meaning of the DC CPPA in that Defendant, among other things, made representations and/or omissions regarding the potential risks associated with the simple use of its CDs, the installation of the spyware without the user's knowledge or consent, and the concealment of that installation. The false and deceptive trade practice was made even worse when the installation of the software hindered the users' operation and made it possible for "hackers" to install viruses on their systems.

120. As a direct and foreseeable result of Defendant' conduct, residents of the District of Columbia have been injured.

121. Defendant continues to market CDs using the MediaMax software and have not indicated that the XCP software will be suspended indefinitely. If Sony is permitted to secretly install spyware on future CDs, and hence on users' computers, more consumers would be damaged.

122. This action is brought pursuant to Section 28-3905(k)(1) of the DC CPPA, and seeks treble damages or \$1,500 per violation, whichever is greater, reasonable attorney's fees, punitive damages, and an injunction against Defendant's use of their unlawful trade practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- (a) That judgment be entered against Defendant and in favor of the General Public;
- (b) That Defendant be permanently enjoined from continuing in any manner the violations alleged in this Complaint including
 - 1. installing upon consumers' computers any software that changes the name, location, or other characteristic or designation of computer software to prevent the owner of the computer from locating and removing the software; or create randomized or intentionally deceptive file names or random or intentionally deceptive directory folders, formats, or registry entries to avoid detection and prevent the owner from removing software.

2. installing software onto consumers' computers that prevents the owner's or operator's reasonable efforts to block the installation of or to disable or remove the software.
3. inducing the installation of software by misrepresenting that installing the software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content.
4. requiring, as a condition to using its products, the installation of any software that reports, transmits, delivers, or collects the personal information, habits, or behavior of its users;
5. requiring, as a condition to issuing software patches or updates to repair security or privacy flaws, that consumer provide personal information not directly and immediately necessary to the issuance of such patch or update.
6. using or disclosing for any marketing purpose any personal information collected through the use of any digital rights management software;
7. using or disclosing for any marketing purpose any personal information collected from consumers who have requested updates or patches to software, or any utility to remove software;
8. using or disclosing personal information collected from consumers for a specified purpose, for any other purpose not specifically, affirmatively, and separately authorized by the consumer;

9. making agreements, contracts, or licenses with consumers, after consumers' purchases, that create restrictions of consumers' rights beyond those specified by law;

10. taking advantage of consumers' difficulty in or inability to meaningfully decline agreements, contracts, or licenses and receive a refund for their purchase

11. making or enforcing agreements, contracts, or licenses with consumers that do not also hold Sony liable for breaches of that agreement;

(c) That equitable relief be awarded in revised public warnings.

(d) That equitable relief be granted requiring Sony to delete all personal information collected through the use of its digital rights management software, or through consumers' requests for updates, patches, or removers for the digital rights management software prior to the date of judgment.

(e) That equitable relief be awarded in a declaration that Defendant's conduct described herein constitutes violations of applicable statutory law in the District of Columbia.


(f) Such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a jury trial as to all issues triable by a jury.

Dated: December 23, 2005

By: FINKELSTEIN, THOMPSON & LOUGHRAN



Tracy D. Rezvani (#464293)
Karen J. Marcus (#486435)

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1050 30th Street, N.W.
Washington, DC 20007
(202) 337-8000
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EXHIBIT A

IMPORTANT-READ CAREFULLY: This compact disc ("CD") product contains standard so-called "Red Book"-compliant audio files that can be played on any standard CD player, including those contained in many personal home computer systems. As an added feature, this compact disc ("CD") product also enables you to convert these audio files into digital music files and/or may also contain other already existing digital content (such files and content, collectively, the "DIGITAL CONTENT"), any of which may be stored on the hard drive of a personal home computer system owned by you ("YOUR COMPUTER") and accessed via YOUR COMPUTER or certain approved, compatible portable devices owned by you (each, an "APPROVED PORTABLE DEVICE").

Before you can play the audio files on YOUR COMPUTER or create and/or transfer the DIGITAL CONTENT to YOUR COMPUTER, you will need to review and agree to be bound by an end user license agreement or "EULA", the terms and conditions of which are set forth below. Once you have read these terms and conditions, you will be asked whether or not you agree to be bound by them. Click "AGREE" if you agree to be bound. Click "DISAGREE" if you do not agree to be bound. Please keep in mind, however, that if you do not agree to be bound by these terms and conditions, you will not be able to utilize the audio files or the DIGITAL CONTENT on YOUR COMPUTER.

As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install a small proprietary software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted. However, the SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.

Once the SOFTWARE has been installed on YOUR COMPUTER, a menu will then appear on the screen of YOUR COMPUTER, giving you the option of playing the audio files on YOUR COMPUTER, creating a copy of the DIGITAL CONTENT directly onto the hard drive of YOUR COMPUTER, or making a limited number of back-up copies of the CD onto other, recordable CDs. If you choose to create a copy of the DIGITAL CONTENT, the menu will then prompt you to select a file format for the DIGITAL CONTENT. Once you have selected a file format, a copy of the DIGITAL CONTENT will automatically be created in that file format and transferred onto the hard drive of YOUR COMPUTER, where you will be able to access it using an APPROVED MEDIA PLAYER (see below) or, at your election, transfer it from YOUR COMPUTER onto an APPROVED PORTABLE DEVICE.

In order to access the DIGITAL CONTENT on YOUR COMPUTER, you will need to have a copy of an approved media player software program that is capable of playing the DIGITAL CONTENT in the file format you selected (each such approved media player, an "APPROVED MEDIA PLAYER") on YOUR COMPUTER. You may already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER. If you do, you will be able to play the DIGITAL CONTENT on YOUR COMPUTER without doing anything further. This CD may also contain an APPROVED MEDIA PLAYER for the file format you selected. If it does, the menu that appears on the screen of YOUR COMPUTER will prompt you on how to transfer a copy of that APPROVED MEDIA PLAYER onto YOUR COMPUTER. To the extent you utilize an APPROVED MEDIA PLAYER contained on this CD, your use of such APPROVED MEDIA PLAYER may be subject, in each instance, to separate terms and conditions provided by the owner of the APPROVED MEDIA PLAYER concerned. If you do not already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER, and if this CD does not contain a compatible APPROVED MEDIA PLAYER, then you will then need to secure a compatible APPROVED MEDIA PLAYER elsewhere (e.g., on an Internet website, where you can download one).

END-USER LICENSE AGREEMENT

This End-User License Agreement ("EULA") is a legal agreement between you and SONY BMG MUSIC ENTERTAINMENT ("SONY BMG"), a general partnership established under Delaware law. By clicking on the "AGREE" button below, you will indicate your acceptance of these terms and conditions, at which point this EULA will become a legally binding agreement between you and SONY BMG.

Article 1. GRANT OF LICENSE

1. Subject to your agreement to the terms and conditions set forth in this EULA, SONY BMG grants to you a personal, non-exclusive and non-transferable license, with no right to grant sublicenses, to:
 - (a) install one (1) copy of SOFTWARE onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
 - (b) install one (1) copy of any APPROVED MEDIA PLAYER(S) contained on this CD onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
 - (c) use the SOFTWARE and any APPROVED MEDIA PLAYER(S) contained on this CD to access the DIGITAL CONTENT on YOUR COMPUTER or on an APPROVED PORTABLE DEVICE;

- in each instance, solely for your own personal and private use and not for any other purpose (including, without limitation, any act of electronic or physical distribution, making available, performance or broadcast, or any act for profit or other commercial purpose) and in accordance with the terms and conditions set forth in this EULA.
2. The DIGITAL CONTENT and the SOFTWARE contained on this CD are sometimes referred to herein, collectively, as the "LICENSED MATERIALS".

Article 2. PRODUCT FEATURES

1. This CD contains technology that is designed to prevent users from making certain, unauthorized uses of the DIGITAL CONTENT, including, without limitation, the following:
- (1) making and storing more than one (1) copy of the DIGITAL CONTENT in each available file format on the hard drive of YOUR COMPUTER;
 - (2) accessing the DIGITAL CONTENT on YOUR COMPUTER (once you have installed a copy of it on the hard drive of YOUR COMPUTER) using a media player that is not an APPROVED MEDIA PLAYER;
 - (3) transferring copies of the DIGITAL CONTENT that reside on the hard drive of YOUR COMPUTER on to portable devices that are not APPROVED PORTABLE DEVICES;
 - (4) burning more than three (3) copies of the DIGITAL CONTENT stored on YOUR COMPUTER (ATRAC OpenMG file format only) onto AtracCDs;
 - (5) burning more than three (3) copies of the DIGITAL CONTENT onto recordable compact discs in the so-called "Red Book"-compliant audio file format; and
 - (6) burning more than three (3) backup copies of this CD (using the burning application provided on the CD) onto recordable CDs and burning or otherwise making additional copies from the resulting backup copies.
2. **PLEASE NOTE:** Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS may be subject to additional restrictions, under applicable copyright and other laws, that are not enforced or prescribed by any technology contained on this CD. The absence of any such technology designed to enforce these additional restrictions should in no way be viewed or interpreted as a waiver, on the part of SONY BMG or any other person or entity owning any rights in any of the LICENSED MATERIALS, of their respective rights to enforce any such additional restrictions regarding your use of the LICENSED MATERIALS. Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS shall, at all times, remain subject to any and all applicable laws governing the use of such materials, including, without limitation, any restrictions on your use prescribed therein.
3. All of your rights to enjoy the DIGITAL CONTENT, as described herein, shall be subject to your continued ownership of all rights in and to the physical CD on which such DIGITAL CONTENT is embodied; should you transfer your ownership rights in the physical CD on which such DIGITAL CONTENT is embodied (in whole or in part) to any other person (whether by sale, gift or otherwise), your rights in both the physical CD and such DIGITAL CONTENT shall terminate.

Article 3. RESTRICTIONS ON USE OF LICENSED MATERIALS

1. Except to the extent otherwise expressly permitted hereunder or otherwise by the owner of the relevant rights in or to the LICENSED MATERIALS concerned, and without limitation, the following restrictions shall apply to your use of the LICENSED MATERIALS:
- (a) You may not copy or reproduce any portion of the LICENSED MATERIALS.
 - (b) You may not distribute, share through any information network, transfer, sell, lease or rent any of the LICENSED MATERIALS to any other person, in whole or in part.
 - (c) You may not change, alter, modify or create derivative works, enhancements, extensions or add-ons to any of the LICENSED MATERIALS.
 - (d) You may not decompile, reverse engineer or disassemble any of the LICENSED MATERIALS, in whole or in part.
 - (e) You may not export the LICENSED MATERIALS outside of the country where you reside. (This clause 1(e) of Article 3 shall not be applicable within the European Economic Area (EEA).)
 - (f) You will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 3 or elsewhere in this EULA.
2. In the event that the owner of the LICENSED MATERIALS is a party other than SONY BMG (each, a "LICENSOR"), you agree that such LICENSOR shall be a third party beneficiary under this EULA and, as such, shall have the right to enforce the terms and conditions of this EULA that pertain directly to such LICENSOR'S rights in and to the LICENSED MATERIALS concerned as if such LICENSOR was a party to this EULA. The rights granted to a Licensor under this Article shall not be revoked.
3. SONY BMG and each LICENSOR reserve the right to use the SOFTWARE and/or any APPROVED MEDIA PLAYER to enforce their respective rights in and to the DIGITAL CONTENT, including any and all of the restrictions on use set forth in this Article 3, at any time, without notice to you.

Article 4. INTELLECTUAL PROPERTY RIGHTS

All title to, and intellectual property rights in, the LICENSED MATERIALS and any related documents are and shall remain owned and/or controlled solely and exclusively by SONY BMG and/or its LICENSORS. SONY BMG and/or all respective LICENSORS reserve all rights in the LICENSED MATERIALS not specifically granted to you under this EULA.

Article 5. EXCLUSION OF WARRANTIES

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU ARE INSTALLING AND USING THE LICENSED MATERIALS AT YOUR OWN SOLE RISK. THE LICENSED MATERIALS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, TERM OR CONDITION OF ANY KIND, AND SONY BMG, ITS LICENSORS AND EACH OF THEIR LICENSEES, AFFILIATES AND AUTHORIZED REPRESENTATIVES (EACH, A "SONY BMG PARTY") EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS OR CONDITIONS. EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. NO ORAL, WRITTEN OR ELECTRONIC INFORMATION OR ADVICE GIVEN BY ANY SONY BMG PARTY SHALL CREATE ANY WARRANTY, TERM OR CONDITION WITH RESPECT TO THE LICENSED MATERIALS OR OTHERWISE. SHOULD THE LICENSED MATERIALS PROVE TO BE DEFECTIVE, YOU (AND NOT THE SONY BMG PARTY CONCERNED) AGREE TO ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIRS OR CORRECTIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, TERMS OR CONDITIONS IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY MANDATES LIABILITY, DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 6. LIMITATION OF LIABILITY

NO SONY BMG PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE, EITHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TERM OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY MISREPRESENTATION, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR ANY OTHER LEGAL THEORY ARISING OUT OF, OR RELATED TO, THIS EULA OR YOUR USE OF ANY OF THE LICENSED MATERIALS (SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, DOWNTIME AND USER'S TIME), EVEN IF THE SONY BMG PARTY CONCERNED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF THE SONY BMG PARTIES, COLLECTIVELY, UNDER THE PROVISIONS OF THIS EULA SHALL BE LIMITED TO FIVE US DOLLARS (US \$5.00). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 7. DAMAGES ARISING OUT OF YOUR ACTIONS

You shall defend and hold the SONY BMG PARTIES harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of your use of the LICENSED MATERIALS, your negligent or wrongful acts, your violation of any applicable laws or regulations, and/or your breach of any provision of this EULA.

Article 8. UPDATES TO THE LICENSED MATERIALS

The SONY BMG PARTIES may from time to time provide you with updates of the SOFTWARE in a manner that the SONY BMG PARTIES deem to be appropriate. All such updates shall be deemed to be part of the SOFTWARE for all purposes hereunder. In the event that you fail to install an update, the SONY BMG PARTIES reserve the right to terminate the term of this EULA, along with your rights to use the LICENSED MATERIALS, immediately, without additional notice to you. The SONY BMG PARTIES shall not be liable for any loss or damage caused by reason of your failure to install any such update or your failure to do so in the manner instructed.

Article 9. EXPIRATION AND TERMINATION

1. The rights granted to you hereunder to use the DIGITAL CONTENT are conditioned upon your continued possession of, and your continued right under a license from SONY BMG to use, the original CD product that you purchased. In the event that you no longer possess or have the right under such license to use the original CD product, your rights hereunder to use the DIGITAL CONTENT shall expire immediately, without notice from SONY BMG.
2. Without prejudice to any other rights SONY BMG or any SONY BMG PARTY may have hereunder, the term of this EULA shall terminate immediately, without notice from SONY BMG, and all rights you may have hereunder to use the LICENSED MATERIALS shall be immediately revoked, in the event that you: (i) fail to comply with any provision of this EULA, (ii) fail to install an update of the SOFTWARE that was previously provided to you by the SONY BMG PARTIES within the time specified, or (iii) file a voluntary petition or are subject to an involuntary petition under applicable bankruptcy laws, are declared insolvent, make an assignment for the benefit of creditors, or are served with a writ of attachment, writ of execution, garnishment or other legal process pertaining to any of your assets or property.
3. Upon the expiration or termination of this EULA, you shall immediately remove all of the LICENSED MATERIALS from your personal computer system and delete or destroy them, along with any related documentation (and any copies thereof) that you may have received or otherwise may possess.
4. Articles 4 (Intellectual Property Rights), 6 (Limitation of Liability), 7 (Damages Arising Out Of Your Actions), 9 (Expiration and Termination), 10 (Governing Law and Waiver of Trial By Jury), and 11 (General) shall survive and remain in full force and effect following the expiration or termination of this EULA.
5. To the extent relevant under applicable law, you and SONY BMG each agree, for the effectiveness of the termination clauses under this EULA, to waive any provisions, procedures and operation of any applicable law that might otherwise require judicial approval or a court order in order to effect the termination of this EULA.

Article 10. GOVERNING LAW AND WAIVER OF TRIAL BY JURY

1. THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS EULA SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.
2. YOU HEREBY WAIVE ALL RIGHTS AND/OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY TO THIS EULA OR THE SOFTWARE.

Article 11. GENERAL

If any provision of this EULA is subsequently held to be invalid or unenforceable by any court or other authority, such invalidity or unenforceability shall in no way affect the validity or enforceability of any other provision of this EULA. This EULA shall be binding upon the parties' authorized successors and assignees. Neither party's waiver of any breach or failure to enforce any of the provision of this EULA at any time shall in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every other provision. No modification of this EULA shall be effective unless it is set forth in a writing signed by SONY BMG.

EXHIBIT B

IMPORTANT-READ CAREFULLY: This compact disc ("CD") product contains standard so-called "Red Book" compliant audio files that can be played on any standard CD player, including those contained in many personal home computer systems. As an added feature, this compact disc ("CD") product also enables you to convert these audio files into digital music files and/or may also contain other already existing digital content (such files and content, collectively, the "DIGITAL CONTENT"), any of which may be stored on the hard drive of a personal home computer system owned by you ("YOUR COMPUTER") and accessed via YOUR COMPUTER or certain approved, compatible portable devices owned by you (each, an "APPROVED PORTABLE DEVICE").

Before you can play the audio files on YOUR COMPUTER or create and/or transfer the DIGITAL CONTENT to YOUR COMPUTER, you will need to review and agree to be bound by an end user license agreement or "EULA", the terms and conditions of which are set forth below. Once you have read these terms and conditions, you will be asked whether or not you agree to be bound by them. Click "AGREE" if you agree to be bound. Click "DISAGREE" if you do not agree to be bound. Please keep in mind, however, that if you do not agree to be bound by these terms and conditions, you will not be able to utilize the audio files or the DIGITAL CONTENT on YOUR COMPUTER.

As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install a small proprietary software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted. However, the SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.

Once the SOFTWARE has been installed on YOUR COMPUTER, a menu will then appear on the screen of YOUR COMPUTER, giving you the option of playing the audio files on YOUR COMPUTER, creating a copy of the DIGITAL CONTENT directly onto the hard drive of YOUR COMPUTER, or making a limited number of back-up copies of the CD onto other, recordable CDs. If you choose to create a copy of the DIGITAL CONTENT, the menu will then prompt you to select a file format for the DIGITAL CONTENT. Once you have selected a file format, a copy of the DIGITAL CONTENT will automatically be created in that file format and transferred onto the hard drive of YOUR COMPUTER, where you will be able to access it using an APPROVED MEDIA PLAYER (see below) or, at your election, transfer it from YOUR COMPUTER onto an APPROVED PORTABLE DEVICE.

In order to access the DIGITAL CONTENT on YOUR COMPUTER, you will need to have a copy of an approved media player software program that is capable of playing the DIGITAL CONTENT in the file format you selected (each such approved media player, an "APPROVED MEDIA PLAYER") on YOUR COMPUTER. You may already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER. If you do, you will be able to play the DIGITAL CONTENT on YOUR COMPUTER without doing anything further. This CD may also contain an APPROVED MEDIA PLAYER for the file format you selected. If it does, the menu that appears on the screen of YOUR COMPUTER will prompt you on how to transfer a copy of that APPROVED MEDIA PLAYER onto YOUR COMPUTER. To the extent you utilize an APPROVED MEDIA PLAYER

contained on this CD, your use of such APPROVED MEDIA PLAYER may be subject, in each instance, to separate terms and conditions provided by the owner of the APPROVED MEDIA PLAYER concerned. If you do not already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER, and if this CD does not contain a compatible APPROVED MEDIA PLAYER, then you will then need to secure a compatible APPROVED MEDIA PLAYER elsewhere (e.g., on an Internet website, where you can download one).

END-USER LICENSE AGREEMENT

This End-User License Agreement ("EULA") is a legal agreement between you and SONY BMG MUSIC ENTERTAINMENT ("SONY BMG"), a general partnership established under Delaware law. By clicking on the "AGREE" button below, you will indicate your acceptance of these terms and conditions, at which point this EULA will become a legally binding agreement between you and SONY BMG.

Article 1. GRANT OF LICENSE

1. Subject to your agreement to the terms and conditions set forth in this EULA, SONY BMG grants to you a personal, non-exclusive and non-transferable license, with no right to grant sublicenses, to:
 - (a) install one (1) copy of SOFTWARE onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
 - (b) install one (1) copy of any APPROVED MEDIA PLAYER(S) contained on this CD onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
 - (c) use the SOFTWARE and any APPROVED MEDIA PLAYER(S) contained on this CD to access the DIGITAL CONTENT on YOUR COMPUTER or on an APPROVED PORTABLE DEVICE;in each instance, solely for your own personal and private use and not for any other purpose (including, without limitation, any act of electronic or physical distribution, making available, performance or broadcast, or any act for profit or other commercial purpose) and in accordance with the terms and conditions set forth in this EULA.
2. The DIGITAL CONTENT and the SOFTWARE contained on this CD are sometimes referred to herein, collectively, as the "LICENSED MATERIALS".

Article 2. PRODUCT FEATURES

1. This CD contains technology that is designed to prevent users from making certain, unauthorized uses of the DIGITAL CONTENT, including, without limitation, the following:
 - (1) making and storing more than one (1) copy of the DIGITAL CONTENT in each available file format on the hard drive of YOUR COMPUTER;
 - (2) accessing the DIGITAL CONTENT on YOUR COMPUTER (once you have installed a copy of it on the hard drive of YOUR COMPUTER) using a media player that is not an APPROVED MEDIA PLAYER;
 - (3) transferring copies of the DIGITAL CONTENT that reside on the hard drive of YOUR COMPUTER on to portable devices that are not APPROVED PORTABLE DEVICES;
 - (4) burning more than three (3) copies of the DIGITAL CONTENT stored on YOUR COMPUTER (ATRAC OpenMG file format only) onto AtracCDs;
 - (5) burning more than three (3) copies of the DIGITAL CONTENT onto recordable compact discs in the so-called "Red Book"-compliant audio file format; and
 - (6) burning more than three (3) backup copies of this CD (using the

burning application provided on the CD) onto recordable CDs and burning or otherwise making additional copies from the resulting backup copies.

2. PLEASE NOTE: Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS may be subject to additional restrictions, under applicable copyright and other laws, that are not enforced or prescribed by any technology contained on this CD. The absence of any such technology designed to enforce these additional restrictions should in no way be viewed or interpreted as a waiver, on the part of SONY BMG or any other person or entity owning any rights in any of the LICENSED MATERIALS, of their respective rights to enforce any such additional restrictions regarding your use of the LICENSED MATERIALS. Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS shall, at all times, remain subject to any and all applicable laws governing the use of such materials, including, without limitation, any restrictions on your use prescribed therein.

3. All of your rights to enjoy the DIGITAL CONTENT, as described herein, shall be subject to your continued ownership of all rights in and to the physical CD on which such DIGITAL CONTENT is embodied; should you transfer your ownership rights in the physical CD on which such DIGITAL CONTENT is embodied (in whole or in part) to any other person (whether by sale, gift or otherwise), your rights in both the physical CD and such DIGITAL CONTENT shall terminate.

Article 3. RESTRICTIONS ON USE OF LICENSED MATERIALS

1. Except to the extent otherwise expressly permitted hereunder or otherwise by the owner of the relevant rights in or to the LICENSED MATERIALS concerned, and without limitation, the following restrictions shall apply to your use of the LICENSED MATERIALS:

(a) You may not copy or reproduce any portion of the LICENSED MATERIALS.

(b) You may not distribute, share through any information network, transfer, sell, lease or rent any of the LICENSED MATERIALS to any other person, in whole or in part.

(c) You may not change, alter, modify or create derivative works, enhancements, extensions or add-ons to any of the LICENSED MATERIALS.

(d) You may not decompile, reverse engineer or disassemble any of the LICENSED MATERIALS, in whole or in part.

(e) You may not export the LICENSED MATERIALS outside of the country where you reside. (This clause 1(e) of Article 3 shall not be applicable within the European Economic Area (EEA).)

(f) You will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 3 or elsewhere in this EULA.

2. In the event that the owner of the LICENSED MATERIALS is a party other than SONY BMG (each, a "LICENSOR"), you agree that such LICENSOR shall be a third party beneficiary under this EULA and, as such, shall have the right to enforce the terms and conditions of this EULA that pertain directly to such LICENSOR'S rights in and to the LICENSED MATERIALS concerned as if such LICENSOR was a party to this EULA. The rights granted to a Licensor under this Article shall not be revoked.

3. SONY BMG and each LICENSOR reserve the right to use the SOFTWARE and/or any APPROVED MEDIA PLAYER to enforce their respective rights in and to the DIGITAL CONTENT, including any and all of the restrictions on use set forth in this Article 3, at any time, without notice to you.

Article 4. INTELLECTUAL PROPERTY RIGHTS

All title to, and intellectual property rights in, the LICENSED

MATERIALS and any related documents are and shall remain owned and/or controlled solely and exclusively by SONY BMG and/or its LICENSORS. SONY BMG and/or all respective LICENSORS reserve all rights in the LICENSED MATERIALS not specifically granted to you under this EULA.

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Article 6. LIMITATION OF LIABILITY

NO SONY BMG PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE, EITHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TERM OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY MISREPRESENTATION, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR ANY OTHER LEGAL THEORY ARISING OUT OF, OR RELATED TO, THIS EULA OR YOUR USE OF ANY OF THE LICENSED MATERIALS (SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, DOWN TIME AND USER'S TIME), EVEN IF THE SONY BMG PARTY CONCERNED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF THE SONY BMG PARTIES, COLLECTIVELY, UNDER THE PROVISIONS OF THIS EULA SHALL BE LIMITED TO FIVE US DOLLARS (US \$5.00). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

Article 7. DAMAGES ARISING OUT OF YOUR ACTIONS

You shall defend and hold the SONY BMG PARTIES harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of your use of the LICENSED MATERIALS, your negligent or wrongful acts, your violation of any applicable laws or regulations, and/or your breach of any provision of this EULA.

Article 8. UPDATES TO THE LICENSED MATERIALS

The SONY BMG PARTIES may from time to time provide you with updates of the SOFTWARE in a manner that the SONY BMG PARTIES deem to be appropriate. All such updates shall be deemed to be part of the

SOFTWARE for all purposes hereunder. In the event that you fail to install an update, the SONY BMG PARTIES reserve the right to terminate the term of this EULA, along with your rights to use the LICENSED MATERIALS, immediately, without additional notice to you. The SONY BMG PARTIES shall not be liable for any loss or damage caused by reason of your failure to install any such update or your failure to do so in the manner instructed.

Article 9. EXPIRATION AND TERMINATION

1. The rights granted to you hereunder to use the DIGITAL CONTENT are conditioned upon your continued possession of, and your continued right under a license from SONY BMG to use, the original CD product that you purchased. In the event that you no longer possess or have the right under such license to use the original CD product, your rights hereunder to use the DIGITAL CONTENT shall expire immediately, without notice from SONY BMG.

2. Without prejudice to any other rights SONY BMG or any SONY BMG PARTY may have hereunder, the term of this EULA shall terminate immediately, without notice from SONY BMG, and all rights you may have hereunder to use the LICENSED MATERIALS shall be immediately revoked, in the event that you: (i) fail to comply with any provision of this EULA (ii) fail to install an update of the SOFTWARE that was previously provided to you by the SONY BMG PARTIES within the time specified, or (iii) file a voluntary petition or are subject to an involuntary petition under applicable bankruptcy laws, are declared insolvent, make an assignment for the benefit of creditors, or are served with a writ of attachment, writ of execution, garnishment or other legal process pertaining to any of your assets or property.

3. Upon the expiration or termination of this EULA, you shall immediately remove all of the LICENSED MATERIALS from your personal computer system and delete or destroy them, along with any related documentation (and any copies thereof) that you may have received or otherwise may possess.

4. Articles 4 (Intellectual Property Rights), 6 (Limitation of Liability), 7 (Damages Arising Out Of Your Actions), 9 (Expiration and Termination), 10 (Governing Law and Waiver of Trial By Jury), and 11 (General) shall survive and remain in full force and effect following the expiration or termination of this EULA.

5. To the extent relevant under applicable law, you and SONY BMG each agree, for the effectiveness of the termination clauses under this EULA, to waive any provisions, procedures and operation of any applicable law that might otherwise require judicial approval or a court order in order to effect the termination of this EULA.

Article 10. GOVERNING LAW AND WAIVER OF TRIAL BY JURY

1. THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS EULA SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.

2. YOU HEREBY WAIVE ALL RIGHTS AND/OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY

TO THIS EULA OR THE SOFTWARE.

Article 11. GENERAL

If any provision of this EULA is subsequently held to be invalid or unenforceable by any court or other authority, such invalidity or unenforceability shall in no way affect the validity or enforceability of any other provision of this EULA. This EULA shall be binding upon the parties' authorized successors and assignees. Neither party's waiver of any breach or failure to enforce any of the provision of this EULA at any time shall in any way affect, limit or waive such party's right there after to enforce and compel strict compliance with every other provision. No modification of this EULA shall be effective unless it is set forth in a writing signed by SONY BMG.