

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

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| In the Matter of |) | |
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| SONY BMG MUSIC ENTERTAINMENT, |) | DOCKET NO. C- |
| a general partnership. |) | |
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COMPLAINT

The Federal Trade Commission, having reason to believe that SONY BMG Music Entertainment, a general partnership, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent SONY BMG Music Entertainment (“respondent” or “SONY BMG”) is a Delaware general partnership with its principal office or place of business at 550 Madison Avenue, New York, New York 10022. SONY BMG distributes music CDs in the United States under various labels.
2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent has licensed, placed on over 100 music CD titles, and installed on consumers’ computers content protection software programs (also known in the music industry as “Digital Rights Management” or “DRM” software). SONY BMG used three types of DRM software on these CDs. SONY BMG first offered for sale CDs containing “XCP” software in April 2005. SONY BMG has sold approximately 3 million XCP CDs. A predecessor to SONY BMG first offered for sale CDs containing “MediaMax version 3.0” software in 2003, and in January 2005 SONY BMG offered for sale CDs containing “MediaMax version 5.0” software. SONY BMG has sold approximately 8.4 million MediaMax 3.0 CDs and 5.7 million MediaMax 5.0 CDs.

Background

4. Unlike CDs that do not contain DRM software, the audio files on SONY BMG content-protected CDs cannot be accessed on a Windows-based computer's CD drive unless the consumer installs additional software from those CDs, specifically SONY BMG's DRM software.
5. In addition, in order to initially access the audio files and other digital content, all XCP CDs and MediaMax CDs require the use of a proprietary media player software program that is bundled with the CD (the "bundled media player"). Certain other SONY BMG music CDs contain a bundled proprietary media player, but no DRM software.
6. On the jewel case of respondent's content-protected CDs, there is no adequate reference to the need to install DRM software before being able to access the CD's content on a computer.

Installation of DRM Software

7. When a user first inserts a content-protected CD into a computer, an End User License Agreement ("EULA") appears, requiring the user to accept or reject its terms. Users must accept the EULA to access the audio files and other digital content on the CD.
8. If the user rejects the EULA, the CD automatically ejects from the computer and the user cannot access its content. However, in the case of MediaMax 5.0 CDs, certain files of that content protection software will be installed and remain on a user's computer, even if the user rejects the EULA.
9. If the user accepts the EULA, the software is installed and becomes operational, and the user gains access to the audio files and other digital content on the CD.

Transmission of Information by the Bundled Media Player

10. The bundled media player runs directly from the CD, launches automatically after acceptance of the EULA, and is pre-set to display for the consumer an image of the artist whose work the CD contains. In addition, if the user's computer is connected to the Internet, the media player on all XCP CDs, certain MediaMax 5.0 CDs, and other CDs that are not content-protected (together, "Enhanced Connectivity CDs") establishes a connection with Internet servers. Through this connection, the user's or proxy server's Internet Protocol ("IP") address and a numerical key identifying the album being played transmit from the consumer's computer to the servers. The servers also register the date and time of the transmission. Based on the information received, the bundled media player retrieves updated images of artists and other targeted images, if any, as well as promotional messages and sends them to the user's computer for display.

11. Respondent does not disclose to consumers, on the jewel case or otherwise prior to purchase, that a proprietary media player contained on the CDs will operate on the user's computer to transmit information to SONY BMG, if the user's computer is connected to the Internet, and that this information will be used to retrieve and send updated images of artists and other targeted images, if any, as well as promotional messages to the user's computer for display.

Effects of the DRM Software and the Bundled Media Player

12. The XCP and MediaMax DRM software limit consumers' use of the music CDs they have purchased by: (1) limiting to three the number of physical copies of the CD that the consumer can make directly from the CD using the computer; and (2) allowing the direct transfer of the CD's audio files only to playback devices that use secure Windows formats and, in some cases, the Sony ATRAC format.

13. The XCP software contains a cloaking technology named "Network Control Manager" that hides the existence of the XCP software from the Windows Operating System. The cloaking technology creates a security vulnerability because malicious software that enters users' computers can exploit the cloaking technology to conceal itself from the computers' security software.

14. MediaMax 5.0 also creates a security vulnerability in users' computers, known as a "privilege escalation vulnerability," that could allow third parties who gain physical access to the computer but who have lower-privilege access to exercise full control over a consumer's computer running the Windows operating system. The files creating the security vulnerability are installed before the user accepts or declines the EULA.

15. XCP and MediaMax software are difficult to locate on a user's computer because: (1) neither XCP nor MediaMax software appears in the commonly accessed "Add/Remove Programs" utility in the Windows operating system; (2) XCP software is named "Plug and Play Device Manager" in the services registry key on users' computers rather than being named "XCP" or "DRM" software; and (3) XCP software's cloaking technology hides its existence from the Windows operating system and thus from security software.

16. XCP and MediaMax are difficult to remove from a user's computer because: (1) an uninstall tool was not provided with these programs; and (2) prior to December 2005, to obtain an uninstall tool for either of these programs, users had to visit SONY BMG's or the software vendor's website, fill out a form that required the user to disclose her e-mail address, then wait for an e-mail, download additional software, and install a program that was designed to remove the files.

VIOLATIONS OF THE FTC ACT

17. Respondent has advertised, offered for sale, and sold music CDs containing XCP and MediaMax content protection software. Through the advertising, offering for sale, and sale of these music CDs, respondent has represented, expressly or by implication, that consumers will be able to use the CDs as they are commonly used on a computer: to listen to, transfer to playback devices, and copy the audio files contained on the CD for personal use. Respondent has failed to disclose, or has failed to disclose adequately, that the XCP and MediaMax CDs will: (1) install software on consumers' computers; (2) through the installed software, limit to three the number of physical copies of the CD that the consumer can make directly from the CD using the computer; and (3) through the installed software, allow the direct transfer of the music files only to playback devices that use the secure Windows formats or the Sony ATRAC format. These facts would be material to consumers in their purchase or use of the CDs. Respondent's failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

18. Respondent has advertised, offered for sale, and sold certain music CDs that contain a bundled proprietary media player. Through the advertising, offering for sale, and sale of these music CDs, respondent has represented, expressly or by implication, that consumers will be able to listen to the music on these CDs on their computers. Respondent has failed to disclose, or has failed to disclose adequately, that, if consumers' computers are connected to the Internet, the CDs' bundled media player will establish a connection with Internet servers through which the user's or proxy server's Internet Protocol ("IP") address and a numerical key identifying the album being played will be transmitted from the consumer's computer to the servers, and that this information will be used to display images and/or promotional messages on consumers' computers that are retrieved from those servers. These facts would be material to consumers in their purchase or use of the CDs. Respondent's failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

19. Through the means described in Paragraphs 6 through 9, respondent has caused the XCP and MediaMax 5.0 software to be installed on consumers' computers without adequate notification and consent. As described in Paragraphs 13 and 14, the software has exposed consumers to security risks. Respondent's practices have caused, or are likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. These practices were, and are, unfair acts or practices.

20. Through the means described in Paragraphs 7 through 9, respondent has caused the XCP and MediaMax 3.0 and 5.0 content protection software to be installed on consumers' computers. As described in Paragraphs 15 and 16, consumers were not able to locate and/or remove this software through the use of reasonable efforts. Consumers have, individually or collectively, incurred substantial costs in locating and removing this software from their computers and in stopping its harmful effects. Among other things, if consumers manually removed the XCP software prior to the time that SONY BMG made an uninstall tool readily available, the software

disabled the audio CD drive on the computer, rendering the consumer's CD-ROM drive inoperable. Respondent's practices have caused, or are likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. These practices were, and are, unfair acts or practices.

21. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this _____ day of _____, 2007, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary