

COPY

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



In the Matter of  
**POLYGRAM HOLDING, INC.,**  
a corporation  
**DECCA MUSIC GROUP LIMITED,**  
a Corporation,  
**UMG RECORDINGS, INC.,**  
a corporation,  
and  
**UNIVERSAL MUSIC & VIDEO**  
**DISTRIBUTION CORP.,**  
a corporation.

**FILE/DOCKET NO.**  
**488016/0010231/DO9298**

**RESPONDENTS' RESPONSE TO WARNER COMMUNICATIONS INC.'S MOTION  
TO MODIFY PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

Respondents PolyGram Holding, Inc. ("PolyGram Holding"), Decca Music Group Limited ("Decca"), UMG Recordings, Inc. ("UMG"), and Universal Music & Video Distribution Corp. ("UMVD") (collectively "Universal" or "Respondents") respectfully submit this response to the motion to modify the protective order governing discovery material filed by third-party Warner Communications Inc. ("Warner").

Provided that Warner adheres to the two-tiered designation system contemplated by the protective order, Universal has no objection to any of the modifications to the protective order sought by Warner, and would have agreed to those modifications had Warner suggested

them before the proposed protective order was submitted. As the Court is aware, the protective order sets forth two level of confidentiality. The first level is “confidential,” and provides “attorney’s eyes only” protection to any materials the disclosure of which would cause substantial commercial harm or personal embarrassment to the producing party. The second level is designated “protected” and allows disclosure of otherwise “confidential” materials to Respondents’ employees so long as such disclosure would not cause substantial commercial harm or personal embarrassment.

Unfortunately, Warner has already indicated it intends to designate all of its documents – irrespective of source or content – as “confidential” merely because those documents were stamped “confidential” during the pre-complaint investigation. Warner’s purposeful over-designation is inappropriate and will prejudice Universal in these proceedings. Many (and perhaps most) of the documents produced by Warner in the pre-complaint investigation were created in the context of Warner’s joint venture with Respondents for the creation of Three Tenors products. Because Respondents were partners in the Three Tenors joint venture, Respondents’ employees have a legitimate interest in the information contained in these documents, and Warner has no basis for contending that the disclosure of such documents to Respondents’ employees would cause any harm to Warner. Such documents should be designated as “protected” materials under the protective order, and Respondents should be permitted to show such documents to their employees in the course of preparing their defense. Any other result would allow Warner to shield documents for which no protection is warranted, much less the protection of an attorneys’ eyes only restriction.

Given the short trial schedule and the need for discovery to proceed in a rational and unobstructed manner, Warner’s improper designation of documents as “confidential” will

only serve to hinder Respondents' ability to defend this case -- requiring Respondents to seek permission to show important discovery materials to relevant employees, and to burden the Court with a motion every time such permission was denied. This concern is not merely theoretical, as Warner has already indicated that it is unwilling to reconsider whether its documents should be re-designated as "protected" unless requested to do so on document-by-document basis. Respondents believe that, if Warner were to reassess its confidentiality designations to identify which documents should be designated as "confidential" and which should be designated as "protected," the likelihood of additional motion practice on this issue will be reduced substantially. Accordingly, Respondents request that the Court instruct Warner that it may not simply rely upon its confidentiality designations from the pre-complaint investigation, but instead must re-assess the protection it needs under the terms of the protective order entered in this case.

Dated: October 31, 2001

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

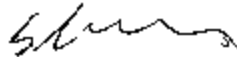
I, Stephen E. Morrissey, hereby certify that on October 31, 2001, I caused a copy of the attached **RESPONDENTS' MOTION FOR ENTRY OF PROTECTIVE ORDER** to be served upon the following persons by facsimile and Federal Express:

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Hon. James P. Timony  
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