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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
SONY BMG MUSIC ENTERTAINMENT,  
a general partnership  
subsidiary of Sony  
Corporation of America  
  
Defendant.

08 Civ. 10730 (LAK)

CONSENT DECREE AND ORDER FOR  
CIVIL PENALTIES, INJUNCTION, AND  
OTHER RELIEF

WHEREAS the plaintiff, the United States of America, has commenced this action by filing the complaint herein; the defendant has waived service of the summons and complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without the defendant admitting liability for any of the matters alleged in the complaint or that the facts as alleged in the complaint, other than the jurisdictional facts, are true;

THEREFORE, on the joint motion of the plaintiff and the defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

- 1. This Court has jurisdiction of the subject matter and of the parties.
- 2. The complaint states a claim upon which relief may be granted against the defendant

under Sections 1303(c) and 1306(d) of the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506, 6502(c), and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b. Among other things, the complaint alleges that the defendant violated COPPA by failing to provide notice to parents of its information practices, to obtain verifiable parental consent prior to collecting, using, and disclosing personal information from children online, and to provide parents with reasonable procedures for reviewing the personal information collected from their children and refusing to permit its further use or maintenance.

3. Defendant Sony BMG Music Entertainment waives any claim it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.
4. Entry of this Consent Decree and Order for Civil Penalties, Injunction, and Other Relief is in the public interest.

#### **DEFINITIONS**

5. For purposes of this Consent Decree, the term "Rule" means the Federal Trade Commission's Children's Online Privacy Protection Rule, 16 C.F.R. Part 312.
6. For purposes of this Consent Decree, the terms "child," "collects," "collection," "Commission," "delete," "disclosure," "Internet," "online contact information," "operator," "parent," "person," "personal information," "third party," "verifiable consent," and "website or online service directed to children," are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.
7. For purposes of this Consent Decree, "defendant" means Sony BMG Music Entertainment, a general partnership subsidiary of Sony Corporation of America.

### INJUNCTION

8. The defendant, its successors and assigns, and its officers, agents, servants, representatives, and employees, and all persons in active concert or participation with it who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined, directly or through any corporation, subsidiary, division, website, or other device, from:
- a. Failing to provide sufficient notice on any website or other online service directed to children, or through which it, with actual knowledge, collects, uses, and/or discloses personal information from children, of what information defendant collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
  - b. Failing to provide direct notice to parents of what information the defendant collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);
  - c. Failing to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, in violation of Section 312.5 of the Rule, 16 C.F.R. § 312.5(a)(1); and,
  - d. Failing to provide a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance, in violation of Section 312.6 of the Rule, 16 C.F.R. § 312.6; or,
  - e. violating any other provision of the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, and as the Rule may hereafter be amended. A

copy of the Rule is attached hereto as "Appendix A" and incorporated herein as if fully set forth verbatim.

9. Defendant, its successors and assigns, and its officers, agents, servants, representatives, and employees, and all persons in active concert or participation with it who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined, directly or through any corporation, subsidiary, division, website, or other device, in connection with the operation of any website or other online service, from making any misrepresentation in the website's privacy policy or elsewhere about the website's collection, use, or disclosure of children's personal information.

#### **CONSUMER EDUCATION REMEDIES**

10. For a period of five (5) years from the date of entry of this Consent Decree, the defendant, and its successors and assigns, in connection with the operation of any website or other online service directed to children or through which it, with actual knowledge, collects, uses, and/or discloses personal information from children, shall place a clear and conspicuous notice (1) within the privacy policy required to be posted on its website(s) by Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b); (2) within the direct notice required to be sent to parents by Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and (3) at each location on its website(s) where personal information is collected, which states as follows in bold typeface:

**NOTICE: Visit [www.ftc.gov/privacy/privacyinitiatives/childrens](http://www.ftc.gov/privacy/privacyinitiatives/childrens) for information from the Federal Trade Commission about protecting children's privacy online.**

Where the above notice is posted on a website or delivered via email or other electronic service, it shall be in the form of a hyperlink to [www.ftc.gov/privacy/privacyinitiatives/childrens](http://www.ftc.gov/privacy/privacyinitiatives/childrens). The Federal Trade Commission may

change the hyperlink/URL upon thirty (30) days prior written notice to the defendant, its successors or assigns.

11. For a period of five (5) years from the date of entry of this Consent Decree, the defendant, and its successors and assigns, in connection with the operation of any website or online service that offers users the opportunity to create user profiles that can publicly be viewed or to interact with other Sony BMG fans, shall place a clear and conspicuous notice on the homepage(s) and privacy notice(s) of its website(s), which states, in the form of a hyperlink in bold typeface, as follows:

**Visit [www.OnGuardOnline.gov](http://www.OnGuardOnline.gov) for social networking safety tips for parents and youth [“parents” must contain a hyperlink to [www.onguardonline.gov/socialnetworking.html](http://www.onguardonline.gov/socialnetworking.html) and “youth” must contain a hyperlink to [www.onguardonline.gov/socialnetworking\\_youth.html](http://www.onguardonline.gov/socialnetworking_youth.html)]**

The Federal Trade Commission may change the hyperlinks/URLs upon thirty (30) days prior written notice to the defendant, its successors or assigns.

#### CIVIL PENALTY

12. The defendant, and its successors and assigns, shall pay to the plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), in the amount of One Million Dollars (\$1,000,000) due and payable within five (5) days following entry of this Consent Decree. Unless otherwise directed, payment shall be made by electronic fund transfer in accordance with procedures specified by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, DC 20530.
13. In the event of any default payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable.

14. The defendant agrees that the facts as alleged in the Complaint filed herewith shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding.

**DELETION OF CHILDREN'S PERSONAL INFORMATION**

15. The defendant, and its successors and assigns, within five (5) days from the date of entry of this Consent Decree, shall delete all personal information collected and maintained in violation of the Rule at any time from April 21, 2000 through the date of entry of this Consent Decree.

**DISTRIBUTION OF ORDER AND COMPLIANCE GUIDE BY THE DEFENDANT**

16. The defendant, and its successors and assigns, within thirty (30) days from the date of entry of this Consent Decree, shall provide a copy of this Consent Decree and the Federal Trade Commission compliance guide entitled *How to Comply with the Children's Online Privacy Protection Rule* (Nov. 1999) ("compliance guide") (attached hereto as "Appendix B") to each of its current principals, officers, and directors; and to all managers and current employees and agents having responsibilities related to the operation of any website or online service subject to this Consent Decree; and to all current representatives having responsibilities related to compliance with this Consent Decree; and secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and the compliance guide. The defendant shall, within ten (10) days of complying with this paragraph, submit to the Commission a signed statement setting forth the fact and manner of the defendant's compliance, including the name and title of each person to whom a copy of the Consent Decree and compliance guide has been provided.
17. The defendant, and its successors and assigns, for a period of three (3) years from the date of entry of this Consent Decree, shall provide a copy of this Consent Decree and the compliance guide to each of its future principals, officers, and directors; and to all

managers and future employees, agents, and representatives having responsibilities related to the operation of any website or online service subject to this Consent Decree, and secure from each such person a signed and dated statement acknowledging receipt of a copy of this Consent Decree and the compliance guide, within thirty (30) days after the person assumes such position or responsibilities. The defendant shall maintain copies of the signed statements, as well as other information regarding the fact and manner of its compliance, including the name and title of each person to whom a copy of the Consent Decree and compliance guide has been provided and, upon request, shall make the statements and other information available to the Commission.

#### **COMPLIANCE REPORTING BY THE DEFENDANT**

18. In order that compliance with the provisions of this Consent Decree may be monitored:
  - a. For a period of three (3) years from the date of entry of this Consent Decree,
    - i. The defendant shall notify the Commission of any changes in its corporate structure that may affect compliance obligations arising under this Consent Decree, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, the defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

- b. Sixty (60) days after the date of entry of this Consent Decree and at such times as the Federal Trade Commission shall reasonably require, the defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Consent Decree. This report shall include, but not be limited to:
- i. a statement setting forth in detail the criteria and process through which any of its websites register visitors online for any activity requiring the submission of personal information, and a copy of each different version of screen or page providing or collecting registration information;
  - ii. a copy of each different version of privacy notice posted on any of its websites;
  - iii. a statement setting forth in detail each place where the privacy notice on any website is located and a copy of each different version of screen or page on which the website collects personal information;
  - iv. a copy of each different version of privacy notice sent to parents;
  - v. a statement setting forth in detail when and how each notice to parents is provided;
  - vi. a statement setting forth in detail the methods used to obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children;
  - vii. a statement setting forth in detail the means provided for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
  - viii. a statement setting forth in detail why each type of information collected from a child is reasonably necessary for the provision of the particular related activity; and



- ix. a statement setting forth in detail the procedures used to protect the confidentiality, security, and integrity of personal information collected from children.
- c. For the purposes of this Consent Decree, the defendant shall, unless otherwise directed by the Commission's representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580  
Re: *U.S. v. Sony BMG Music Entertainment*,  
Civil Action No. 08 Civ. 10730

#### **RECORD-KEEPING PROVISIONS**

19. For a period of three (3) years from the date of entry of this Consent Decree, the defendant, and its successors and assigns, shall maintain, and make available to the Federal Trade Commission for inspection and copying within fourteen (14) days of the date of receipt of a written request, a print or electronic copy in HTML format of all documents demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to, copies of acknowledgments of receipt of this Consent Decree; all reports submitted to the Commission pursuant to this Consent Decree; a sample copy of every different form, web page, or screen through which personal information is collected; and a sample copy of each different document containing any representation regarding the defendant's collection, use, and disclosure practices pertaining to personal information of a child. Each web page copy shall be accompanied by the URL of the web page where the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting information on the Internet. *Provided*, however, that the defendant shall not be required to retain any document for longer than two (2) years after the document was created, or to retain a print or electronic copy of any amended

web page or screen to the extent that the amendment does not affect the defendant's compliance obligations under this Consent Decree.

**PROVISION OF TAXPAYER IDENTIFYING NUMBERS**

- 20. The defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer identifying number (employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of its relationship with the government.

**CONTINUING JURISDICTION**

- 21. This Court shall retain jurisdiction of this matter for the purposes of enabling the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

**JUDGMENT IS THEREFORE ENTERED** in favor of the plaintiff and against the defendant, pursuant to all the terms and conditions recited above.

*The Court shall close the case.*

Dated this 15<sup>th</sup> day of December 2008.

*[Handwritten Signature]*  
UNITED STATES DISTRICT JUDGE