

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re SONY BMG CD Technologies Litigation : No. 05 CV 9575 (NRB)  
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**DEFENDANT SONY BMG MUSIC ENTERTAINMENT'S  
AND CLASS COUNSEL'S AGREED MOTION  
TO MODIFY THE SETTLEMENT AGREEMENT AND NOTICE FORMS**

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*Class Counsel*

At a hearing on January 6, 2006, the Court granted preliminary approval to a settlement of this consolidated class action matter, and ordered that notice be sent to members of the proposed Settlement Class by February 15, 2006. The parties advised the Court at that hearing that, prior to the notice date, they may seek to amend the Settlement Agreement in ways that would be favorable to the Settlement Class, and to make conforming amendments to the forms of notice that will be disseminated. Consistent with those representations, the parties respectfully request that the Court enter the attached Order, which provides:

1. The Settlement Agreement among the parties is amended to include, as a new Section III.W., the following:

Settlement Class Members who are entitled to receive promotional codes usable to download one or more of the albums from the list attached to Exhibit C, and who do not use those promotional codes by their expiration date (*i.e.*, 180 days after issuance), because, for example, they do not have access to a broadband internet connection and do not wish to download music over a dial-up connection, may, within 60 days after the expiration of the codes, return the codes to the Settlement Administrator, and receive in exchange a payment of two dollars (\$2.00), payable by check, for each unused code.

3. The Settlement Agreement is amended to include, as a new Section III.X, the following:

If, in particular instances, SONY BMG cannot within a reasonable time provide (*i*) a non-content protected replacement for an XCP CD returned pursuant to Section III.B.1, or (*ii*) MP3 downloads of the music on an XCP CD or a MediaMax CD pursuant to Sections III.B.1, III.E or III.F, then SONY BMG will provide an alternate benefit of equivalent or greater value, in a form acceptable to Class Counsel, and in consultation with the affected class member(s).

4. Paragraph 14 of the Hearing Order entered by this Court is amended to delete the date “May 1, 2006” in the third line of that paragraph, and to replace it with the following: “May

1, 2006, or within 60 days of the date on which the person becomes a Settlement Class Member (whichever is later).”

5. Exhibit E to the Settlement Agreement (the summary form of notice to class members) is replaced by Exhibit 1 to this Motion.

6. Exhibit F to the Settlement Agreement (the full form of notice to class members) is replaced by Exhibit 2 to this Motion.

7. All these amendments are made *nunc pro tunc* January 6, 2006.

Dated: New York, New York  
January 31, 2006

Respectfully submitted,

s/ Jeffrey S. Jacobson  
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*Class Counsel*

# **EXHIBIT 1**

**If You Bought, Received or Used a SONY BMG Music Entertainment CD  
Containing Either XCP or MediaMax Content Protection Software,  
Your Rights May Be Affected By a Class Action Settlement,  
And You Should Download Updates For That Software.**

**What is this about?**

A settlement has been proposed in a lawsuit brought against SONY BMG Music Entertainment, Inc., SunnCom International Inc., and First 4 Internet, Ltd. ("Defendants"). The lawsuit, *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB, is pending in the United States District Court for the Southern District of New York and relates to XCP and MediaMax content protection software installed on certain SONY BMG music CDs.

The settlement resolves claims that the Defendants manufactured and sold CDs containing XCP and MediaMax software without adequately disclosing the limitations the software imposes on the use of the CDs and the security vulnerabilities it creates. The Defendants have denied that they did anything wrong.

**Who Is Included, And What Does The Settlement Provide?**

The settlement provides relief for persons who bought, received or used SONY BMG CDs with either XCP or MediaMax software. Under the settlement, any person in possession of an XCP CD can exchange it for a replacement CD, an MP3 download of the same album, and either (a) cash payment of \$7.50 and one (1) free album download from a list of 200 albums, or (b) three (3) free album downloads from that list. Purchasers of CDs containing MediaMax 5.0 software will receive a free MP3 download of the same album and one (1) additional free album download. Purchasers of CDs containing MediaMax 3.0 software will receive a free MP3 download of the same album.

The settlement also requires the Defendants to stop manufacturing SONY BMG CDs with XCP or MediaMax 3.0 and 5.0 software and, until 2008: (1) make available updates to fix all known security vulnerabilities caused by XCP and MediaMax software; (2) provide software programs to uninstall XCP and MediaMax software safely; (3) fix any future security vulnerabilities discovered in MediaMax and any other content protection software placed on SONY BMG CDs; (4) provide independent verification

that personal information about users of SONY BMG CDs has not and will not be collected through XCP or MediaMax; (5) waive certain provisions of the end user license agreements for XCP and MediaMax software; and (6) ensure that any other content protection software will be clearly disclosed, independently tested and readily uninstalled.

At 9:15 a.m. on May 22, 2006, the Court will hold a hearing at the United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York 10007-1312, to decide whether to approve the settlement and the class attorneys' fees and costs.

**How Do I Participate In The Settlement?**

If you bought or received a SONY BMG Music CD containing XCP or MediaMax software and want to receive the relief you may be eligible for under the settlement, you must submit an online claim form at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com), or mail a claim form to:

SONY BMG CD Technologies Settlement  
P.O. Box 1804, Faribault, MN 55021-1804

All claim forms must be submitted by **December 31, 2006**.

**What Are My Other Options?**

If you bought, received or used a SONY BMG Music CD containing XCP or MediaMax software, and you do not want to be legally bound by the settlement or receive a replacement CD, cash, free downloads or other relief, you must exclude yourself by **May 1, 2006**. If you do not exclude yourself, certain of your claims against the Defendants that were or could have been asserted in the lawsuit will be released, meaning you may not be able to sue the Defendants for those claims.

To view the detailed legal Notice of Proposed Class Action Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and to download the software updates, visit [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). You may obtain further information by contacting the claims administrator at the address above or by calling toll free 1-800-242-7610.

## Si usted compró, recibió o usó un CD de SONY BMG Music Entertainment con software de protección de contenido de XCP o de MediaMax, es posible que sus derechos se vean afectados por un arreglo de acción colectiva, y debe bajar actualizaciones de ese software.

### ¿De qué se trata?

Se ha propuesto un arreglo en un juicio promovido en contra de SONY BMG Music Entertainment, Inc., SunnCom International Inc. y First 4 Internet, Ltd. ("Demandados"). El juicio, *In re SONY BMG CD Technologies Litigation*, Expediente N° 1:05-cv-09575-NRB, está pendiente en el Tribunal de Distrito de los Estados Unidos del Distrito Sur de New York y tiene que ver con software de protección de contenido de XCP y de MediaMax instalado en ciertos CD de música de SONY BMG.

El arreglo resuelve los reclamos en el sentido que los Demandados fabricaron y vendieron CD con el software de XCP y de MediaMax sin divulgar adecuadamente las limitaciones impuestas por el software en el uso de los CD y las vulnerabilidades que crea en la seguridad. Los Demandados han negado que hayan procedido mal.

### ¿Quiénes están incluidos y qué proporciona el arreglo?

El arreglo proporciona reparación para las personas que compraron, recibieron o usaron CD de SONY BMG con el software de XCP o de MediaMax. Bajo el arreglo, toda persona que posea un CD con XCP podrá cambiarlo por un CD de reemplazo, una descarga en MP3 del mismo álbum y o (a) un pago en efectivo de \$7.50 y la descarga gratis de un (1) álbum de una lista de 200 álbumes o (b) la descarga gratis de tres (3) álbumes de esa lista. Los compradores de CD con el software MediaMax 5.0 recibirán una descarga gratis en MP3 del mismo álbum y la descarga gratis adicional de un (1) álbum. Los compradores de CD con el software MediaMax 3.0 recibirán la descarga gratis en MP3 del mismo álbum.

El arreglo también exige que los Demandados dejen de fabricar CD SONY BMG con el software de XCP o MediaMax 3.0 y 5.0, y que, hasta el año 2008: (1) ofrezcan actualizaciones para arreglar todas las vulnerabilidades de seguridad conocidas causadas por el software de XCP y de MediaMax; (2) proporcionen programas de software para desinstalar el software de XCP y de MediaMax en forma segura; (3) arreglen toda vulnerabilidad de seguridad descubierta en el futuro en el software de MediaMax y cualquier otro software de protección del contenido colocado en los CD de SONY BMG; (4) proporcionen verificación independiente de

que no se reunido ni se reunirá la información personal acerca de los usuarios de los CD de SONY BMG por medio de XCP o MediaMax; (5) renuncien a ciertas disposiciones de los acuerdos de licencia para los usuarios finales del software de XCP y de MediaMax; y (6) aseguren que cualquier otro software de protección del contenido esté claramente divulgado, probado independientemente y que sea fácil de desinstalar.

A las 9:15 a.m. del 22 de mayo de 2006, el Tribunal realizará una audiencia en el Tribunal de Distrito de los Estados Unidos, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York 10007-1312, para decidir si aprobará el arreglo, así como los honorarios y los costos de los abogados colectivos.

### ¿Cómo participo en el arreglo?

Si usted compró o recibió un CD de música de SONY BMG con software de XCP o de MediaMax y desea recibir la reparación que le podría corresponder bajo el arreglo, debe presentar un formulario de reclamo en línea en [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com), o enviar un formulario de reclamo a:

SONY BMG CD Technologies Settlement  
P.O. Box 1804, Faribault, MN 55021-1804

Todos los formularios de reclamo deben presentarse antes del fin del día **31 de diciembre de 2006**.

### ¿Tengo otras opciones?

Si usted compró, recibió o usó un CD de música de SONY BMG con software de XCP o de MediaMax, y no desea estar legalmente obligado por el arreglo ni recibir un CD de reemplazo, efectivo, descargas gratis u otra reparación, debe excluirse antes del fin del día **1º de mayo de 2006**. Si no se excluye, algunos de sus reclamos en contra de los Demandados que fueron o que podrían haber sido afirmados en el juicio serán liberados, lo cual significa que tal vez no pueda demandar a los Demandados por esos reclamos.

Para ver la Notificación legal del arreglo propuesto para la acción colectiva, moción para los honorarios de los abogados y audiencia sobre la equidad del arreglo en detalle y para bajar las actualizaciones del software, visite a [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). Puede obtener información adicional poniéndose en contacto con el administrador de reclamos en esta misma dirección o llamando, sin cargo, al teléfono 1-800-242-7610.

## **EXHIBIT 2**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

SONY BMG CD TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, MOTION FOR ATTORNEYS' FEES  
AND SETTLEMENT FAIRNESS HEARING**

TO: ALL PEOPLE WHO BOUGHT, RECEIVED OR USED A SONY BMG MUSIC ENTERTAINMENT COMPACT DISC WITH CONTENT PROTECTION SOFTWARE

**If you bought, received or used a Sony BMG Music Entertainment compact disc containing either XCP or MediaMax 3.0 or 5.0 content protection software, your rights may be affected by a class action settlement.**

**If you have played a CD on your computer that contains either XCP or MediaMax 5.0 content protection software on it, you need to patch your computer or uninstall the software immediately to lower your risk of security vulnerabilities. Please visit [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com) and follow the links to download the patch or uninstaller appropriate to you.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- If you bought or have a SONY BMG CD with XCP content protection software, you are eligible to receive among the following benefits: a replacement CD, a cash payment of \$7.50, free downloads of the music on the CD, up to three (3) additional free album downloads, and software updates to fix known security vulnerabilities. **If you have not done so already, please download the update or uninstaller for XCP immediately at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com).**
- If you bought or have a SONY BMG CD with MediaMax content protection software, you are eligible (depending upon the version of MediaMax on your CD) to receive among the following benefits: free downloads of the music on the CD, another free album download, and software updates to fix known security vulnerabilities. **If you have not done so already, please download the update or uninstaller for MediaMax immediately at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com).**
- This settlement requires SONY BMG and others ("the Defendants") to update their content protection software on SONY BMG CDs for security vulnerabilities discovered in the future. The Defendants also will ensure that, until 2008, any future content protection software will be fully and accurately disclosed, independently tested, and readily uninstalled.
- The settlement resolves class action lawsuits concerning SONY BMG CDs that contain either XCP or MediaMax content protection software. Content protection software restricts the transfer of music to the hard drive of a personal computer and limits the number of copies a user can burn onto a blank CD. It also prevents the user from saving the audio files in unprotected formats. The lawsuits allege that the software can send and receive information between the user's computer and the Defendants, can install hidden files on the user's computer, cannot be easily uninstalled, is subject to an overly restrictive license agreement, and may expose the user's computer to malicious software programs like viruses, Trojan Horses and spyware. Defendants deny these allegations.
- The settlement resolves claims that the Defendants engaged in deceptive conduct in designing, manufacturing and selling CDs with either XCP or MediaMax content protection software and without adequately disclosing the limitations the software imposes on the use of the CDs and the security vulnerabilities the software creates.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM</b>	The only way to qualify for the XCP exchange program, cash and free music download settlement benefits.
<b>EXCLUDE YOURSELF</b>	Get no XCP exchange program, cash or free music download settlement benefits. This is the only option that allows you to ever be part of any other lawsuit against the Defendants about the legal claims being resolved in this case. <u>See</u> Question 13 below.
<b>OBJECT</b>	Write to the Court about why you don't like the settlement.
<b>GOTO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.
<b>DO NOTHING</b>	Get no XCP exchange program, cash or free music download settlement benefits. Give up certain rights. You will retain the right to sue the Defendants for any consequential damage to your computer or network that may have resulted from interactions between XCP software or MediaMax software and other software or hardware installed on your computer or network.

- These rights and options — **and the deadlines to exercise them** — are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement.
- Settlement benefits will be provided to Settlement Class Members if the Court approves the settlement and after appeals are resolved. Please be patient.

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## BASIC INFORMATION

### **1. Why did I get this notice package?**

You or someone in your family may have bought, received or used a SONY BMG CD with XCP software (“XCP CD”) or MediaMax 3.0 or 5.0 software (“MediaMax CD”). You can find lists of the XCP CDs and MediaMax CDs in Exhibits 1, 2 and 3 at the end of this notice. The Court directed that this notice be sent to you because you have a right to know about a proposed settlement of a class action lawsuit and about all of your options, before the Court decides whether to approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will provide the XCP exchange program, cash and free music download settlement benefits that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB (“the Action”). The people who sued are called Plaintiffs, and the companies they sued, SONY BMG Music Entertainment, Inc., First 4 Internet Ltd., and SunnComm International, Inc., are called the Defendants.

### **2. What is this lawsuit about?**

The lawsuit involves the Defendants’ use of content protection software installed on SONY BMG CDs.

### **3. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case Plaintiffs Edwin Bonner, Ori Edelstein, Joseph Halpin, Robert Hull, Andrew Klewan, John Maletta, James Michaelson, Jeffrey Potter, Tom Ricciuti, Yvonne Ricciuti, Dora Rivas, Mary Schumacher and James Springer), sue on behalf of people who have similar claims. All of these people are “the Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### **4. Why is there a settlement?**

The Court did not decide in favor of the Plaintiffs or the Defendants. Instead, both sides agreed to a settlement. That way, they avoid the risks, delay and cost of a trial, and the people affected will get compensation and other benefits as soon as possible. The Class Representatives and the attorneys think the settlement is best for everyone who bought, received or used XCP CDs or MediaMax CDs.

## WHO IS IN THE SETTLEMENT

To see if you will get benefits from this settlement, you first have to decide if you are a Settlement Class Member.

### **5. How do I know if I am part of the settlement?**

The Court directed, for purposes of this settlement, that everyone who fits the following description is a Settlement Class Member: The named Plaintiffs in the Action and all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more XCP CDs and/or MediaMax CDs prior to the date on which the Judgment in this Action becomes Final.

### **6. Are there exceptions to being included?**

You are not a Settlement Class Member if you are a current or former employee of any of the Defendants, or of any of their direct and indirect parent companies, including, but not limited to, Sony Corporation and Bertelsmann AG, or any of their respective divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, or of any entity that manufactured, supplied, advertised, marketed distributed or sold MediaMax software, XCP software, MediaMax CDs and/or XCP CDs. Also excluded from the Settlement Class are SONY BMG-authorized resellers or distributors of the XCP CDs and MediaMax CDs; or anyone who has previously executed a release discharging Defendants from liability concerning any or all claims that are the subject of the Action.

### **7. I’m still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. You can call (800) 242-7610 or visit [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com) for more information. Or you can fill out and return the attached claim form to see if you qualify.

## THE SETTLEMENT BENEFITS — WHAT YOU GET

### 8. What does the settlement provide?

**If you have an XCP CD (listed in Exhibit 1 to this notice), you can participate in the XCP Exchange Program.** You can exchange each XCP CD that you have for a replacement CD and an MP3 download of the same album. The replacement CD will not contain content protection software. You can exchange your XCP CDs at participating retail stores or by sending your XCP CDs to SONY BMG at no charge.

For each XCP CD you exchange, you are also entitled to one of the following two incentives:

*Incentive #1:* A payment of \$7.50 (in the form of a check or debit card), and one (1) free album download from the list of albums in Exhibit 4 to this notice.

*or*

*Incentive #2:* Three (3) free album downloads from the list of albums in Exhibit 4 to this notice.

**If you bought a Media Max CD with version 5.0 software (listed in Exhibit 2 to this notice), the following settlement benefits are available.** For each CD with MediaMax 5.0 that you bought, you are entitled to receive a free MP3 download of the same album. This download will not be content protected. In addition, you are entitled to one (1) free album download from the list of albums in Exhibit 4 to this notice.

**If you bought a MediaMax CD with version 3.0 software (listed in Exhibit 3 to this notice), the following settlement benefits are available.** For each CD with MediaMax 3.0 that you bought, you are entitled to receive a free MP3 download of the same album without any content protection.

If, in particular instances, SONY BMG cannot within a reasonable time provide a non-content protected replacement for an XCP CD, or MP3 downloads of the music on an XCP CD or a MediaMax CD, then SONY BMG will provide an alternate benefit of equivalent or greater value, in a form acceptable to Class Counsel, and in consultation with the affected class member(s).

If you cannot or do not want to download any of the albums listed in Exhibit 4, you may, after the codes entitling you to these downloads expire, return the codes to the claims administrator and receive a cash payment of \$2.00 per unused code.

**The following benefits are available to everyone who bought, owned or used an XCP CD or MediaMax CD without having to submit a claim form or take any other action:**

**XCP and MediaMax Software Updates and Uninstallers.** Utilities that allow you to uninstall the XCP software and the MediaMax software from your computer, or to update the software to fix all known security vulnerabilities, are available. An independent security expert has verified the security and effectiveness of these utilities, which are available at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com)

**Manufacturing and Distribution of Content Protected CDs.** The Defendants will not manufacture more CDs with XCP software or MediaMax 3.0 or 5.0 software and have recalled all XCP CDs.

**Fixes For Security Vulnerabilities.** The Defendants will fix any security vulnerabilities discovered in MediaMax and other content protection software placed on SONY BMG CDs. Experts will verify that any fixes provided through software updates are safe and secure.

**Collection of Personal Information.** SONY BMG has represented that it has not collected and will not collect any personal information about users of XCP CDs or MediaMax CDs through the software, other than artist, album title, and the user's IP address (which address is not aggregated with any other information, and is only logged temporarily). An independent auditor will confirm this and repeat its audits at the end of 2006 and 2007.

**Waiver of Specific Provisions of the Licensing Agreement.** The Defendants will waive certain provisions in the End User License Agreements ("EULAs") used for XCP CDs and MediaMax CDs. A list of the specific provisions that the Defendants will waive appears in Exhibit 5 to this notice.

**Future SONY BMG Content Protection Software.** If SONY BMG manufactures any CDs with content protection software before 2008, SONY BMG will ensure that:

- The CDs include labels that adequately describe the nature and function of the software;
- The software only installs with the consumer's express consent;
- A program to uninstall the software is readily available to consumers;
- Updates and relevant changes in how the software operates are meaningfully disclosed to consumers;
- An independent third party reviews the EULA for the software, and the EULA describes what the software does in understandable terms;
- An independent computer security expert verifies that the software is secure;
- The software does not provide any more information to SONY BMG's Internet servers than is necessary to make the enhanced features on the CDs work, unless the user authorizes SONY BMG to do otherwise;
- If the software is discovered to have security vulnerabilities, it will be fixed with an update, or other appropriate steps will be taken.

**9. What can I get from the settlement?**

The Defendants' changes in practices and procedures described in Section 8 will benefit all Settlement Class Members even if you do nothing. Section 8 also describes the additional benefits you can get if you have an XCP CD or a MediaMax CD and submit a Proof of Claim form.

**HOW YOU GET SETTLEMENT BENEFITS — SUBMITTING A CLAIM FORM**

**10. How can I get a replacement CD, album downloads or other settlement benefits?**

The XCP update, XCP uninstaller, MediaMax update and MediaMax uninstaller are and will be available for download at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). You can obtain these benefits without submitting a Proof of Claim form.

**Do you have an XCP CD?**

To participate in the XCP Exchange Program and obtain replacement CDs and Incentive #1 or Incentive #2, you must send the XCP CD back to SONY BMG (at SONY BMG's expense) with a Proof of Claim form, or return the XCP CD to the place of purchase and send a receipt showing the return to SONY BMG with a Proof of Claim form. A Proof of Claim form and the instructions for sending XCP CDs back to SONY BMG are being circulated with this notice. You may also get a Proof of Claim form at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). Read the instructions carefully, fill out the form, and return the claim form by December 31, 2006.

**Do you have a MediaMax CD?**

To receive the MediaMax compensation, you must send in a Proof of Claim form with either proof of purchase of the MediaMax CD, or with the MediaMax CD. A Proof of Claim form is being circulated with this notice. You may also get a Proof of Claim form at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). Read the instructions carefully, fill out the form, and submit it electronically through the website or by U.S. Mail no later than December 31, 2006.

**11. When would I get my settlement benefits?**

Defendants are making several of the settlement benefits available immediately. For example, you may download the XCP update, XCP uninstaller, MediaMax update and MediaMax uninstaller at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). You will receive the cash and music download benefits within six to eight weeks after you submit the Proof of Claim form and all required proof.

**12. What am I giving up in the settlement?**

If the settlement is approved, you will release all "Released Claims" (as defined below) against the "Released Parties" (as defined below). "Released Claims" means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of any and all Plaintiffs and/or Settlement Class Members arising out of any purchase or use by them of an XCP CD or a MediaMax CD, the XCP Update (as defined in the settlement agreement), the XCP Uninstaller (as defined in the Settlement Agreement), the MediaMax Update (as defined in the Settlement Agreement), or the MediaMax Uninstaller (as defined in the Settlement Agreement) or any installation or de-installation of XCP Software or MediaMax Software at any time, to the extent that such claims: (a) arise out of the Action or the Non-S.D.N.Y. Actions (as defined in the Settlement Agreement); (b) relate to any allegations that either were or could have been asserted in the Action or the Non-S.D.N.Y. Actions; or (c) which might in the future be asserted by any Plaintiff or Settlement Class Member, against any of the Released Parties that would arise out of, or relate to in any manner, directly or indirectly, any acts, facts, transactions, occurrences, conduct, representations or omissions alleged in the Action and the Non-S.D.N.Y. Actions, including, without limitation, claims respecting any disclosure, advertising or other descriptions of, or claims relating to (i) the nature, quality, value, and/or functionality of the MediaMax CDs, the XCP CDs, the MediaMax Software, MediaMax Update, MediaMax Uninstaller, XCP Software, XCP Update or XCP Uninstaller; and/or (ii) the EULAs, and/or (iii) the alleged collection by Defendants of Personal Data or IP addresses. Released Claims also include claims for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the defense or resolution of the Action. For avoidance of doubt, Released Claims include claims relating to (i) the asserted costs of removing XCP Software and/or MediaMax Software from a computer or network and (ii) damages caused by negligent removal of XCP Software and/or MediaMax Software. The sole exception to the definition of Released Claims is that such claims do not include claims for consequential damage to a computer or network that may or are alleged to have resulted from interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network. (For avoidance of doubt, Released Claims also do not include unalleged copyright, trademark or other claims concerning the ownership of intellectual property rights in the MediaMax Software or the XCP Software, or any uninstallers or updates thereto.)

"Released Parties" means each and all of the Defendants and each and all of Defendants' direct and indirect parent companies including, in the case of SONY BMG and without limitation, Sony Corporation and Bertelsmann AG, and each and all of each of Sony Corporation's,

Bertelsmann AG's and Defendants' respective divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and each and all of their past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have designed, developed, programmed, manufactured, supplied, advertised, marketed, distributed or sold MediaMax CDs and/or XCP CDs or software thereon.

If you bought, received or used an XCP CD or a MediaMax CD, you will be a member of the Settlement Class, unless you exclude yourself. All of the Court's orders will apply to you and legally bind you.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to participate in the settlement and get the XCP exchange program, cash and music download settlement benefits described in Section 8, but you want to keep the right to sue or continue to sue the Defendants on your own about any of the claims that this settlement resolves, then you must take steps to get out. This is called excluding yourself — or is sometimes referred to as "opting out" of the Settlement Class.

### ***13. How do I get out of the settlement?***

If you want to exclude yourself from the settlement, you must send a letter by mail clearly indicating your name, address and telephone number and stating that you "request to be excluded from the Settlement Class in the SONY BMG CD Technologies Litigation," and you must sign the letter. You also must state the title of the XCP CD or MediaMax CD that you bought, received or used, and the approximate date of purchase. Lists of XCP CDs and MediaMax CDs appear in Exhibits 1 and 2 to this Notice.

You must mail your exclusion request postmarked no later than **May 1, 2006** — or, if you bought your CD after March 1, 2006, then **within 60 days of the date of purchase**:

SONY BMG CD Technologies Settlement  
P.O. Box 1804  
Faribault, MN 55021-1804

You can't exclude yourself on the phone or by e-mail. If you exclude yourself from the Settlement Class, you will not get any of the XCP exchange program, cash and music download settlement benefits described in Section 8, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendants in the future for the claims for consequential damage to a computer or network that may or are alleged to have resulted from interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network.

### ***14. If I don't exclude myself, can I sue the Defendants for the same thing later?***

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the Released Parties for the claims that this settlement resolves. If you have a pending lawsuit bringing claims that this settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **May 1, 2006 - or if you bought your CD after March 1, 2006, then within 60 days of the date of purchase**.

### ***15. If I exclude myself, can I get benefits from this settlement?***

No. If you exclude yourself, do not send in a claim form to ask for any of the settlement benefits described in Section 8. But, you may sue, continue to sue, or be part of a different lawsuit bringing claims that this settlement resolves against the Released Parties. Note: If you elect to receive any of the XCP exchange program, cash and music download settlement benefits, you cannot also opt out.

## **THE LAWYERS REPRESENTING YOU**

### ***16. Do I have a lawyer in this case?***

The Court ordered that the following lead counsel and their law firms will represent you and the other Settlement Class Members: Daniel C. Girard, Esq., Girard Gibbs De Bartolomeo, LLP, 601 California Street, Suite 1400, San Francisco, CA 94108, Telephone (415) 981-4800; and Scott A. Kamber, Kamber & Associates, LLC, 19 Fulton Street, Suite 400, New York, NY 10038, Telephone (877) 773-5469. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

**17. How will the lawyers be paid?**

Class Counsel and the Defendants may agree on the amount of attorneys' fees and expenses that Plaintiffs' counsel may request for legal work on behalf of the Class. Whether or not they agree, Class Counsel will submit a motion for an award of attorneys' fees and reimbursement of expenses to the Court no later than April 6, 2006. A copy of the motion will be available at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). The Court will consider the motion at a Settlement Fairness Hearing on May 22, 2006. No matter how these issues are resolved, however, the amount of fees and expenses awarded to Plaintiffs' counsel by the Court will not affect in any way the settlement benefits to which you are entitled.

Class Counsel will also submit an application to Court by April 6, 2006 to award incentive payments in an amount not to exceed \$1,000 to each named Plaintiff in this Action and related actions pending in other courts across the country.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it.

**18. How do I tell the Court that I don't like the settlement?**

If you're a Settlement Class Member, you can object to the settlement or the motion for an award of attorneys' fees and reimbursement of expenses, if you wish. You can give reasons why you think the Court should not approve the settlement or award of attorneys' fees and reimbursable expenses. The Court will consider your views. To object, you must send a letter saying that you object to the proposed settlement in the *In re SONY BMG CD Technologies Litigation*. You must include your name, address, telephone number, the title of the XCP CD or MediaMax CD that you bought, received or used, and your signature. You must also state the reasons why you object. Mail the objection to each of the following addresses postmarked no later than **May 1, 2006**:

**COURT**

Clerk of the Court  
United States District Court  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**CLASS COUNSEL**

GIRARD GIBBS &  
De BARTOLOMEO LLP  
Daniel C. Girard  
601 California Street, Suite 1400  
San Francisco, CA 94108  
Tel. (415) 981-4800

**DEFENSE COUNSEL**

DEBEVOISE & PLIMPTON LLP  
Jeffrey S. Jacobson  
919 Third Avenue  
New York, NY 10022  
Tel. (212) 909-6000

**KAMBER & ASSOCIATES LLC**

Scott A. Kamber  
19 Fulton Street, Suite 400  
New York, NY 10038  
Tel. (877) 773-5469

**19. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you cannot object because the case no longer affects you.

**THE COURT'S SETTLEMENT HEARING**

**20. When and where will the Court decide whether to approve the settlement?**

Plaintiffs' Counsel will submit a motion for final approval of the settlement to the Court by April 6, 2006. A copy of the motion will be available at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com). The Court will hold a Settlement Fairness Hearing at 9:15 a.m. on May 22, 2006, at the United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate, and the award of attorneys' fees and reimbursable expenses. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Plaintiffs' counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**21. Do I have to come to the hearing?**

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

**22. *May I speak at the hearing?***

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include with your objection, described in point 18 above, the statement, "I hereby give notice that I intend to appear at the Fairness Hearing in *In re SONY BMG CD Technologies Litigation*." Be sure to include your name, address, telephone number, the title of the XCP CD or MediaMax CD that you bought, received or used, and your signature. If you intend to have any witnesses testify or to introduce any evidence at the Fairness Hearing, you must list the witnesses and evidence in your objection. Your Notice of Intention to Appear must be postmarked no later than **May 1, 2006**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses shown in the answer to question 18. You cannot speak at the hearing if you excluded yourself.

**IF YOU DO NOTHING**

**23. *What happens if I do nothing at all?***

If you do nothing, and do not submit a Proof of Claim form, you will not be able to receive the XCP exchange program, cash and music download settlement benefits or participate in the XCP Exchange Program described in Section 8. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the Released Parties about the claims that this settlement resolves, ever again.

**GETTING MORE INFORMATION**

**24. *Are there more details about the settlement?***

This notice summarizes the proposed settlement. More details are in a Settlement Agreement dated December 28, 2005. You can get a copy of the Settlement Agreement by visiting [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com).

**25. *How do I get more information?***

You can call the Claims Administrator at (800) 242-7610 toll free with questions about submitting a Proof of Claim, or visit the Website at [www.sonybmgcdtechsettlement.com](http://www.sonybmgcdtechsettlement.com), where you will find answers to common questions about the settlement, a Proof of Claim form, plus other information to help you determine whether you are a Settlement Class Member and whether you are eligible for certain relief. Any other questions should be directed to Class Counsel identified in paragraph 18 above.

Date: February 10, 2006



## Exhibit 1 - XCP Titles Distributed in the United States

The SONY BMG CDs with XCP software are:

ARTIST	TITLE	ITEM NUMBER(S)	UPC(S)	ARTIST	TITLE	ITEM NUMBER(S)	UPC(S)
A Static Lullaby	Faso Latido	CK92772	827969277225	Gerry Mulligan	Jeru	CK65498	074646549827
Acceptance	Phantoms	CK89016	696998901629	Horace Silver	Silver's Blue	CK93856	827969385623
Amerie	Touch	CK90763	827969076323	Jane Monheit	The Season	EK97721	827969772126
Art Blakey	Drum Suit	CK93637	827969363720	Jon Randall	Walking Among The Living	EK92083	827969208328
The Bad Plus	Suspicious Activity?	CK94740	827969474020	Life Of Agony	Broken Valley	EK93515	827969351529
Bette Midler	Sings the Peggy Lee Songbook	CK95107 CK74815	827969510728 828767481524	Louis Armstrong	The Great American Songbook	CK94295	827969429525
Billie Holiday	The Great American Songbook	CK94294	827969429426	Mary Mary	Mary Mary	CK94812 CK92948	000768353721 827969294826
Bob Brookmeyer	Bob Brookmeyer & Friends	CK94292	827969429228	Montgomery Gentry	Something To Be Proud Of: The Best of 1999-2005	CK75324 CK94982	828767532424 827969498224
Buddy Jewell	Times Like These	CK92873	827969287323	Natasha Bedingfield	Unwritten	EK93988	827969398821
Burt Bacharach	At This Time	CK97734	827969773420	Neil Diamond	12 Songs	CK94776 CK97811	827969477625 827969781128
Celine Dion	On Ne Change Pas	E2K97736	827969773628	Nivea	Complicated	82876671562	828766715620
Chayanne	Cautivo	LAK96819 LAK96818 LAK95886	037629681921 037629681822 037629588626	Our Lady Peace	Healthy In Paranoid Times	CK94777	827969477724
Chris Botti	To Love Again	CK94823	827969482322	Patty Loveless	Dreamin' My Dreams	EK94481	827969448120
The Coral	The Invisible Invasion	CK94747	827969474723	Pete Seeger	The Essential Pete Seeger	CK92835	827969283523
Cyndi Lauper	The Body Acoustic	EK94569	827969456927	Ray Charles	Friendship	CK94564	827969456422
The Dead 60's	The Dead 60's	EK94453	827969445327	Rosanne Cash	Interiors	CK93655	827969365526
Deniece Williams	This Is Niecy	CK93814	827969381427	Rosanne Cash	King's Record Shop	CK86994	696998699427
Dextor Gordon	Manhattan Symphonie	CK93581	827969358122	Rosanne Cash	Seven Year Ache	CK86997	696998699724
Dion	The Essential Dion	CK92670	827969267028	Shel Silverstein	The Best Of Shel Silverstein	CK94722	827969472224
Earl Scruggs	I Saw The Light With Some Help From My Friends	CK92793	827969279328	Shelly Fairchild	Ride	CK90355	827969035528
Elkland	Golden	CK92036	827969203620	Susie Suh	Susie Suh	EK92443	827969244326
Emma Roberts	Unfabulous And More: Emma Roberts	CK93950 CK97684	827969395028 827969768426	Switchfoot	Nothing Is Sound	CK96534 CK96437	827969653425 827969643723
Flatt & Scruggs	Foggy Mountain Jamboree	CK92801	827969280126	Teena Marie	Robbery	EK93817	827969381724
Frank Sinatra	The Great American Songbook	CK94291	827969429129	Trey Anastasio	Shine	CK96428	827969642825
G3	Live In Tokyo	E2K97685	827969768525	Van Zant	Get Right With The Man	CK93500	827969350027
George Jones	My Very Special Guests	E2K92562	827969256220	Vivian Green	Vivian	CK90761	827969076125

<sup>1</sup> Three titles — Ricky Martin, "Life"; Peter Gallagher, "7 Days in Memphis"; and a limited number of "Hidden Beach Presents Unwrapped Vol. 4" — were released with a content protection grid on the back of the CD packaging but XCP content protection software was not actually included on the albums.

### Exhibit 2 - MediaMax 5.0 Titles Distributed in the United States

The SONY BMG CDs with MediaMax version 5.0 software are:

ARTIST	TITLE	SELECTION #
Alicia Keys	Unplugged	82876674242 82876731662
Amici Forever	Defined	82876688832
Babyface	Grown & Sexy	82876705682
Black Rebel Motorcycle Club	Howl	8287671601
Britney Spears	Hit me - Remix	82876740622
Cassidy	I'm A Hustla	82876687072 82876680732
Chris Brown	Chris Brown	82876733222
Cook, Dixon & Young	Volume One	82876673342
David Gray	Life In Slow Motion	82876710682
Dido	Dido Live	82876658099
Faithless	Forever Faithless/ENH	82876710142
Imogen Heap	Speak For Yourself	82876725322
Judd & Maggie	Subjects	82876692492
Leo Kottke/Mike Gordon	Sixty Six Steps	82876689092
Maroon 5	Live	82876709742 82876699522
My Morning Jacket	Z	82876710672
Raheem DeVaughn	The Love Experience	82876537232
Santana	All That I Am	82876597732
Sarah McLachlan	Bloom (Remix Album)	82876697982
Stellastarr*	Harmonies for the Haunted	82876688812
Syleena Johnson	Chapter 3: The Flesh	82876610932
T-Pain	Rappa Ternt Sanga	82876734472 82876732002
Various	So Amazing: An All Star Tribute To Luther Vandross	82876624722
Various	Songs Brown Hotel	82876714112
Wakefield	Which Side Are You On?	82876685072 82876681352
Charlie Wilson	Charlie, Last Name Wilson	82876694292
YoungBloodZ	Everybody Know Me	82876733402 82876731752

### Exhibit 3 - MediaMax 3.0 Titles Distributed in the United States

The SONY BMG CDs with MediaMax version 3.0 software are:

ARTIST	TITLE	SELECTION #
Anderson, Keith	Three Chord Country	82876662942
Backstreet Boys	Never Gone (Walmart)	82876702442
Backstreet Boys	Never Gone (Target)	82876705342
Backstreet Boys	Never Gone	82876696112
Brickman, Jim	Grace	82876679792
Brickman, Jim	Grace (Provident Version)	82876687952
Citizen Cope	Clarance Greenwood Recordings	82876521142
Charlotte Martin	On Your Shore	82876606762
Chieftains, The	Live From Dublin	82876671372
Clay Aiken	Merry Christmas	82876626222
Dave Matthews Band	Stand Up	82876687962
Dido	"White Flag" W/Enhanced Features (Maxi Single)	
Foo Fighters	In Your Honor (Bb Version)	82876705282
Foo Fighters	In Your Honor	82876680382
40 Below Summer	The Mourning After	79301828982
Hamilton, Anthony	Coming From Where I'm From	82876521072
J-Kwon	Hood Hop (Edited)	82876583672
J-Kwon	Hood Hop (Ex)	82876576132
Kasabian	Kasabian	82876664282
Kings Of Leon	Aha Shake Heartbreak	82876645442
McLachlan, Sarah	"Fallen" W/Enhanced Features (Maxi Single)	
McLachlan, Sarah	Afterglow Live	82876601432
McLachlan, Sarah	Afterglow Live	82876644942
McLachlan, Sarah	Afterglow Live	82876645432
Nodesha	Get It While It's Hot (Maxi Single)	82876566902
Sahara Hotnights	Kiss & Tell	82876626892
Silvertide	Show & Tell	82876644022
Silvertide	Show & Tell (Ex)	82876609892
Soundtrack	Xxx: State Of The Union	82876679222
Soundtrack	Xxx: State Of The Union	82876681092
Stone, Angie	Stone Love	82876562152
Tha' Rayne	Didn't You Know (Maxi Single)	82876566882
Velvet Revolver	Contraband (Bb Version)	82876665102
Velvet Revolver	Contraband (Ed)	82876605242
Velvet Revolver	Contraband (Ex)	82876597942
Yung Wun	The Dirtiest Thir(Ex)	82876607672
Yung Wun	The Dirtiest Thirstiest	82876609492
Various	Relaxation: A Windham Hill Collection	82876629422

## EXHIBIT 4

The albums available for download by Settlement Class Members who purchased one of the SONY BMG CDs with XCP software listed in Exhibit 1 or SONY BMG CDs with MediaMax 5.0 software listed in Exhibit 2 are:

<u>ARTIST</u>	<u>GENRE</u>	<u>TITLE 1</u>	<u>Selection</u>	<u>Full Album</u>	<u>TITLE 2</u>	<u>Selection</u>	<u>Full Album</u>
Acceptance	Rock	Phantoms	CK 89016	YES			
Alexander, Jessi	Country	Honeysuckle Sweet	CK 90849	YES			
Amerie	R&B	All I Have	CK 85959	YES	Touch	CK 90763	YES
Amos, Tori	Pop	Scarlet's Walk	EK 86412	YES	The Beekeeper	EK 92800	YES
Anastacia	Dance	Freak of Nature	EK 86010	YES	Not That Kind	EK 69948	YES
Annointed	Gospel	Now is the Time	CK 90929	YES			
Anthony, Marc	Pop	Mended	CK 85300	YES	Marc Anthony	CK 69726	YES
Ataris	Rock	So long, Astoria	CK 86184	YES			
Babyface	R&B	The Essential: Babyface	EK 89172	YES			
Backstreet Boys	Pop	The Hits—Chapter One	0124141792	YES			
Bad Plus	Jazz	Give	CK 90771	YES	Suspicious Activity	CK 94740	YES
Blakey, Art	Jazz	The Jazz Messengers	CK 65265	YES			
Blu Cantrell	Jazz	Bittersweet	82876527292	YES			
Botti, Chris	Jazz	To Love Again, The Duets	CK 677505	YES	When I Fall In Love	CK 92872	YES
Bow Wow	Rap	Wanted	CK 93505	YES			
The Calling	Rock	Two	82876566122	YES	Camino Palmero	7863675852	YES
Carpenter, Mary Chapin	Country	Between Here And Gone	CK 86619	YES	The Essential: Mary Chapin Carpenter	CK 90772	YES
Carter, Aaron	Pop	Most Requested Hits	82876555702	YES			
Cash, Roseanne	Country	Interiors	CK 677638	YES	Seven Year Ache	CK 677637	YES
Cassidy	R&B	Split Personality	82876588962	YES			
Cave In	Pop	Antenna	07863681312	YES			
Chasez, JC	Pop	Schizophrenic	82876537242	YES			
Citizen Cope	Country	The Clarence Greenwood Recordings	82876521142	YES			
Coe, David Allan	Country	The Essential: David Allan Coe	CK 89073	YES	Good Apollo	CK 93989	YES
Coheed and Cambria	Rock	In Keeping Secrets	CK 92686	YES			
Colvin, Shawn	Pop	Polaroids	CK 93452	YES			
Coral	Rock	The Coral	CK 87192	YES			
Crossfade	Rock	Crossfade	CK 87148	YES			
Growell, Rodney	Country	The Outsider	CK 94470	YES	Diamonds & Dirt	CK 61612	YES
Cypress Hill	Rap	III (Temples Of Boom) Edited	CK 67433	YES	Live At The Fillmore	CK 85273	YES
Da Brat	Rap	Limelite, Luv & Niteclubz	82876525092	YES			
Dead 60's	Rock	The Dead 60's	EK 677675	YES			
Diamond Rio	Country	Completely	07863670462	YES			

**EXHIBIT 4 (continued)**

<u>ARTIST</u>	<u>GENRE</u>	<u>TITLE 1</u>	<u>Selection</u>	<u>Full Album</u>	<u>TITLE 2</u>	<u>Selection</u>	<u>Full Album</u>
Dimeola, Al	Jazz	The Essence of Al Dimeola	CK 52920	YES			
Dion, Celine	Pop	A New Day ...Live In Las Vegas	EK 86400	YES			
Downey Jr, Robert	Pop	The Futurist	SK 92654	YES			
Dr. Hook	Pop	Super Hits	CK 85876	YES	The Essential Dr. Hook & Medicine Show	CK 86813	YES
Earth Wind and Fire	Pop	Greatest Hits	C2K 86661	YES	Spirit (expanded)	CK 65739	YES
Ellington, Duke	Jazz	Piano In The Background	CK 87107	YES	Masterpieces By Ellington	CK 87043	YES
Ellis, Don	Jazz	Electric Bath	CK 65522	YES			
Estefan, Gloria	Pop	Unwrapped	EK 86790	YES	Mi Tierra	EK 53807	
Eve 6	Eve 6		07863676172	YES			
Fatty Koo	R&B	House Of Fatty Koo	CK 91256	YES			
Fishbone	Rock	Truth And Soul	CK 40891	YES	The Essential Fishbone	CK 86361	YES
Flatt & Scruggs	Country	Foggy Mountain Jamboree	CK 677627	YES			
Fleck, Bela	Jazz	Perpetual Motion	SK 89610	YES			
Frankie J	R&B	The One	CK 96432	YES			
Fuel	Rock	Something Like Human	EK 90705	YES			
Full Scale	Rock	Full Scale	CK 93557	YES			
Future Leaders of the World	Rock	LVL IV	EK 89192	YES			
Getz, Stan	Jazz	Jazz Moods: Cool	CK 90690	YES			
Ginuwine	Rap	The Senior	EK 86960	YES			
Good Charlotte	Rock	The Chronicles of Life & Death	EK 92425	YES			
Gordon, Dexter	Jazz	Manhattan Symphonic	CK 677633	YES			
Gray, Macy	R&B	The Very Best Of Macy Gray	EK 92944	YES	Macy Gray On How Life Is	EK 61400	YES
Green, Vivian	R&B	Vivian	CK 677881	YES	A Love Story	CK 86357	YES
Gregory, James	Comedy	It Could Be A Law, I Don't Know! The Funniest Man In America	EK 46080	YES			
Griffin, Eddie	Comedy	Message In The Hat	EK 53806	YES			
Griggs, Andy	Country	This I Gotta See	82876596302	YES			
Haggard, Merle	Country	Love Songs	EK 90569	YES	The Essential Merle Haggard: The Epic Years	EK 90568	YES
Hancock, Herbie	Jazz	The Piano	CK 87083	YES			
Heart	Rock	Little Queen	EK 85772	YES	Bebe Le Strange	EK 85770	YES
Incubus	Rock	A Crow Left Of The Murder	EK 90890	YES	Morning View	EK 85227	YES
Indigo Girls	Rock	Indigo Girls	EK 85109	YES	All That We Let In	EK 91003	YES
Indigo Girls	Rock	Rites Of Passage	EK 61576	YES			
Jagged Edge	R&B	Hard	CK 87017	YES	JE Heartbreak	CK 69862	YES
Jennings, Waylon	Country	Highwayman 2	CK 45240	YES			

**EXHIBIT 4 (continued)**

<u>ARTIST</u>	<u>GENRE</u>	<u>TITLE 1</u>	<u>Selection</u>	<u>Full Album</u>	<u>TITLE 2</u>	<u>Selection</u>	<u>Full Album</u>
Jewell, Buddy	Country	Times Like These	CK 677879	YES	Buddy Jewell	CK 90131	YES
Jones, George	Country	Love Songs	EK 87151	YES			
Kings of Leon		Aha Shake Heartbreak	82876645442	YES			
Korn	Rock	Greatest Hits, Vol 1	EK 92700	YES	Issues	EK 62239	YES
Kristofferson, Kris	Country	Kristofferson	JK 85281	YES			
Labellie, Patti	R&B	Love Songs	EK 85290	YES			
Lamb of God	Rock	Ashes Of The Wake	EK 90702	YES			
Lambert, Miranda	Country	Kerosene	EK 92026	YES			
Lauper, Cyndi	Pop	The Body Acoustic	EK 94569	YES			
Leadbelly	Blues	King Of The 12-String Guitar	CK 46776	YES			
Lewis, Ramsey	Jazz	Love Songs	CK 93568	YES			
Lit	Rock	A Place In The Sun	82876681515	YES	Atomic	07863680862	YES
Longwave		There's A Fire	82876670352	YES	The Strangest Things	07863681792	YES
Lopez, Jennifer	Pop	Rebirth	EK 90622	YES			
Loveless, Patty	Country	On Your Way Home	EK 86620	YES			
Marie, Teena	R&B	Robbery	EK 677629	YES	Super Hits	EK 86344	YES
Marsalis, Wynton	Jazz	Hot House Flowers	CK 39530	YES	Marsalis Plays Monk	CK 67503	YES
Martin, Charlotte	Rock	On Your Shore	82876606762	YES			
Martin, Ricky	Pop	Life	CK 678318	YES	Ricky Martin	CK 69891	YES
Mary Mary	R&B	Mary Mary	CK 677733	YES			
Mathis, Johnny	Pop	Love Songs	CK 87065	YES	Christmas Music: A Personal Collection		
Mathis, Johnny	Pop	Open Fire, Two Guitars	CK 65862	YES	Good Night, Dear Lord	CK 64891	YES
McKay, Nellie	Pop	Get Away From Me	C2K 90940	YES			
Monk, Thelonious	Jazz	The Essential: Thelonious Monk	CK 89175	YES	Jazz Moods: 'Round Midnight	CK 90692	YES
Monroe, Bill	Country	16 Gems	CK 53908	YES			
Montgomery Gentry	Country	You Do Your Thing	CK 90558	YES			
Moore, Mandy	Pop	The Best of Mandy Moore	EK 93458	YES			
Mudvayne	Rock	Lost And Found	EK 90784	YES			
Mulligan, Gerry	Jazz	Jeru	CK 677634	YES			
Nalick, Anna	Pop	Wreck Of The Day	CK 90891	YES			
Nas	Rap	God's Son	CK 86985	YES			
Nine Days	Rock	The Madding Crowd	BK 63634	YES			
O'jays	R&B	The Essential O'Jays	EK 90632	YES			
Omarion	R&B	O	EK 92818	YES			
Paul, Billy	Pop	Super Hits	EK 86553	YES			

**EXHIBIT 4 (continued)**

<u>ARTIST</u>	<u>GENRE</u>	<u>TITLE 1</u>	<u>Selection</u>	<u>Full Album</u>	<u>TITLE 2</u>	<u>Selection</u>	<u>Full Album</u>
Paycheck, Johnny	Country	Johnny Paycheck - 16 Biggest Hits	EK 69968	YES			
Phillips, Esther	Jazz	Jazz Moods	EK 93641	YES			
Randall, Jon	Country	Walking Among The Living	EK 92083	YES			
Raveonettes		Chain Gang of Love	CK 90353	YES			
Raye, Colin	Country	16 Biggest Hits	EK 86682	YES			
Rich, Charlie	Country	16 Biggest Hits	EK 69740	YES			
Rockpile	Rock	Seconds Of Pleasure	CK 63983	YES			
Satriani, Joe	Rock	Is There Love In Space?	EK 90832	YES	Strange Beautiful Music	EK 86294	YES
Savage Garden	Pop	Savage Garden	CK 67954	YES			
Scruggs, Earl	Country	I Saw The Light With Some Help From My Friends	CK 92793	YES			
Simon, Carly	Pop	Moonlight Serenade	CK 94890	YES			
Simpson, Jessica	Pop	In This Skin	CK 92005	YES			
Sinatra, Frank	Pop	I've Got A Crush On You	CK 66964	YES	Sinatra Sings His Greatest Hits	CK 65240	YES
Skaggs, Ricky	Country	Live In London	EK 93546	YES			
Stanley Brothers	Country	The Complete Columbia Stanley Brothers	CK 53798	YES			
Sweet, Matthew	Pop	Time Capsule: The Best of Matthew Sweet 1990-2000	61422311572	YES			
Switchfoot	Rock	Nothing Is Sound	CK 94581	YES	The Beautiful Letdown	CK 86967	YES
Tatum, Art	Jazz	Piano Starts Here	CK 64690	YES			
Train	Pop	Alive At Last	CK 92830	YES	My Private Nation	CK 86593	YES
Tritt, Travis	Country	My Honky Tonk History	CK 92084	YES	Strong Enough	CK 86660	YES
Tyrell, Steve	Jazz	This Guy's In Love	CK 89238	YES	This Time Of Year	CK 86638	YES
Vandross, Luther	R&B	This Is Christmas	EK 92701	YES	The Ultimate Luther Vandross	EK 85991	YES
Vandross, Luther	R&B	Your Secret Love	EK 67553	YES	The Essential Luther Vandross	E2K 89167	YES
Vaughan, Sarah	Jazz	Love Songs	CK 93570	YES	Sarah Vaughan In High-Fi	CK 65117	YES
Vendetta Red	Rock	Between the Never and the Now	EK 86415	YES			
The Verve Pipe	Pop	Underneath	07863679962	YES			
Watts Jeff Train	Jazz	Citizen Tain	CK 69551	YES			
White, Peter	Jazz	Confidential	CK 89090	YES			
Xscape	Rap	Traces Of My Lipstick	CK 68042	YES	Off The Hook	CK 67022	YES
Yamagata, Rachael		Happstance	82876505662	YES			
ZZ Top	Rock	Mescalero	82876511682	YES			

## **EXHIBIT 5**

Upon Final Approval, Defendants agree to waive all of their rights to enforce the following provisions of the XCP EULA and the MediaMax 5.0 EULA (which are identical):

1. **Article 2**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to media players and portable devices that are not “APPROVED MEDIA PLAYERS” and “APPROVED PORTABLE DEVICES” (as those terms are defined in the EULA);
2. **Article 2.3**;
3. **Article 3.1(a)**, to the extent such provision could be construed to prevent copying or reproducing the “DIGITAL CONTENT” otherwise permitted by applicable laws;
4. **Article 3.1(b)**, to the extent such provision could be construed to prevent resale of the physical CD on which the “DIGITAL CONTENT” is embodied;
5. **Article 3.1(c)**, to the extent such provision could be construed as giving Defendants an affirmative right to preclude uninstallation of the XCP Software or MediaMax Software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software;
6. **Article 3.1(f)**, to the extent anything in such provision is inconsistent with SONY BMG’s waiver of rights under this Paragraph U;
7. **Articles 7 and 8**;
8. **Article 9(1)**; and
9. **Article 9.2(ii)-(iii)**.

Upon Final Approval, SONY BMG and SunnComm also agree to waive all of their rights to enforce the following provisions of the MediaMax 3.0 EULA:

1. **Paragraph III**, to the extent anything in such provision is inconsistent with SONY BMG’s waiver of rights under this Paragraph U;
2. **Article 1.1**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to a media player or portable device that is not a “Digital Content System” (as that term is defined in the MediaMax 3.0 EULA);
3. **Article 1.2**;
4. **Article 1.3**, to the extent such provision could be construed as (i) preventing copying or reproducing otherwise permitted by applicable laws, (ii) preventing the resale of the physical CD on which the “Digital Content” is embodied, or (iii) giving SONY BMG or SunnComm an affirmative right to preclude uninstallation of the MediaMax software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software; and
5. **Article 1.4**, to the extent such provision could be construed to prevent copying or reproducing otherwise permitted by applicable laws.

Defendants agree to waive the limitation of liability provisions (Article 6 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 4.1 of the MediaMax 3.0 EULA), and the New York forum selection clauses (Article 10 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 6.1 of the MediaMax 3.0 EULA) of the EULAs only in cases where a Settlement Class Member alleges non-Released Claims on his or her own behalf only, and not as a putative class action, mass action or private attorney general proceeding.