

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of

SONY BMG MUSIC ENTERTAINMENT,

Respondent

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

In 2004, Eliot Spitzer, Attorney General of the State of New York, initiated an investigation pursuant to the provisions of Article 22-A of the General Business Law and Section 63 of the Executive Law into practices relating to the promotion of music to radio broadcasting stations. SONY BMG MUSIC ENTERTAINMENT ("SONY BMG") has cooperated with the Attorney General through the course of this investigation and, in January 2005, implemented guidelines that address some of the conduct discussed below. SONY BMG has agreed to revise its guidelines consistent with Exhibit B to this Assurance of Discontinuance. The Attorney General finds that the practices discussed below are pervasive within the music industry and by no means unique to SONY BMG. Further, the Attorney General makes no finding as to the artistic merit of the work of any of the artists mentioned in this document.

Based on his investigation, the Attorney General makes the following findings:

Preliminary Statement

1. Respondent, SONY BMG, is a Delaware general partnership with its principal place of business located at 550 Madison Avenue, New York, New York, 10022. SONY Corporation and Bertelsmann A.G. are the ultimate parents of SONY BMG and each has a fifty

percent ownership interest in SONY BMG.

2. SONY BMG is engaged in the production, distribution and sale of pre-recorded music. SONY BMG is the second largest record company in the world and is one of the four major record companies that dominate the music industry. SONY BMG includes several record labels that sign artists, produce records, and market, promote, and sell those records.

3. To sell music and reap profits, SONY BMG label groups aggressively promote their music to radio broadcasting stations, because radio airplay is the single most significant driver of music sales: the more a song is played on the air, the more people are likely to hear it and then buy it; moreover, the more airplay a song receives, the higher it climbs on the published charts that purport to reflect the song's popularity. This, in turn, increases the likelihood that retailers will stock the song and consumers will buy it. Simply put, increased airplay translates into increased sales.

4. SONY BMG has illegally provided radio stations with financial benefits to obtain airplay and boost the chart position of its songs. Contrary to listener expectations that songs are selected for airplay on the basis of their popularity or artistic merit, SONY BMG has obtained airplay for its songs through such deceptive and illegal practices as: (a) on occasion, bribing radio station employees to play its songs; (b) providing a stream of financial benefits to radio stations, including purchasing equipment, paying off invoices and providing free concerts, all on condition that its records receive airplay; (c) providing vacation packages, electronics, gift cards and other valuable items to radio stations for contest giveaways in exchange for airplay; and (d) using independent promoters as conduits for illegal payments to radio stations to obtain airplay.

I. Payola: Illegal and Deceptive Business Practice

5. The term “payola” was originally coined by the trade publication *Variety* in 1938.

It refers to the music industry practice of exchanging money or other valuable consideration for increased exposure or promotion of a particular piece of music. Payola, or “pay-for-play,” has existed in one form or another since the industry’s inception.

6. Record labels have stables of artists whose music the labels seek to promote.

Because far more songs are produced than can be played on the air, stiff competition exists between labels to obtain airplay for their artists, a necessary component of the labels’ marketing effort to profit from record sales.

7. Payola became a particularly acute problem in the 1950's and 1960's. Because disc jockeys had significant control over which records would be played at their stations, true competition among record companies gave way to corruption scandals that rocked the music industry. Record companies and their agents brazenly bribed DJs to gain airplay.

8. In November of 1959, the House Subcommittee on Legislative Oversight initiated a formal investigation into the payola scandals. The probe focused primarily on small independent record labels, disc jockeys, and other outside influences used to influence radio station programming decisions.

9. The Communications Act amendments of 1960 were enacted as a result of the Committee’s findings as well as the findings of other related investigations. Although the obligation for broadcasting stations to disclose the receipt of valuable consideration provided in exchange for airplay was first codified in 1927, it was rarely enforced. See 47 U.S.C. § 317. Congress strengthened the obligation by adding several provisions to Section 317 including a

provision requiring radio stations to exercise due diligence to ensure that the prescribed announcements take place.

10. Congress also added a provision to the Act which requires any employee of a radio station who accepts or agrees to accept money, services or other valuable consideration, or any person who pays or agrees to pay such radio station employee money, services or other consideration in exchange for the broadcast of any particular piece of programming, to disclose, this payment to the station. See 47 U.S.C. § 508. Further, failure to comply with these disclosure requirements constitutes a misdemeanor and subjects the violator to imprisonment of up to one year and fines of up to \$10,000. Id.

11. In addition to the federal payola statutes, New York State law prohibits the paying of bribes to radio station personnel. Under the State's commercial bribery statute, New York Penal Law § 180.00, it is a misdemeanor for anyone to confer (or offer to confer) a benefit upon another party with the intent to influence the recipient's conduct regarding the business affairs of the recipient's employer, without the employer's consent.

12. Section 349 of the New York General Business Law ("GBL") empowers the Attorney General to seek injunctive relief when any person or entity has engaged in deceptive acts or practices in the conduct of any business. Section 350-d of the GBL empowers the Attorney General to seek, inter alia, civil penalties in the amount of \$500 for each violation of section 350, the False Advertising Statute, and section 349, the Deceptive Practices Statute. Finally, Executive Law §§ 63(12) and 63(15) empower the Attorney General to seek injunctive and equitable relief when any person or business entity has engaged in or otherwise demonstrated repeated fraudulent or illegal acts in the transaction of business.

II. Modern Pay-for-Play

13. In the 45 years since the enactment of the federal payola statutes, the practice of pay-for-play has changed significantly. The bribes to local disc jockeys have evolved into an elaborate corporate payola strategy, developed and brokered at the highest levels of the record labels and radio broadcasting companies. The increased sophistication of such strategy reflects the significant consolidation that has taken place within the radio industry in the wake of the Telecommunications Act of 1996, which substantially increased the number of stations that could be owned by a single entity. With the advent of conglomerates such as Clear Channel Communications, Inc. ("Clear Channel") and Infinity Broadcasting, Inc. ("Infinity"), record label executives can, and do, negotiate large scale promotion deals netting airplay across a large number of stations serving a host of different geographic markets.

14. Radio stations – whether independent or belonging to a conglomerate – no longer rely on disc jockeys to choose recorded music for broadcast. Rather, programming personnel now have responsibility for formulating "play lists," strict and detailed schedules setting forth exactly those songs the radio station will play each week. As they update the play lists from one week to the next, programmers generally remove a limited number of songs and add new songs to fill the vacated slots. The newly added songs are referred to in the industry as "adds." Record labels pursue carefully designed promotion campaigns aimed at garnering adds, which represent in each case a significant achievement for the label's promotion staff. In general, an "add" amounts to a commitment by the radio station not only to play the label's song, but to do so regularly over a period of several weeks.

15. Once a radio station has finished its play list for the upcoming week, the station often will report the play list to other music industry participants, including record labels and the two charting companies, Billboard and Radio & Records. The charting companies compile charts for various music formats that purport to reflect the popularity of individual songs based on radio airplay, as monitored by two other companies, BDS and Mediabase, which track the number of times (or “spins”) each song is played on the air.

16. Accordingly, in addition to seeking to have their songs added to play lists, record labels are intensely interested in seeing each add receive as many spins as possible. Frequent airplay not only creates audience awareness but improves the song’s chart position and its prospects for becoming a lucrative hit. Thus, label promotion staff work to obtain commitments from stations to play each add a minimum number of times, preferably between 6:00 AM and midnight, when the listening audience is largest.

17. Intense competition among record labels for the relatively small number of valuable play list slots has caused a variety of aggressive pay-for-play mechanisms to emerge. All labels share the common objective of advancing the circulation of record labels’ products to the listening public, without regard to the artistic value of those products. In each case, music consumers remain unaware of the extent to which radio programming and record popularity statistics are being manipulated and compromised.

18. In addition to employing the traditional device of delivering bribes to radio programmers – which now can take the form of expensive vacation packages, electronics, and other valuable items – record labels endeavor to gain airplay for their songs by providing such inducements to the radio stations as “promotional support,” which the stations can then use either

to help meet their own operational needs or as prizes and “giveaways” designed to increase the size of the stations’ listening audience. Similarly, labels routinely arrange for their artists to perform on the radio for free or at reduced rates, with the clear understanding that each such performance will take place only if the station gives the artist’s recorded work airplay.

19. In an effort to dodge the payola laws, record labels and radio stations have also enlisted the services of so-called independent promoters, or “indies,” middlemen who act as conduits for delivery of the labels’ “promotional support” to the stations and help perpetuate the fiction that this support is not actually being delivered by the labels in exchange for airplay and therefore does not violate the payola statutes. Many independent promoters receive compensation from the labels for each “add” they obtain.

20. Labels also strive to boost the popularity of their recorded music through the deceptive device of “spin programs” – air time bought by the labels under the guise of advertising, during which particular songs are played so that the charting companies (BDS and Mediabase) will credit those songs with spins beyond those attributable to the radio stations’ own programming decisions.

21. Finally, to increase spins and exposure, labels direct their own personnel (or paid agents) to contact radio stations and radio programs, and place fraudulent requests that certain songs be played.

22. By engaging in such an elaborate scheme to purchase airplay, increase spins, and manipulate the charts, SONY BMG and the other record labels present the public with a skewed picture of the country’s “best” and “most popular” recorded music.

III. SONY BMG's Multi-Faceted Pay-for-Play Strategy

23. Rather than relying exclusively on the quality or originality of its music to obtain airplay for its artists' recordings, SONY BMG pursues all of the foregoing "pay-for-play" techniques. These practices are carried out by the promotion departments of SONY BMG's various label groups – which include Epic Records, Columbia Records, SONY Urban, SONY Nashville, the Zomba Label Group, and RCA Label Group – and have been tolerated and facilitated by senior executives at SONY BMG record labels.

24. Each of the major SONY BMG labels is headed by a senior vice president of promotion, who receives reports from staff responsible for the specific music formats adopted by music radio stations, such as Top 40, Adult Contemporary, Alternative Rock, and Adult Album Alternative.

25. The national promotion staff is responsible for promoting songs by music format. The promotion department of each major SONY BMG label also has a regional promotion staff, focused geographically, that reports directly to the senior vice president of promotion, and works with the national promotion staff. The sole function of promotion department employees is to obtain airplay for SONY BMG's artists.

26. In recent years, a significant portion of SONY BMG's radio promotion dollars has been used to purchase airplay and create hit records. These practices are so fundamental to SONY BMG's success as a record company that senior label executives frequently have been involved.

A. Gifts and Bribes to Station Programmers

27. SONY BMG provides items of value to radio station programmers personally, having delivered electronics, vacations, airfare, hotel stays, sporting events tickets, concert

tickets, computer equipment and other gifts for programmers' personal use. When employed, this practice is used both to secure airplay commitments on specific songs and to buy the good will of a programmer who, in return, commits to playing SONY BMG music on a regular basis. In many instances, the gifts are couched as contest prizes and other types of listener giveaways. SONY BMG promotion department employees go to considerable lengths to conceal such fraudulent transactions within SONY BMG's accounting systems. Because the law requires SONY BMG to record a winner name and social security number for each contest prize in excess of \$600, SONY BMG employees have solicited false "winner" names and social security numbers from the radio programmers who in actuality received the "prize."

Epic Records

28. The Epic Records promotion department routinely has provided radio station programmers with valuable items in exchange for airplay. Indeed, the Epic promotion department has paid for numerous personal trips for David Universal, a former program director at WKSE in Buffalo in exchange for airplay. For example, in July 2001, Universal and a guest were flown to New York City in exchange for Universal adding the song "I'm Real" by Jennifer Lopez to the WKSE play list [SONY 00104159]. Similarly, in November 2003, Epic paid for round-trip airfare to Ft. Lauderdale for the former program director, in exchange for Universal's "add" of the song "Hold On" by Good Charlotte to WKSE's play list [SONY 00098276, 00098285].

29. More recently, in August 2004, desperate to secure airplay for the song "Take Me Out" by the group Franz Ferdinand, the Epic promotion department agreed to pay for Universal and three friends to take another extravagant trip to Miami, in exchange for the "add" of "Take

Me Out” to the WKSE play list. In an e-mail sent shortly after the deal was negotiated, an Epic promotion executive briefed the Executive Vice President of Promotion as follows:

I needed your advice – I know Alex [the Epic promotion employee who negotiated the August 2004 Miami trip] feels like he is being pulled in different directions and I don’t want him to feel that way. Two weeks ago, it cost us over 4000.00 to get Franz [Ferdinand] on WKSE. That is what the four trips to Miami and hotel cost. *Yesterday I specifically heard him tell Dave Universal that the cost was outrageous and we needed Good Charlotte to make up for some of the costs. He was perfect.* Dave hates GC and Franz will be in overnights for a few more weeks. At the end of the day, Universal added GC and Gretchen Wilson and hit Alex up for another grand and they settled for \$750.00. So almost \$5000.00 in two weeks for overnight airplay. He told me that Tommy really wanted him to do it so he cut the deal. We are now once again on Dave Universals agenda in which we swore we would never do again. I did speak to Tommy and he feels like the records will come out soon but Alex sees it different. I will stay out of it but I don’t want Alex to feel like he is getting different direction. I just think it is bad business that we swore we would not not [sic] do again.

(Emphasis added). [SONY 00104558-59].

30. To conceal programmer bribes of this sort, Epic’s promotion department has resorted to falsifying purchase orders so as not to raise a red flag with Epic’s accounting department. As a matter of Epic policy, all radio promotion expenditures are to be coded according to the nature of the expense and entered into an accounting database. Gifts given to programmers like Dave Universal sometimes have been coded and entered as “contest giveaways” provided to each programmer’s radio station.

31. For example, in November 2002, a flat screen TV was provided to Clear Channel Program Director Diana Laird of KHTS in San Diego. To conceal the true nature of the transaction within SONY BMG’s accounting system, Epic’s Executive Vice President of

Promotion solicited a fictitious winner name and social security number from Laird and directed Epic operations personnel to bury the expense in the accounting system. Acting on these orders, Epic operations personnel characterized the transaction as a contest giveaway [SONY 00235185] and entered the name and social security number of a friend of Laird's who had agreed to accept delivery of the TV as the "winner" of a contest supposedly held by Laird's radio station, KHST. Laird's friend also "agreed" to pay any taxes owed in connection with the receipt of the TV.

32. The Laird transaction is not unique. Epic's promotion department has paid for a number of personal items for Blake Larson, a programmer at WRHT in Greenville, North Carolina, including airfare for the programmer and his girlfriend [SONY 00234921], a laptop computer [SONY 00234922], and Playstation 2 equipment and games [SONY 00234923]. These items were provided to Larson himself to secure airplay and were characterized by Epic as contest giveaways for Larson's radio station. To conceal the true nature of the laptop gift, the Epic promotion employee characterized the laptop as a contest giveaway and provided a false name and social security number for entry into the SONY BMG accounting system as the "contest winner" of the laptop, which was then shipped to Larson's girlfriend.

Columbia Records

33. The promotion department of Columbia Records pursues a similar practice. For example, in July 2003, the Columbia promotion department paid for a trip to Las Vegas for Donnie Anderson, aka Donnie Michaels, former program director of WFLY in Albany to secure airplay. [SONY 00151439]. On other occasions, the Columbia promotion department has paid for a hotel room for Anderson [SONY 00151491] and given him a laptop [SONY 00165404]. The Columbia promotion department also paid for a trip to Boston for programmers at WWHT, a

Clear Channel station in Syracuse. These deals were negotiated by the former Vice President of Top 40 Promotion at Columbia to secure airplay for Columbia music. When asked about these transactions under oath, the former Vice President of Top 40 Promotion at Columbia, who by then had left the company, asserted his Fifth Amendment privilege against self-incrimination.

SONY Urban

34. The practice of providing gifts to programmers for airplay is also part of the mindset at SONY Urban. A January 2003 email by a SONY Urban Promotion employee setting forth ideas on how to obtain airplay for the song "Adidas" by artist Killer Mike makes explicit the contemplated quid pro quo nature of such deals:

I plan on settling up the record with each mix show jock who has a free hand to play what they want @ the station. I would like to ask them their shoe size and send one Adidas sneaker to them and send the other match when the airplay reaches @ least 10 spins. For the staions [*sic*] who come out of the box with 10 or more spins they will get an autographed pair of Adidas as well as a t-shirt to match. The type of clothing or accessory will be up to the DJ to request. Whoever breaks the single (with 20 spins a week or more), will receive gift certificate to a sporting goods store to buy an outfit for a winner or themselves.

[SONY 00040823-24]. The Attorney General's investigation has not revealed evidence that the promotion described above actually was executed.

35. In July 2004, an executive within SONY Urban's promotion department provided a programmer at WSSP in Milwaukee with Celine Dion concert tickets in order to generate airplay for the artist Holla Point [SONY 00160579-80]. On various occasions, the same SONY Urban promotion executive also has provided radio station employees with car service [SONY 00220176-77] and a CD walkman [SONY 00160539-40] to obtain airplay.

36. Similarly, in August of 2004, SONY Urban agreed to provide Michael Saunders, Program Director at Clear Channel station WWPR in New York City, with a plasma TV and entertainment system worth several thousand dollars, in exchange for SONY Urban music airplay. A SONY Urban promotion executive obtained Saunders' home mailing address [SONY 00220130] and first sought to falsely account for the transaction as promotional support for WWPR, while sending the electronic equipment to Saunders' home address [SONY 00168895]. As a result of the Attorney General's investigation, however, the corrupt deal was discovered by SONY BMG in-house counsel and Saunders never received the equipment.

B. Promotional Support to Radio Stations

37. In addition to bribing individual radio station employees to secure airplay, SONY BMG regularly provides "promotional support" to radio stations in exchange for airplay of its songs. SONY BMG has provided this support to exert the same influence over the stations' airplay decisions as when a bribe goes directly into a station employee's pocket. The practice is equally deceptive.

38. In their regular direct contact with radio station programmers, SONY BMG promotion department employees dangle the prospect of promotional support as an explicit and implicit inducement for the programmers to add songs and/or increase airplay. Radio programmers exacerbate the situation by frequently soliciting items of value in exchange for airplay. Stations use the promotional support they receive for two general purposes: to assist with operating costs, and to provide contest giveaways. Such support is attractive to stations because it lowers overhead, draws listeners and boosts ratings. This support influences programming decisions, a fact not disclosed to consumers.

39. In recent years, SONY BMG labels have secured airplay by paying the invoices of third party vendors that supply goods and services to radio stations. SONY BMG also has provided stations with electronic equipment, and has paid industry conference registration fees for station personnel. And, perhaps most noticeably, SONY BMG has supplied a myriad of valuable items that enable the stations to conduct on-air promotional events, such as: vacation packages, concert tickets, sporting events tickets, airfare, hotel expenses, gift certificates, gift cards, musical instruments and equipment, athletic equipment, electronic and computer equipment, CDs and DVDs. See, e.g., [SONY 00173236 (TV and DVD Players) SONY 00161374, 00216512-14, 00210741 (laptop); 00113917, 00173233 (flyaway packages); 00041740, 00173185 (promotional dollars); 00041740, 00150763 (digital cameras); 00173209 (concert tickets); 00229582-83, 00164447 (passes for a promotional appearance by artist Kelly Rowland); 00141466 (passes for a promotional appearance by Jessica Simpson)].

40. Recognizing the value of promotional support to radio stations, SONY BMG employees routinely make aggressive promotion pitches that plainly tie promotional support to airplay. For example, in April 2003, an Epic employee promoting the song “Like a Stone” by the group Audioslave to a Clear Channel programmer asked:

WHAT DO I HAVE TO DO TO GET AUDIOSLAVE ON
WKSS THIS WEEK?!?!? Whatever you can dream up, I can
make it happen!!!

(Emphasis in original). [SONY 00099470]. Similarly, in May 2004, a Zomba Label Group employee, seeking airplay for “Love Song” by 311, importuned a Top 40 radio programmer, “You have room for a money record this week? 311 ‘Love Song’ Big \$\$\$.” [SONY 00119335].

41. Such pay-for-play deals have constituted an integral part of SONY BMG's business strategy and have proceeded with the knowledge and approval of the top promotion executives at each SONY BMG label. Indeed, promotion staff must demonstrate the value of specific promotional activity in terms of airplay. For example, on one occasion, a promotion employee reported: "This is what we did for an Evan and Jaron add and a 2 spin a day increas [*sic*] on FFF. The total was three cheap DVD players, and a one 32 inch tv." [SONY 00173236]. Junior promotions personnel are directed to obtain approval and to provide weekly reports of their pay-for-play transactions. In a May 2003 e-mail, Columbia's Vice President of Pop Promotion directed his staff to report on "any promotions you did this week for airplay. Flyaways, equipment, etc." [SONY 00113278].

42. Frequently, SONY BMG employees seek not just a promise from the station to add the song, but a specific spin commitment – an agreement by the radio programmer to play a song a minimum number of times, usually at specified times during the day. As one Columbia promotion executive has explained, these commitments are used to hold radio stations "accountable" for the expensive promotional support they receive from SONY BMG. In June 2004, an Epic promotion employee offered to provide a radio station with promotional support of the station's choice in exchange for a commitment by the station to add the Franz Ferdinand song "Take Me Out" and spin it eighteen times a week between the hours of 7 p.m. and 6 a.m. [SONY 00011468].

43. SONY BMG personnel monitor and enforce the spin commitments they obtain by using the services of BDS, one of the airplay monitoring companies, which provides real time access to spins accumulating on current songs at radio stations across the

country. In an October 2004 e-mail, a SONY BMG employee reminded a Clear Channel programmer of the terms of a pay-for-play deal involving the song "Predictable" by Good Charlotte, which called for the station to play the song not just late at night, but during the more heavily listened-to part of the day:

When we all spoke [about] putting the Good Charlotte single together a few weeks ago. [*Sic*]. We all agreed that the single would start slow, but that the single would get 1 good spin [a day] plus the overnight spin. To date we have not received that 1 good daypart spin It is not our procedure to be the BDS police. We feel the spins effectively carry out the promotions we have in place with KXXM. We know you have given 1 of the 2 trips away. Can we now with everything positive going on get those 7-10pm daypart spins started now? So we can finish our business on both trips.

[SONY 00108155].

44. If a radio station does not deliver airplay, it risks losing the promotional support it has obtained. In October 2003 – upon hearing that airplay for the song "Bigger Than My Body" by John Mayer was down at radio stations that had agreed to add and play the single in exchange for flyway packages for their listeners – the Executive Vice President of Promotion at Columbia, admonished his staff: "Many stations here will NOT be given the promo with the airplay they are fiving us at this point. Either deal with it or pull it...each trip must be approved by me."

(Emphasis in original) [SONY 00167139]. To the same effect is the following internal e-mail sent by an Epic Records promotion employee unhappy with the times assigned for spins of the song "I Drove All Night" by Celine Dion:

OK, HERE IT IS IN BLACK AND WHITE AND IT'S SERIOUS:
IF A RADIO STATION GOT A FLYAWAY TO A CELINE
[DION] SHOW IN LAS VEGAS FOR THE ADD, AND THEY'RE
PLAYING THE SONG ALL IN OVERNIGHTS, THEY ARE NOT

GETTING THE FLYAWAY. PLEASE FIX THE OVERNIGHT
ROTATIONS IMMEDIATELY.

(Emphasis in original). [SONY 00095182-84].

45. SONY BMG also has negotiated pay-for-play transactions with radio conglomerates like Infinity. In such cases, SONY BMG has offered to sponsor a national contest in which dozens of contest winners are to be flown to a special show or artist performance at SONY BMG's expense. In return for this promotional support, the participating radio stations have committed to adding a particular song and playing the song a specific number of times a week.

46. One such deal reaching a large number of stations was negotiated in October 2002 between Epic and Infinity. Epic committed to flying contest winners to Las Vegas to see Celine Dion perform. In return for this promotional support – which was not disclosed by radio stations to listeners as coming from SONY BMG – participating Infinity stations agreed to add Dion's song "Goodbye's" to their respective play lists. An Epic promotion executive confirmed the terms of the deal with Infinity as follows:

Epic Records has agreed to provide a Celine Dion promotion for each mainstream adult Infinity radio station. The promotion will consist of winner and guest from each market being flown roundtrip to Las Vegas for a Celine Dion performance at Caesar's Palace. Two nights hotel stay and tickets to the performance will be provided by Epic Records. There will be one grand prize (meet Celine, play BlackJack with Celine, have lunch with Celine) to be determined before the promotion airs. *This e-mail also confirms each of the following stations has agreed to report "Goodbye's" on October 28th, 2002.* Please call me tomorrow if you have any further questions.

(Emphasis added) [Sony 00047142-43].

47. Finally, SONY BMG also routinely arranges for its artists to perform at radio station events and concerts in exchange for airplay commitments. Artist performances have come to represent a particularly attractive revenue source for radio stations, presenting significant branding and advertising opportunities at reduced expense, as the artists typically agree to perform for free or at reduced rates. For its part, SONY BMG uses these events to obtain substantial airplay commitments. For example, in an October 2004 e-mail, a Columbia promotion employee asked about the possibility of the group Switchfoot performing at Christmas shows sponsored by various radio stations. Seeking to ensure that these shows would generate significant airplay commitments, Columbia's Executive Vice President of Promotion, responded: "Before show[s] are given, I d [*sic*] like to know what kind of power rotation commitment were talking about." The executive's subordinate subsequently echoed this directive, advising staff to "[g]et a power rotation commitment and what kind of spins before we agree." [SONY 00106247].

C. Independent Promoters

48. SONY BMG supplements the work of its promotion employees through the use of independent promoters – third parties who deal directly with the radio stations in seeking to gain airplay for SONY BMG music. Although they are hired by the record labels, some independent promoters enjoy exclusive arrangements with particular radio stations, and are guaranteed regular, direct access to the programmers responsible for the all-important play lists. These independent promoters are often referred to as "exclusive indies." Other independent promoters promote to radio on a non-exclusive basis.

49. Many independent promoters, both exclusive and non-exclusive, have a financial

relationship with radio stations. Although the financial arrangements between independent promoters and the radio stations they work with vary, the essence of this financial relationship is the same: money and items of value supplied by SONY BMG and other record labels are funneled through the independent promoters to the stations.

50. SONY BMG has hired both exclusive indies and non-exclusive indies to implement its pay-for-play strategy. At the beginning of each promotion project, SONY BMG establishes the compensation rate for each independent promoter hired to promote the song. In general, SONY BMG has paid non-exclusive indies lump-sum retainer fees for their efforts. In contrast, exclusive indies generally have been paid a fee, often referred to as an "add fee," each time one of the promoter's stations has added a SONY BMG song to its play list.¹ Based on this compensation information, the independent promoters inform the radio station programmers each week which songs had promotional dollars available to support airplay.

51. Generally, independent promoters hired by SONY BMG have passed funds through to the stations in an amount approximating the sum total of the funds the independent promoter was paid by SONY BMG minus a percentage for the independent promoter's services. The SONY BMG funds have flowed to the stations in a variety of ways, ranging from the straight-forward payment of monthly or annual fees by the independent promoter to the radio station, to more sophisticated disbursement methods whereby stations have drawn upon SONY BMG funds held by the indies to pay for station expenses. Indies also have passed through promotional packages and other items of value from SONY BMG to stations.

¹ In certain circumstances, SONY BMG also has paid exclusive indies retainer fees and bonuses in addition to add fees to induce the exclusive indies to favor SONY BMG projects over the projects of other record companies.

52. One example of an exclusive indie is Michele Clark Promotion (“Michele Clark”), an independent promotion firm that specializes in promotion to radio stations in the Adult Album Alternative or “Triple AAA” music format. During the period covered by this investigation, Michele Clark has collected both a retainer fee and add fees for the SONY BMG projects the firm was hired to promote. This firm has operated by keeping the retainers fees and any bonuses for itself and passing through the add fees to its stations. Each week, Michele Clark would communicate with programmers at each of its radio stations and convey the dollar amount of the add fee available for each song being promoted. When a station would add one of these songs, Michele Clark would collect the add fee and set it aside for the station.

53. Each month, Michele Clark would tally these add fees and cut a check to the station in an amount approximating the total amount collected that month. Michele Clark would keep detailed logs for each station it represented in which it recorded all of this information, including the songs added by the station each week and the corresponding add fees collected from SONY BMG. [WDST 0385]. Similarly, Michele Clark has recorded each instance of “Non Money Consideration,” where SONY BMG and other record labels have provided stations with other items of value, such as concert tickets, electronics or free artist performances, in lieu of a payment in exchange for airplay.

54. Although many of the independent promoters hired by SONY BMG have exclusive arrangements with radio stations, these indies work for other record companies as well. Concerned that some independent promoters were working to remove SONY BMG songs from station play lists after collecting the prescribed add fees, SONY BMG promotion departments have developed detailed independent promotion policies requiring a minimum number of spins at

monitored stations before the indies receive payment. Specifically, in the fall of 2002, the Epic promotion department adopted a new independent promotion policy, which included a market size-based fee schedule with add fees ranging from \$500 to \$1,000 per add, depending on the particular market served by the station making the add. In a November 2002 letter outlining the new policy, Epic's Executive Vice President of Promotion advised independent promoters that "Epic Records has already instituted a 75 spin minimum rule. If a record receives less than 75 spins at any given radio station, we will not pay the full rate." [SONY 00137264].

55. Columbia followed suit by issuing a similar policy in February 2003. A letter authored by Columbia's Executive Vice President of Promotion recognized three separate tiers of radio stations based on market size and delineated the circumstances under which Columbia would pay for airplay at those stations:

- We pay only for the stations designated on our list.
- We will only pay the amount on the rate sheet for each artist.
- An add shall be defined, and payment will only be generated, after a station has spun a song for 56 times in a 4 week period, in the 6 a.m. to 12 midnight daypart. *** additional spins may accumulate in the overnights – however, those spins will not count towards the airplay criteria.
- We won't pay for a station that has been given a promotion, artist appearance/performance.

[SONY 00967].

56. These stated policies demonstrate that SONY BMG's payments to independent promoters have been tied expressly to airplay at radio stations – right down to the number of spins a song must receive before payment will issue to the independent promoter. The pay-for-play nature of these payments is clear. As the Executive Vice President of Promotion at

Columbia explicitly noted in his February 2003 missive: Columbia would not pay an independent promoter's add fee when it already had given other promotional support, such as "artist appearance/performance," to the radio station. Simply put, Columbia would not pay for the same airplay twice.

57. Senioremost executives within the SONY BMG labels' management team understood the role of independent promoters in SONY BMG's business, and involved themselves in the labels' relationship with the indies at strategic junctures. In September 2001, a senior staff meeting was called at Columbia to address the problem posed by the compensation Columbia was giving to indies, which reportedly was so low that it risked incurring a boycott that would shut Columbia out of Clear Channel stations. [SONY 00256230]. Later, in the spring of 2003, executives from the SONY BMG labels' management team met with senior Clear Channel executives and encouraged them to sever ties with independent promoters and allow SONY BMG promotion departments to deal directly with Clear Channel stations. SONY BMG explained that independent promotion fees were becoming too expensive for SONY BMG. Less than a month later, Clear Channel announced that it was severing ties with independent promoters.

D. Spin Programs and Time Buys

58. SONY BMG regularly purchases radio time to increase airplay and deceptively boost chart position for its artists. SONY BMG thus avails itself of the "spin programs" offered by certain radio stations, broadcasting conglomerates and syndicated radio programs. These programs are simply blocks of advertising time during which SONY BMG music is played. Because the monitoring services, BDS and Mediabase, count these spins just like any other

airplay that has not been purchased, the paid spins become part of the data used by Billboard and Radio & Records to compile the record charts.

59. Sometimes these advertising “spots” sound like a commercial advertisement for a new song or artist. More frequently, however, they consist simply of the broadcast of a song, undifferentiated from regular music programming, so that the listener remains unaware that the spin has been purchased. In all cases, spin programs benefit SONY BMG by generating additional spin detections by the airplay monitoring companies, even if the spins occur in the dead of night when relatively few people are listening to the radio. Nighttime spins may still prove effective as a means to improve song chart positions. Accordingly, SONY BMG purchases spin programs from a variety of vendors [SONY 00123786] – especially in the Top 40 format and frequently during overnight hours – to generate dozens, sometimes hundreds, of additional spin detections each week.

60. In recent years, SONY BMG has purchased spin programs for dozens of songs, including:

- “Take My Breath Away” by Jessica Simpson (Columbia Records)
- “Meant to Live” by Switchfoot (Columbia Records)
- “Daughters” by John Mayer (Columbia Records)
- “I Just Wanna Live” by Good Charlotte (Epic Records)
- “Collide” by Howie Day (Epic Records)
- “I Don’t Want to Be” by Gavin DeGraw” (J Records)
- “Don’t Tell Me” by Avril Lavigne (J Records)
- “Sunday Morning” by Maroon 5 (J Records).

61. SONY BMG uses spin programs strategically to vie for a higher chart position. For example, one of SONY BMG’s labels, J Records repeatedly bought spin programs to support the song “I Don’t Want to Be” by Gavin DeGraw, including a major spin program buy in the

week before the song attained the number 1 position on the Billboard chart, in January 2005.

62. SONY BMG also purchases spin programs when a song begins to show signs of weakness on the charts. If a song does not produce enough of a spin increase from one week to the next, or its spins actually decrease, the song will fall in chart position and radio programmers, who watch the charts and the weekly spin tallies, will consider dropping the song from the play list. Through spin programs, SONY BMG can combat the perception that a song may be weak. For example, although a Good Charlotte song showed an increase of 61 spins during a particular week in January 2005, an Epic executive was compelled to concede that the song was “down almost 200 spins for the week,” because Epic had purchased 250 spins. [SONY 00245250].

63. Finally, SONY BMG has generated additional spins for its records by utilizing time buys, paid radio advertisements. Until the fall of 2004, the BDS monitoring service selected a slice of each song to serve as a unique identifier, or thumbprint, that, when broadcast, would result in BDS counting a spin as if the whole song had been broadcast. Having devised a technique for determining the location of the thumbprint for certain records, the Epic promotion department has gained credit for full spins by running 30-second commercials featuring mere song fragments. BDS has reported this false data to Billboard for use in compiling Billboard’s charts, thereby making SONY BMG’s music appear more popular.

E. Fraudulent Call-In Requests

64. In addition to the foregoing practices, SONY BMG has orchestrated fraudulent call-in request campaigns to obtain additional airplay for its music. Most radio stations take requests from listeners to play particular songs. In fact, most stations have dedicated phone lines and website features that handle listener call-in requests and record listener feedback. Such

information is monitored carefully by radio stations and syndicated radio programs, which frequently incorporate actual requests into the radio program. Additionally, many radio stations air programs comprised of music derived exclusively from listener requests, for example, an all-request weekend or all-request hour. Often, the number of requests a station receives for a particular song will influence the station's decisions whether to add the song to its play list or whether to play the song more often. Request formats, particularly on-air requests and voting mechanisms, attract listeners by projecting the image of a station with a responsive, even democratic, programming process.

65. Unbeknownst to the listening public, SONY BMG has expended significant resources to manipulate the listener request process. Specifically, SONY BMG has used its own interns and outside vendors – such as “Play It Again Now,” “takeout MARKETING” and “Iced Media” – to pose as listeners “requesting” that certain SONY BMG songs be played by radio stations and syndicated radio programs. The outside vendors hire teams of people who place call after call to radio stations while pretending to be avid listeners requesting their favorite new song. Often these callers know nothing about the song or artist they are requesting, or the station they are calling.

66. To make the calls sound authentic, SONY BMG promotion personnel provide details about the stations and the songs that help the callers develop a believable script. To the same end, SONY BMG also attempts to hire callers of a certain age and gender. [SONY 00170197]. SONY BMG also provides its paid callers with feedback from radio stations. In February 2004, an Epic promotion employee asked the call-in campaign leader to make the callers sound more excited:

As for Saturday nights, you need to rotate your people. My guys on the inside say that it's the same couple of girls calling in every week and that they are not inspired enough to be put on the air. They've got to be excited. They need to be going out, or getting drunk, or going in the hot tube [*sic*], or going clubbing. . . you get the idea.

[SONY 00162781-82].

IV. Statutory Violations

67. The Attorney General alleges that, by engaging in the practices described above, SONY BMG has violated GBL § 349 and Executive Law § 63(12).

IT NOW APPEARS that SONY BMG MUSIC ENTERTAINMENT is willing to enter into this Assurance of Discontinuance, without admitting or denying the Attorney General's allegations, but acknowledging that some of its employees pursued improper promotion practices, as set forth in SONY BMG's Statement annexed hereto as "Exhibit A"; and that the Attorney General is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63 (15) in lieu of commencing a civil action. This Assurance shall conclude any action the Attorney General could commence against SONY BMG arising from or relating to the subject matter of this Investigation: provided, however, that nothing contained in this Assurance shall be construed to cover any claims that may be brought by the Attorney General to enforce SONY BMG's obligations arising from or relating to the provisions contained in this Assurance.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between SONY BMG MUSIC ENTERTAINMENT, and the Attorney General that:

1. This Assurance of Discontinuance shall be binding upon and extend to SONY

BMG, its employees, directors, officers, principals, divisions, subsidiaries, joint ventures or representatives, or any other person or entity whose acts, practices or policies with respect to radio are directed or controlled by SONY BMG;

2. Within 90 days of the Effective Date of this Assurance, SONY BMG will contribute and cause the total amount of \$10 million to be delivered to the Rockefeller Philanthropy Advisors who will distribute these funds to New York State not-for-profit corporations, to inure to the benefit of the residents of the State of New York by funding programs aimed at music education and appreciation; and

3. SONY BMG will pay to the New York State Department of Law the sum of \$100,000, to cover the costs of this investigation, made payable to the New York State Department of Law and forwarded to the following address: New York State Department of Law, Division of Public Advocacy, 120 Broadway, 25th Floor, New York, N.Y. 10271, Attn: Terryl Brown Clemons, Assistant Deputy Attorney General.

BUSINESS REFORMS

4. Within 90 days of the effective date of this Assurance SONY BMG shall implement the Business Reforms as set forth in "Exhibit B" annexed hereto.

COOPERATION WITH THE ATTORNEY GENERAL

5. SONY BMG shall fully and promptly cooperate with the Attorney General with regard to his Investigation, and related proceedings and actions, of any person, corporation or entity, including but not limited to SONY BMG's current and former employees, concerning the music and broadcasting industries. SONY BMG shall use its best efforts to ensure that all of its officers, directors, employees, and agents also fully and promptly cooperate with the Attorney

General in his Investigation and related proceedings and actions. Cooperation shall include without limitation: (1) production voluntarily and without service of subpoena any information and all documents or other tangible evidence reasonably requested by the Attorney General, and any compilations or summaries of information or data that the Attorney General reasonably requests be prepared; (2) without the necessity of a subpoena, having SONY BMG's officers, directors, employees and agents attend any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (3) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession relevant to all inquiries reasonably made by the Attorney General concerning any fraudulent or criminal conduct whatsoever about which it has any knowledge or information; and (4) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by SONY BMG indicating: a) the type of document; b) the date of the document; c) the author and recipient of the document; d) the general subject matter of the document; e) the reason for withholding the document; and f) the Bates number or range of the withheld document. The Attorney General may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which has been described by SONY BMG, its officers, directors, employees, or agents. Nothing herein shall prevent SONY BMG from providing such evidence to other regulators, or as otherwise required by law.

6. SONY BMG shall comply fully with the terms of this Agreement. If SONY BMG violates the terms of ¶ 5 in any material respect, as determined solely by the Attorney General: (1) the Attorney General may pursue any action, criminal or civil, against any entity for any crime it

has committed, as authorized by law, without limitation; (2) as to any criminal prosecution brought by the Attorney General for violation of law committed within 5 years prior to the date of this Agreement or for any violation committed on or after the date of this Agreement, SONY BMG shall waive any claim that such prosecution is time barred on grounds of speedy trial or speedy arraignment or the statute of limitations.

MISCELLANEOUS

7. Nothing contained herein shall be construed as relieving SONY BMG of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the Assurance be deemed permission to engage in any act or practice prohibited by such law, regulation or rule.

8. The acceptance of this Assurance of Discontinuance by the Attorney General shall not be deemed approval by the Attorney General of any of SONY BMG's business practices, and SONY BMG shall make no representation to the contrary.

9. This Assurance of Discontinuance is contingent on and relies on the truthfulness and accuracy of all representations made by SONY BMG herein and during this investigation.

10. Unless otherwise provided, all notices as required by this Assurance of Discontinuance shall be provided as follows:

Kathleen O'Neill, Assistant Attorney General
New York State Attorney General's Office
Telecommunications and Energy Bureau
120 Broadway, 25th Floor
New York, New York 10271
tel. (212) 416-8336
fax. (212) 416-8877

11. In any application or in any such action, facsimile transmission of a copy of any

papers to current counsel for SONY BMG shall be good and sufficient service on SONY BMG unless SONY BMG designates, in a writing to the Attorney General, another person to receive service by facsimile transmission.

12. Facsimile transmission of a copy of this Assurance to counsel for SONY BMG shall be good and sufficient service on SONY BMG.

13. This Assurance shall be governed by the laws of the State of New York without regard to conflict of laws principles.

14. This Assurance may be executed in counterparts.

RIGHTS OF CUSTOMERS

15. Nothing contained in this Assurance of Discontinuance shall be construed to alter or enhance any existing legal rights of any consumer or to deprive any person or entity of any existing private right under the law. Nothing in this Assurance of Discontinuance shall in any way affect, restrict, or otherwise govern any rights of of recourse SONY BMG may have or seek to assert against any third-party.

EFFECTIVE DATE

16. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the Attorney General's Office ("Effective Date").

VIOLATION AS PRIMA FACIE PROOF OF LAW VIOLATION

17. Any violation of the terms of this Assurance of Discontinuance shall constitute *prima facie* evidence of violation of the applicable law in any civil action or proceeding thereafter commenced against SONY BMG by the Attorney General.

ENTIRE ASSURANCE OF DISCONTINUANCE

18. The terms stated herein constitute the entire terms of this Assurance of Discontinuance.

WHEREFORE, the following signatures are affixed hereto this 22nd day of July, 2005.

SONY BMG MUSIC ENTERTAINMENT

**ELIOT SPITZER,
ATTORNEY GENERAL
OF THE STATE OF NEW YORK**

By: *Daniel M. Mandil*
**DANIEL M. MANDIL, ESQ.
Executive Vice President,
Global General Counsel
SONY BMG MUSIC ENTERTAINMENT**

By: *Terryl Brown Clemons 07 July 2005*
**TERRYL BROWN CLEMONS
Assistant Deputy Attorney General
Division of Public Advocacy**

[EXHIBIT A]

**STATEMENT OF
SONY BMG MUSIC ENTERTAINMENT**

Despite federal and state laws prohibiting unacknowledged payment by record labels to radio stations for airing of music, such direct and indirect forms of what has been described generically as "payola" for spins has continued to be an unfortunately prevalent aspect of radio promotion. SONY BMG acknowledges that various employees pursued some radio promotion practices on behalf of the company that were wrong and improper, and apologizes for such conduct. SONY BMG looks forward to defining a new, higher standard in radio promotion.

[EXHIBIT B]

BUSINESS REFORMS

- I. Within ninety (90) days of the effective date of this Assurance and Stipulation (hereinafter "Agreement"), SONY BMG MUSIC ENTERTAINMENT ("SONY BMG") shall undertake (to the extent not already undertaken) the following business reforms.

- II. Definitions
 - A. SONY BMG: SONY BMG means any employee, director, officer, principal, division, subsidiary, joint venture or representative of SONY BMG or any other person or entity whose acts, practices or policies with respect to Radio are directed or controlled by SONY BMG.
 - B. Radio: Radio means any entity that broadcasts music or develops music programming for broadcast to consumers in the United States with the exception of Television.
 - C. Television: Television means any entity that broadcasts music to consumers in the United States primarily through an audio-visual format.
 - D. Airplay Monitoring Company: Airplay Monitoring Company means Nielsen Broadcast Data Systems, Mediabase 24/7 or any other nationally recognized company or entity that tracks or monitors Radio airplay in the United States for the purpose of charting or ranking music.

- III. Impermissible Activity
 - A. SONY BMG shall not give, offer, arrange for or provide anything of value to Radio, a Radio employee or a Radio contest winner except as set forth in ¶ IV.
 - B. SONY BMG may engage in the activity set forth in ¶ IV subject to the following restrictions:
 1. SONY BMG shall not use any of the activity set forth in ¶ IV in an explicit or implicit exchange, agreement or understanding to obtain airplay or increase airplay of SONY BMG music.
 2. SONY BMG shall not give, offer, arrange for or provide cash, gift cards, gift certificates, or any monetary payment to a Radio employee.
 3. SONY BMG shall not give, offer, arrange for or provide cash, gift cards, gift certificates, or any monetary payment to a Radio contest winner.

4. SONY BMG shall not give, offer, arrange for or provide cash, gift cards, gift certificates, or any monetary payment to Radio except in compensation for advertising and commercial transactions set forth in ¶ IV.
 5. SONY BMG shall not pay Radio for airplay of all or part of a song (such as a spin program, a paid-for spin, or a paid for advertising spin) for the purpose of generating spin detections.
- C. SONY BMG shall prohibit its employees, interns or others working on its behalf from:
1. contacting Radio and representing themselves as members of the public and requesting, or asking listeners to request, airplay of SONY BMG music; and
 2. manipulating voting features offered by Radio to falsely register public support for a SONY BMG song or artist.

IV. Permissible Activity

SONY BMG may engage in the following activity with Radio subject to the restrictions set forth in ¶ III and the mandatory disclosure and documentation requirements set forth in ¶ V:

- A. Contests or Giveaways: SONY BMG may provide or pay for items of value for Radio to give away on the air or at a Radio event or to charity to people other than Radio employees or their relatives.
- B. Commercial Transactions: SONY BMG may enter into commercial transactions with Radio pursuant to which it may license, sell, or otherwise agree to distribute SONY BMG music or records.
- C. Advertising:
 1. SONY BMG may purchase advertising with Radio.
 2. SONY BMG may also pay for the broadcast of its music on syndicated Radio programs (“Syndicated Radio Advertising”).
- D. Artist Appearances and Performances: SONY BMG may arrange for its artists to appear or perform at events sponsored by Radio. SONY BMG may subsidize reasonable costs related to the appearance or performance of its artists at events sponsored by Radio provided that such expenditures are approved in advance by the Compliance Officer.

- E. Nominal Consideration:¹ SONY BMG may provide the following items of value to Radio and Radio employees:
1. CDs: SONY BMG may provide Radio with electronic copies of songs, and up to twenty (20) copies of each CD that it is promoting to Radio for the purpose of familiarizing Radio employees with SONY BMG music. SONY BMG may also provide Radio with electronic copies of songs for posting on Radio websites for the purpose of familiarizing visitors to Radio websites with SONY BMG music.
 2. Concert tickets: Each SONY BMG label may provide each Radio station or Radio program with up to twenty (20) tickets to concert and/or industry events per year to be used by Radio employees for the purpose of familiarizing Radio employees with live performances by SONY BMG artists.
 3. Modest personal gifts for life events and holidays: Each SONY BMG label may give Radio employees gifts commemorating life events and holidays provided that the expenditure does not exceed \$150 in value per recipient per year. SONY BMG may give Radio employees gifts commemorating life events and holidays that exceed \$150 in value per recipient per year provided that the expenditure is approved in advance and in writing by the Compliance Officer.
 4. Meals and entertainment: SONY BMG may pay for meals and entertainment for Radio employees in an amount not to exceed \$150 per person provided that the event is attended by a SONY BMG employee and has a legitimate business purpose. SONY BMG may pay for meals and entertainment for Radio employees in an amount that exceeds \$150 per person provided that the event is attended by a SONY BMG employee, has a legitimate business purpose and is approved in writing by the Compliance Officer.
 5. Travel and lodging expenses: Each SONY BMG label may provide or pay reasonable travel and lodging expenses for Radio employees to attend live performances or appearances by SONY BMG artists for the purpose of familiarizing Radio employees with live performances or appearances by SONY BMG artists. Each Radio station shall be limited to twenty (20) such trips annually, to be allocated among the stations' employees at SONY BMG's discretion. For purposes of this provision, reasonable travel and lodging expenses means commercial airfare (coach class), train or car service and lodging to cover a period within 24 hours of the

¹ Dollar amounts in this section may be adjusted for inflation based on the Consumer Price Index.

live performance or appearance by a SONY BMG artist. All travel and lodging expenditures must be approved in advance and in writing by the Compliance Officer.

V. Mandatory Disclosure and Documentation

A. SONY BMG shall disclose and document all activity set forth in ¶ IV as follows:

1. Contests or Giveaways: Before SONY BMG provides or pays for an item for Radio to give away on the air as set forth in ¶ IV A, SONY BMG shall obtain a letter signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of the Radio station or Radio program that verifies:
 - a. the item of value will be given away to people other than the employees of the Radio station or Radio program, or their relatives;
 - b. an announcement that the item is being paid for by SONY BMG or one of its labels will be included in Radio's broadcast of any on air contest or giveaway; and
 - c. Radio is not providing or increasing airplay for SONY BMG music in connection with SONY BMG's provision of this item.
 - (1) For items that exceed the monetary reporting threshold established by the Internal Revenue Service, SONY BMG shall, in addition to the documentation requirements set forth above, obtain a letter signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of the Radio station or Radio program verifying that a contest winner has been selected and providing the full name, address and social security number of the recipient(s) of the prize. SONY BMG shall obtain this verification letter, complete with all requisite information, before shipping any item to Radio that exceeds the monetary reporting threshold established by the Internal Revenue Service.
2. Advertising and Syndicated Radio Advertising:
 - a. Advertising: SONY BMG shall not advertise on a Radio broadcast unless, for each advertisement which contains music of a SONY BMG artist and is more than 60 seconds long, before the advertisement is broadcast on Radio,

SONY BMG notifies the Airplay Monitoring Companies in writing of:

- (1) the general time frame and date(s) of the broadcast of the advertisement, to the extent such information is obtainable by SONY BMG;
 - (2) the length of the broadcast of the advertisement;
 - (3) the station(s) on which the advertisement is to be broadcast, to the extent such information is obtainable by SONY BMG; and
 - (4) the fact that the broadcast is an advertisement and is not intended for detection by the Airplay Monitoring Companies.
- b. Syndicated Radio Advertising: In advance of any broadcast of Syndicated Radio Advertising, SONY BMG shall obtain a letter in writing signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of the syndicated Radio program that verifies:
- (1) an announcement will be made immediately before and after the broadcast of each song paid for by SONY BMG;
 - (2) the announcement will consist exclusively of the following unaltered statements broadcast in a manner that is audible and understandable to the average listener:
 - (a) announcement immediately before broadcast: The next song is a commercial advertisement that has been paid for and selected by [insert name of SONY BMG label].
 - (b) announcement immediately after broadcast: The song you just heard was a commercial advertisement that was paid for and selected by [insert name of SONY BMG label].
 - (3) Notification to Airplay Monitoring Companies: SONY BMG shall notify the Airplay Monitoring Companies in advance and in writing:
 - (a) the general time frame and date(s) of the broadcast of the Syndicated Radio Advertising;

- (b) the length of the song contained in the Syndicated Radio Advertising;
- (c) the station(s) on which the Syndicated Radio Advertising is to be broadcast; and
- (d) the fact that the broadcast is Syndicated Radio Advertising not intended for detection by the Airplay Monitoring Companies.

3. Artist Appearances and Performances: Before confirming an appearance or performance by a SONY BMG artist at an event sponsored by Radio, SONY BMG shall obtain a letter signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of the Radio station or Radio program verifying that the artist's appearance or performance at Radio's event is not being provided in an explicit or implicit exchange, agreement or understanding to obtain airplay or increase airplay of SONY BMG music.

B. Databases: Within 240 days of the effective date of this Agreement, SONY BMG shall establish and maintain a database or databases of all expenditures made by SONY BMG in connection with Radio. SONY BMG shall maintain all documentation of expenditures required by this Agreement in the database(s) or in hardcopy for a period of not less than five (5) years. The database or databases shall:

- 1. track and generate reports by Radio station or Radio program; and
- 2. be readily searchable by the categories of expense set forth in ¶IV.

VI. Independent Promoters

A. SONY BMG may hire independent promoters to assist SONY BMG in promoting its music to Radio, however, solely for the purposes of this Agreement, all independent promoters hired by SONY BMG shall be deemed to be representatives of SONY BMG with respect to activities they undertake on behalf of SONY BMG and therefore subject to the terms of this Agreement and the Standards of Conduct established by SONY BMG pursuant to ¶ VIII.

B. The following additional restrictions shall govern SONY BMG's relationship with any independent promoter hired by SONY BMG to promote music to Radio:

- 1. SONY BMG shall not provide any item of value to an independent promoter to be distributed to Radio, a Radio employee or a Radio contest winner.

2. SONY BMG shall not reimburse an independent promoter for any expense or purchase made for Radio, a Radio employee or a Radio contest winner.
 3. SONY BMG shall require any independent promoter it hires to certify in writing, on a quarterly basis, that the independent promoter agrees to be bound, in the same manner as a SONY BMG employee, by the terms of this Agreement and the Standards of Conduct established by SONY BMG pursuant to ¶ VIII.
- C. SONY BMG shall make reasonable inquiries into the promotion activities of any Independent Promoter SONY BMG hires to ensure that the Independent Promoter is operating in compliance with this Agreement and the Standards of Conduct established by SONY BMG pursuant to ¶ VIII.
- D. The failure of SONY BMG to make reasonable inquiries into the promotion activities of the Independent Promoter with respect to Radio will not shield SONY BMG from liability for breach of this paragraph of the Agreement. If such reasonable inquiries are made by SONY BMG and SONY BMG is otherwise in compliance with the Agreement and Standards of Conduct established pursuant to ¶ VIII, it shall not be liable for a breach of this Agreement.
- E. If SONY BMG learns or determines that an Independent Promoter hired by SONY BMG has violated any of the terms of this Agreement or the Standards of Conduct established by SONY BMG pursuant to ¶ VIII, SONY BMG shall notify the Compliance Officer and terminate the Independent Promoter immediately.

VII. Television

- A. SONY BMG shall not offer anything of value to Television or a Television employee in an explicit or implicit exchange, agreement or understanding to obtain broadcast or increase broadcast of SONY BMG music.
- B. SONY BMG may enter into commercial transactions with Television pursuant to which it may license, sell, or otherwise agree to distribute SONY BMG music or records. Such transactions shall not be used as leverage to increase the broadcast of SONY BMG music or records that are not the subject of the transactions themselves.
- C. SONY BMG shall prohibit its employees, interns or others working on its behalf from:
1. contacting Television and representing themselves as members of the public and requesting, or asking listeners to request, the broadcast of SONY BMG music; and

2. manipulating voting features offered by Television to falsely register public support for a SONY BMG song or artist.

VIII. Standards of Conduct and Training

SONY BMG shall develop company-wide written standards of conduct regarding its activities with Radio ("Standards of Conduct"), consistent with the terms of this Agreement, which Standards shall include, inter alia, appropriate training of employees in business ethics, professional obligations, the federal payola and sponsorship identification laws, state commercial bribery laws, state and federal laws prohibiting the falsification of business records, state deceptive practices laws, and SONY BMG's compliance obligations pursuant to the terms of this Agreement. SONY BMG shall submit proposed Standards of Conduct for approval by the Attorney General within sixty (60) days of the effective date of this Agreement.

IX. Monitoring Compliance and Reporting

- A. Compliance Officer: SONY BMG shall designate or hire a Compliance Officer, subject to the approval of the Attorney General whose approval will not be unreasonably withheld, whose sole responsibility shall be to ensure SONY BMG's compliance with this Agreement and the Standards of Conduct. The Compliance Officer's responsibilities shall include:
1. Establishing, implementing and supervising a training program as set forth in ¶ VIII for all employees of SONY BMG's promotion departments and all employees with supervisory authority over promotion activity or expenditures.
 2. Establishing a hotline for employees to call the Compliance Officer to obtain advice on compliance with the Standards of Conduct, and report violations of the Standards of Conduct.
 3. Developing and implementing procedures designed to ensure SONY BMG's compliance with the Standards of Conduct.
 4. Monitoring, on an ongoing basis, SONY BMG's compliance with the Standards of Conduct and all procedures and systems designed to ensure SONY BMG's compliance with this Agreement.
 5. Reporting, on a quarterly basis, to the General Counsel of SONY BMG regarding the status of SONY BMG's compliance with the Standards of Conduct.
- B. Annual Reports to the Board of Directors and the Attorney General: The Compliance Officer shall submit annual reports to the SONY BMG Board of Directors and the Attorney General concerning SONY BMG's compliance with this Agreement and with the Standards of Conduct for a period of five (5) years from the effective date of this Agreement.

- C. Implementation Report: SONY BMG shall provide a written report, within 120 days of the effective date of this Agreement, to the Attorney General that details SONY BMG's implementation of the terms of this Agreement.