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June 2, 2000

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Restraining Competition in CD Music Market
File No. 971-0070

CC: U.S. Senate Committee Of Commerce, Science & Transportation

Dear Chairman Pitofsky and Commissioners,

I am writing this letter to you in response to the matter involving Time Warner, Sony Music, Capitol Records, UMVD, & BMG Music, File # 971-0070. I am an independent music retailer. I currently sit on the board of the Coalition of Independent Music Stores. In the twenty three years that I've been in business I've never faced an obstacle like the one your commission is about to put before us. I write today to ask you to reconsider your position on MAP and its components. I believe that the issue has been completely misread and fear that your actions could, in fact create the kind of situations you aim to avoid. Please consider the following.

As you are aware, there was a period of extreme discounting in compact disc sales in the mid 90's. You are correct when you state that major electronic stores & others started to sell CDs as low as $9.99. What you failed to state in your press release is that the box lot price averaged between $10.30 & $10.50 at that time. The major electronic stores & big box retailers engaged in a strategy that was designed to put as many music retailers out of business as possible. Since music retailers realize the vast majority of revenues from the sale of music, they could not compete in an environment where they lose money on every hit CD they sell.

In this environment, the Big Six major distributors individually decided that they did not legally have to fund a "Price War" that would severely weaken their account base and have a long term detrimental effect on the music consumer. Most non-music retailers who are engaging in the "Price War" carry a much smaller selection that the typical music retailer. Therefore, the amount of individual music titles available to the consumer began to shrink.

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There is no economic model that has sustained across the board below-cost pricing. Sure, on the surface it looks like the consumer is winning, but in the long run if the thousands of independent and chain music-only retailers go out of business, where will their choice and selection come from? This is not a wild assumption. History shows that before the imposition of MAP hundreds of stores closed and eleven music chains filed for bankruptcy protection. Do we need an encore? Choice will not come from the big box electronic stores or the major discounters (Wal-Mart, Kmart, etc.). It seems that the industry giants in "big box" consumer electronics retailing like Best Buy ($11.4 billion sales in 1999) and Circuit City ($8.48 billion sales in 1999) cried foul when the record companies chose not to fund a below-cost price war. Why would the FTC advocate a policy which protects the predatory price practices of these retailers? If selling CDs below cost is so great for business, the acceptance of co-op funding should be irrelevant. Please remember, MAP has always been a choice. The big box retailers chose not to play. They chose to cry foul. Their only motive is to destroy their competition in a predatory pricing strategy. And that will only hurt the consumer and the artists themselves.

The role of the independent music retailer is crucial to the music industry. We develop new artists so the mass merchants can sell millions. Without a farm system the dynamics of the industry are destroyed. We need to be able to compete. We only have music to sell. The MAP prices were no means price gouging. Here is a table of the average cost and MAP structure:

Suggested List Price	Cost	MAP	Gross Profit	Gross Margin
$16.98	$10.70	$11.88	$1.18	9.93%
$17.98	$11.41	$12.88	$1.47	11.41%
$18.98	$12.04	$13.88	$1.84	13.26%

Eliminating MAP will not affect the bottom line of any distributor. Their wholesale prices do not have to change. This, more than any other reason, explains the rise in cd prices over the past few years. As the sole providers of these hit recordings to the world, these manufacturers control the prices. Not retailers. Please find a way to end the threat if collusion and higher CD prices. If record company profits are too high, why should I, as a retailer, be part of the fallout?

Please consider the following questions. How will the elimination of MAP bring the wholesale price of music down, which in turn allows for the true cost to the consumer to go down? Not just to go down temporarily in a predatory pricing scheme, but long term price reductions? It can be proven that once the retail competition is eliminated prices will rise to their previous or higher levels. The elimination of these voluntary MAP policies will, in effect, weaken the manufacturers customer base and cause many music retailers to close their doors over the next few years. The consumer will not ultimately win in this scenario. They will have less choice and possibly the same or higher prices. In the commission statement you noted "that no music retailer can realistically choose not to carry the music of any of the five major distributors." While this is true, no retailer was ever forced to make such a choice. The choice was whether to accept Co-op advertising funds or not to accept these funds.

I hope that after reading this letter and others like it, you will at least postpone your decision until you can consider all the facts of this matter and it's long term repercussions to both our industry and the music consumer.

Respectfully submitted,

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