

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

In re: SONY BMG CD  
TECHNOLOGIES LITIGATION

Cause No: 1:05-cv-09575-NRB

---

**MOTION FOR EXCLUSION FROM SETTLEMENT CLASS AND  
RELEASE FROM TEMPORARY RESTRAINING ORDER**

---

COMES NOW, Mark Lyon ("Lyon"), Member of Settlement Class, and files this, his Motion for Exclusion from Settlement Class and Release from Temporary Restraining Order, and in support thereof would show unto this Court the following to-wit:

1. Lyon is an adult resident citizen of Rankin County, Mississippi and lives at 403 Eaglewood Lane, Florence, Mississippi 39073.
2. Lyon purchased two CD's containing the Sony BMG XCP Rootkit – Neil Diamond, 12 Songs ("Diamond") and Our Lady Peace, Healthy in Paranoid Times ("OLP").
3. Lyon used OLP in his computer.
4. Lyon's computer became infected with the XCP rootkit as a result.
5. Lyon's computer then began to malfunction, causing damages to Lyon.
6. Other actions of Sony BMG Music Entertainment, including but not limited to those actions alleged in the Consolidated Amended Class Action Complaint,

caused damages to Lyon.

7. As a result, Lyon filed an individual action against Sony BMG in the County Court of the First Judicial District of Hinds County, Mississippi, cause number 251-06-33-COV, on January 5, 2006, a copy of which complaint is attached hereto as Exhibit "A".
8. This honorable Court entered an order on January 6, 2006, which certified the class in this matter for settlement purposes and enjoined Lyon from pursuing his claim against Sony BMG Music Entertainment.
9. The settlement agreement referenced in the order of January 6, 2006, would require Lyon to install and run additional software (the XCP Uninstaller or XCP Update) from Sony BMG Music Entertainment and/or First 4 Internet in order to qualify for any compensation.
10. Because Sony BMG Music Entertainment deceived Lyon about the safety and effectiveness of their software both at installation and when he previously attempted to remove the rootkit, Lyon is unwilling to install and run additional software from Sony BMG Music Entertainment and/or First 4 Internet and is therefore ineligible to complete the claim form described in Section III(D)(ii) of the Settlement Agreement.
11. Even if Lyon installs and runs the additional software from this untrustworthy source, the settlement provides for only fifteen dollars (\$15.00) in compensation and two (2) CD downloads or, at Lyon's option, zero dollars (\$0.00) in compensation and six (6) CD downloads.

12. Lyon spent ten dollars and ninety-nine cents (\$10.99) on Diamond and at least an equal amount on OLP.
13. While Lyon was unable to obtain a copy of the transcript of the proceedings held in regard to this matter on January 6, 2006, Lyon understands from the settlement agreement that Sony BMG Music Entertainment intends to make the CD downloads available on major music download services such as Apple's "iTunes".
14. "iTunes" and other similar download services offer lower-quality versions of the music contained on music CD's and additionally encode downloaded music with Digital Rights Management ("DRM") that restricts the ability of end users to utilize downloaded files in the same manner as lossless or even mp3 files created from the original CD.
15. Lyon does not desire to download inferior, compressed, DRM-encumbered copies of Diamond and OLP, or any of the albums offered in the settlement agreement.
16. Lyon was unable to obtain the forms referenced in the settlement agreement from Defendant's counsel, but desires to be excluded from the settlement class before the February 15, 2006 deadline contained in this Court's order of January 6, 2006 for Sony BMG Music Entertainment to make such forms available.
17. Lyon is unable to actively participate in the litigation pending before this Court, due to financial and other considerations, in a manner which would allow this court to adequately address his injury and damages.

**WHEREFORE, ALL PREMISES CONSIDERED,** Mark Lyon prays that this

Court will enter the enclosed order:

1. Excluding Mark Lyon from the settlement class, and,
2. Releasing Mark Lyon from the injunction contained in the order of January 6, 2006.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mark Lyon', is written over a horizontal line.

Mark Lyon, *pro se*  
403 Eaglewood Lane  
Florence, Mississippi 39073  
(601) 540-1692

---

**CERTIFICATE OF SERVICE**

---

I, Mark Lyon, do hereby certify that I have this day mailed by first class United States mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Exclusion from Settlement Class and Release from Temporary Restraining Order, to the following counsel of record at his/her usual address of:

**Jeffrey S. Jacobson**

Debevoise & Plimpton, LLP (NYC)  
919 Third Avenue  
New York, NY 10022

**Scott Adam Kamber**

Kamber & Associates, LLC  
19 Fulton Street, Suite 400  
New York, NY 10038

**Jonathan K. Levine**

Girard Gibbs & De Bartolomeo, LLP  
601 California St, Suite 1400  
San Francisco, CA 94108

**Sanford P. Dumain**

Milberg Weiss Bershad &  
Schulman LLP (NYC)  
One Pennsylvania Plaza  
New York, NY 10119

**Peter G.A. Safirstein**

Milberg Weiss Bershad &  
Schulman LLP (NYC)  
One Pennsylvania Plaza  
New York, NY 10119

**Ira M. Press**

Kirby McInerney & Squire, LLP  
830 Third Avenue, 10th Floor  
New York, NY 10022

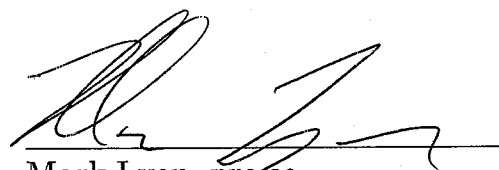
**Mark A. Strauss**

Kirby McInerney & Squire, LLP  
830 Third Avenue, 10th Floor  
New York, NY 10022

**Jason Louis Solotaroff**

Giskan & Solotaroff  
207 West 25th Street  
New York, NY 10001

This, the 20<sup>th</sup> day of January, 2006.

  
Mark Lyon, *pro se*  
403 Eaglewood Lane  
Florence, Mississippi 39073  
(601) 540-1692

IN THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

**FILED**

MARK LYON

PLAINTIFF

v.

JAN 05 2006

BARBARA DUNN, CIRCUIT CLERK

CAUSE NO. 251-06-33-  
COV

SONY BMG MUSIC ENTERTAINMENT

D.C.

DEFENDANT

---

**COMPLAINT**

---

**COMES NOW**, Mark Lyon, Plaintiff, and files this, his complaint against Sony BMG Music Entertainment, as follows:

**PARTIES**

1. Plaintiff Mark Lyon ("LYON") is an adult resident citizen of Rankin County, Mississippi.
2. Defendant Sony BMG Music Entertainment ("SONY BMG") is a Delaware General Partnership doing business in the State of Mississippi. SONY BMG may be served with process of this Court through its CEO, Mr. Andrew Lack, at 550 Madison Avenue, New York, New York 10022.

**FACTS**

3. SONY BMG is the world's second largest music company.
4. SONY BMG manufactures, distributes, markets, and sells audio compact discs ("CDs").
5. SONY BMG regularly advertises and sells CDs in Mississippi.

6. In 2003, SONY BMG began to distribute CDs that contain software that SONY BMG refers to as Digital Rights Management ("DRM") to the public.
7. DRM software on SONY BMG CDs included, among others, Extended Copy Protection ("XCP") created by First4Internet.
8. SONY BMG is the first company to commercially deploy XCP.
9. On information and belief, SONY BMG has been using versions of XCP since 2002 on prerelease CDs sent to radio stations and internal employees.
10. Since March 2005, SONY BMG has distributed at least 52 music titles with XCP software. On information and belief, SONY BMG has shipped at least 4.7 million CD's containing the XCP software, of which 2.1 million have been sold.
11. LYON purchased a SONY BMG CD, Our Lady Peace - Healthy in Paranoid Times ("OUR LADY"), from Best Buy located at 6370 Ridgewood Court, Jackson, Mississippi 39211.
12. LYON purchased a SONY BMG CD, Neil Diamond - 12 Songs ("DIAMOND"), from Amazon.com located in Seattle, Washington.
13. OUR LADY and DIAMOND were manufactured and distributed by SONY BMG, its agents, or its subsidiaries.
14. OUR LADY and DIAMOND contained, in addition to the advertised audio tracks, XCP software.
15. LYON inserted OUR LADY into his laptop computer's CD-ROM drive in order to listen to OUR LADY while working on a school project.
16. When LYON inserted OUR LADY into his Windows based laptop computer,

OUR LADY executed a computer program which presented an End User License Agreement ("EULA") and then installed software components onto the machine.

17. According to the EULA, LYON could not utilize the audio files or the digital content of the CD on the computer unless he agreed to the EULA, making it a contract of adhesion. Attached hereto as "Exhibit A" and incorporated herein by reference is a true and correct copy of the EULA.
18. When LYON attempted to decline the EULA, the CD was ejected from his computer.
19. Until the EULA was accepted, each time LYON reinserted the CD, the EULA reappeared and it was otherwise unusable to LYON.
20. LYON was informed, through the EULA, that the CD would install software onto LYON's computer that would allow LYON to play, save, and copy the audio files on the CD.
21. According to the EULA, the software automatically installed by the XCP CD was intended to protect the "digital content" embodied on the XCP CD.
22. Digital content appears to include audio files converted into digital music files as well as unspecified other "already existing digital content."
23. While the LYON was led to believe that SONY BMG's XCP software was installing the player software into LYON's computer, it additionally installed an unauthorized software "rootkit" on LYON's hard drive.
24. The SONY BMG XCP software also installed a filter driver that intercepted and monitored the use of LYON's computer's CD drive.



25. A rootkit is used to hide login, processes, files, and logs and may include software to intercept data from terminals, network connections, CD drives, and keyboards.
26. A rootkit is invisible to the operating system and to antivirus and security software, and is frequently used by unauthorized third-parties (such as computer hackers and spyware manufactures), after gaining access to a computer system, to hide their activities.
27. Specifically, the SONY BMG XCP rootkit intercepts all calls for process, directory, or registry listings, and then modifies what information is visible to the operating system in order to hide every file, process, or registry key beginning with the characters "\$sys\$".
28. Once the rootkit was installed by the XCP software, the rootkit degraded the performance of the LYON's computer.
29. Once the rootkit was installed by the XCP software, the rootkit caused the LYON's computer to malfunction and become unstable.
30. Due to the instability of LYON's computer, LYON had difficulty taking exams using his laptop and designing websites for his clients.
31. Once the rootkit was installed by the XCP software, the rootkit caused the LYON's computer to communicate with SONY BMG's internet servers each time a CD was played, reporting to SONY BMG his listening habits and IP address.
32. Once the rootkit was installed by the XCP software, it was not able to be removed by LYON without downloading additional software from SONY BMG,

or by providing additional information to SONY BMG.

33. LYON requested, using the online form, the uninstall utility from SONY BMG. SONY BMG acknowledged LYON's request on Tuesday, November 1, 2005, as demonstrated by their email, attached as Exhibit "B".
34. On Thursday, November 3, 2005, SONY BMG sent LYON an email that purported to contain instructions that would remove the offending rootkit, and assigning LYON's problem "Case ID: 3372231", attached as Exhibit "C".
35. The update page contained a service pack for the application that did not fully uninstall the application, which is what LYON had requested.
36. Further, the update page stated, "This Service Pack removes the cloaking technology component that has been recently discussed in a number of articles published regarding the XCP Technology used on XCP content protected CDs. **This component is not malicious and does not compromise security.** However to alleviate any concerns that users may have about the program posing potential security vulnerabilities, this update has been released to enable users to remove this component from their computers," (Emphasis Added) as demonstrated by Exhibit "D".
37. The process, however, required the installation of an "ActiveX" control that opened LYON's computer to even greater security risks.
38. SONY BMG notified LYON of the "ActiveX" control issue on Monday, November 28, 2005, by email, attached as Exhibit "E".
39. As a result of these security issues, LYON no longer trusts software offered by

SONY BMG to perform as promised. As such, LYON cannot utilize the current “removal” tool offered on the SONY BMG website to remove the infection.

40. LYON has tried, and failed, to remove the infection manually.

**COUNT ONE**  
***BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY***

41. LYON adopts by reference the previous allegations in this Complaint.
42. On information and belief, SONY BMG was and is in the business of, and is a merchant within the meaning of *Miss. Code. §75-2-104*, with respect to the manufacture and sale of CDs.
43. The CDs sold by SONY BMG are goods within the meaning of *Miss. Code. §75-2-105*.
44. In selling CDs, SONY BMG warranted that the CDs were merchantable and of merchantable quality and were reasonably fit and suitable for their general purpose and their intended and ordinary use.
45. SONY BMG breached their implied warranty of merchantability by manufacturing and selling CDs containing software (XCP) that caused harm to LYON’s computer.

**COUNT TWO**  
***FRAUD***

46. LYON adopts by reference the previous allegations in this Complaint.
47. SONY BMG has made misrepresentations and omissions of material facts.
48. SONY BMG’s XCP EULA, attached hereto as “Exhibit A,” falsely states that the software installed on LYON’s computer will not collect any personal

information.

49. SONY BMG falsely stated, on their update page for Service Pack 2a, attached hereto as "Exhibit D," that the "[XCP] component is not malicious and does not compromise security."
50. These and other misrepresentations and omissions by SONY BMG were likely to deceive LYON.
51. SONY BMG knew or should have known that their misrepresentations and omissions were false and misleading.
52. LYON was deceived by these misrepresentations and omissions.
53. LYON relied on these misrepresentations and omissions to his detriment.

**COUNT THREE**  
***INVASION OF PRIVACY***

54. LYON adopts by reference the previous allegations in this Complaint.
55. By obtaining information from the LYON's computer without the permission of the LYON, SONY BMG has committed a non-consensual intrusion into the LYON's privacy.
56. The non-consensual intrusion into the LYON's privacy is highly offensive to the LYON.
57. The non-consensual intrusion into the LYON's privacy is highly offensive to a reasonable person.

**COUNT FOUR**  
***NEGLIGENCE***

58. LYON adopts by reference the previous allegations in this Complaint.

59. At all times, SONY BMG had a duty to exercise reasonable care in connection with the manufacturing of CDs, including OUR LADY and DIAMOND.
60. SONY BMG's duty of care extended to LYON, who SONY BMG foresaw or reasonably should have foreseen would be damaged in the event the CDs were negligently manufactured.
61. SONY BMG and/or its agents, servants, subcontractors, or employees acting within the scope of their employment breached the duty of care by negligently, recklessly, or carelessly manufacturing and selling CDs (including OUR LADY and DIAMOND) containing XCP, which harmed LYON's computer, and manufacturing and selling CDs (including OUR LADY and DIAMOND) containing XCP, which exposed LYON's computer to the risk of viruses and malware.
62. SONY BMG and/or its agents, servants, subcontractors, or employees acting within the scope of their employment breached the duty of care by negligently, recklessly, or carelessly manufacturing and distributing and update to XCP, which harmed LYON's computer, and which exposed LYON's computer to the risk of viruses and malware.
63. As a proximate result of SONY BMG's negligence, LYON has been harmed.

**COUNT FIVE**  
***COMPUTER FRAUD AND TRESPASS***

64. LYON adopts by reference the previous allegations in this Complaint.
65. SONY BMG accessed or caused to be accessed LYON's computer, computer

system, and computer network with the intent to insert or attach or knowingly create the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into LYON's computer programs, computer, computer system, or computer network.

- 66. Such insertion was intended to acquire, alter, disrupt, or destroy LYON's access to his property computer programs, computer, computer system, or computer network.
- 67. Such insertion otherwise used the services of LYON's computer program, computer, computer system, or computer network.
- 68. Such use, fraud, and trespass are in violation of *Miss. Code §97-45-3*.

**COUNT SIX**  
***OFFENSE AGAINST COMPUTER USER - DENIAL OF ACCESS***

- 69. LYON adopts by reference the previous allegations in this Complaint.
- 70. SONY BMG, through the use of XCP, intentionally denied LYON, without consent, the full and effective use of or access to LYON's computer, computer system, computer network, or computer services.
- 71. Such denial of access is in violation of *Miss. Code §97-45-5*.

**COUNT SEVEN**  
***OFFENSE AGAINST COMPUTER USER - USE OF ACCESS***

- 72. LYON adopts by reference the previous allegations in this Complaint.
- 73. SONY BMG, through the use of XCP, intentionally used, without consent, the means of access to LYON's computer, computer system, computer network, or

computer services.

74. Such use of access is in violation of *Miss. Code* §97-45-5.

**COUNT EIGHT**  
***OFFENSE AGAINST COMPUTER EQUIPMENT***

75. LYON adopts by reference the previous allegations in this Complaint.

76. SONY BMG, through the use of XCP, intentionally modified, without consent, LYON's computer equipment (namely LYON's CD Drive), which was used in LYON's computer, computer system, or computer network.

77. Such modification of computer equipment is in violation of *Miss. Code* §97-45-7.

**WHEREFORE**, all premises considered, Plaintiff demands judgement from the Defendant for:

1. Damages in an amount to be proven at trial;
2. Pre and post-judgement interest;
3. Treble and/or punitive damages to the full extent permitted by law;
4. Costs of suit, and any attorney's fees incurred in this action; and
5. For any other relief this Court may deem just and proper.

Respectfully Submitted,



---

MARK LYON, Plaintiff *pro se*  
403 Eaglewood Lane  
Florence, Mississippi 39073  
601-540-1692  
mark@mhlyon.com

**IMPORTANT-READ CAREFULLY:** This compact disc ("CD") product contains standard so-called "Red Book"-compliant audio files that can be played on any standard CD player, including those contained in many personal home computer systems. As an added feature, this compact disc ("CD") product also enables you to convert these audio files into digital music files and/or may also contain other already existing digital content (such files and content, collectively, the "DIGITAL CONTENT"), any of which may be stored on the hard drive of a personal home computer system owned by you ("YOUR COMPUTER") and accessed via YOUR COMPUTER or certain approved, compatible portable devices owned by you (each, an "APPROVED PORTABLE DEVICE").

Before you can play the audio files on YOUR COMPUTER or create and/or transfer the DIGITAL CONTENT to YOUR COMPUTER, you will need to review and agree to be bound by an end user license agreement or "EULA", the terms and conditions of which are set forth below. Once you have read these terms and conditions, you will be asked whether or not you agree to be bound by them. Click "AGREE" if you agree to be bound. Click "DISAGREE" if you do not agree to be bound. Please keep in mind, however, that if you do not agree to be bound by these terms and conditions, you will not be able to utilize the audio files or the DIGITAL CONTENT on YOUR COMPUTER.

**As soon as you have agreed to be bound by the terms and conditions of the EULA, this CD will automatically install** a small proprietary software program (the "SOFTWARE") onto YOUR COMPUTER. The SOFTWARE is intended to protect the audio files embodied on the CD, and it may also facilitate your use of the DIGITAL CONTENT. Once installed, the SOFTWARE will reside on YOUR COMPUTER until removed or deleted. However, the SOFTWARE will not be used at any time to collect any personal information from you, whether stored on YOUR COMPUTER or otherwise.

Once the SOFTWARE has been installed on YOUR COMPUTER, a menu will then appear on the screen of YOUR COMPUTER, giving you the option of playing the audio files on YOUR COMPUTER, creating a copy of the DIGITAL CONTENT directly onto the hard drive of YOUR COMPUTER, or making a limited number of back-up copies of the CD onto other, recordable CDs. If you choose to create a copy of the DIGITAL CONTENT, the menu will then prompt you to select a file format for the DIGITAL CONTENT. Once you have selected a file format, a copy of the DIGITAL CONTENT will automatically be created in that file format and transferred onto the hard drive of YOUR COMPUTER, where you will be able to access it using an APPROVED MEDIA PLAYER (see below) or, at your election, transfer it from YOUR COMPUTER onto an APPROVED PORTABLE DEVICE.

In order to access the DIGITAL CONTENT on YOUR COMPUTER, you will need to have a copy of an approved media player software program that is capable of playing the DIGITAL CONTENT in the file format you selected (each such approved media player, an "APPROVED MEDIA PLAYER") on YOUR COMPUTER. You may already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER. If you do, you will be able to play the DIGITAL CONTENT on YOUR COMPUTER without doing anything further. This CD may also contain an APPROVED MEDIA PLAYER for the file format you selected. If it does, the menu that appears on the screen of YOUR COMPUTER will prompt you on how to transfer a copy of that APPROVED MEDIA PLAYER onto YOUR COMPUTER. To the extent you utilize an APPROVED MEDIA PLAYER contained on this CD, your use of such APPROVED MEDIA PLAYER may be subject, in each instance, to separate terms and conditions provided by the owner of the APPROVED MEDIA PLAYER concerned. If you do not already have a copy of an APPROVED MEDIA PLAYER on YOUR COMPUTER, and if this CD does not contain a compatible APPROVED MEDIA PLAYER, then you will then need to secure a compatible APPROVED MEDIA PLAYER elsewhere (e.g., on an Internet website, where you can download one).

#### END-USER LICENSE AGREEMENT

This End-User License Agreement ("EULA") is a legal agreement between you and SONY BMG MUSIC ENTERTAINMENT ("SONY BMG"), a general partnership established under Delaware law. By clicking on the "AGREE" button below, you will indicate your acceptance of these terms and conditions, at which point this EULA will become a legally binding agreement between you and SONY BMG.

##### Article 1. GRANT OF LICENSE

1. Subject to your agreement to the terms and conditions set forth in this EULA, SONY BMG grants to you a personal, non-exclusive and non-transferable license, with no right to grant sublicenses, to:

- (a) install one (1) copy of SOFTWARE onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
- (b) install one (1) copy of any APPROVED MEDIA PLAYER(S) contained on this CD onto the hard drive of YOUR COMPUTER, solely in machine-executable form;
- (c) use the SOFTWARE and any APPROVED MEDIA PLAYER(S) contained on this CD to access the DIGITAL CONTENT on YOUR COMPUTER or on an APPROVED PORTABLE DEVICE;

in each instance, solely for your own personal and private use and not for any other purpose (including, without limitation, any act of electronic or physical distribution, making available, performance or broadcast, or any act for profit or other commercial purpose) and in accordance with the terms and conditions set forth in this EULA.



2. The DIGITAL CONTENT and the SOFTWARE contained on this CD are sometimes referred to herein, collectively, as the "LICENSED MATERIALS".

#### Article 2. PRODUCT FEATURES

1. This CD contains technology that is designed to prevent users from making certain, unauthorized uses of the DIGITAL CONTENT, including, without limitation, the following:
- (1) making and storing more than one (1) copy of the DIGITAL CONTENT in each available file format on the hard drive of YOUR COMPUTER;
  - (2) accessing the DIGITAL CONTENT on YOUR COMPUTER (once you have installed a copy of it on the hard drive of YOUR COMPUTER) using a media player that is not an APPROVED MEDIA PLAYER;
  - (3) transferring copies of the DIGITAL CONTENT that reside on the hard drive of YOUR COMPUTER on to portable devices that are not APPROVED PORTABLE DEVICES;
  - (4) burning more than three (3) copies of the DIGITAL CONTENT stored on YOUR COMPUTER (ATRAC OpenMG file format only) onto AtracCDs;
  - (5) burning more than three (3) copies of the DIGITAL CONTENT onto recordable compact discs in the so-called "Red Book"-compliant audio file format; and
  - (6) burning more than three (3) backup copies of this CD (using the burning application provided on the CD) onto recordable CDs and burning or otherwise making additional copies from the resulting backup copies.
2. **PLEASE NOTE:** Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS may be subject to additional restrictions, under applicable copyright and other laws, that are not enforced or prescribed by any technology contained on this CD. The absence of any such technology designed to enforce these additional restrictions should in no way be viewed or interpreted as a waiver, on the part of SONY BMG or any other person or entity owning any rights in any of the LICENSED MATERIALS, of their respective rights to enforce any such additional restrictions regarding your use of the LICENSED MATERIALS. Your use of the DIGITAL CONTENT and the other LICENSED MATERIALS shall, at all times, remain subject to any and all applicable laws governing the use of such materials, including, without limitation, any restrictions on your use prescribed therein.
3. All of your rights to enjoy the DIGITAL CONTENT, as described herein, shall be subject to your continued ownership of all rights in and to the physical CD on which such DIGITAL CONTENT is embodied; should you transfer your ownership rights in the physical CD on which such DIGITAL CONTENT is embodied (in whole or in part) to any other person (whether by sale, gift or otherwise), your rights in both the physical CD and such DIGITAL CONTENT shall terminate.

#### Article 3. RESTRICTIONS ON USE OF LICENSED MATERIALS

1. Except to the extent otherwise expressly permitted hereunder or otherwise by the owner of the relevant rights in or to the LICENSED MATERIALS concerned, and without limitation, the following restrictions shall apply to your use of the LICENSED MATERIALS:
- (a) You may not copy or reproduce any portion of the LICENSED MATERIALS.
  - (b) You may not distribute, share through any information network, transfer, sell, lease or rent any of the LICENSED MATERIALS to any other person, in whole or in part.
  - (c) You may not change, alter, modify or create derivative works, enhancements, extensions or add-ons to any of the LICENSED MATERIALS.
  - (d) You may not decompile, reverse engineer or disassemble any of the LICENSED MATERIALS, in whole or in part.
  - (e) You may not export the LICENSED MATERIALS outside of the country where you reside. (This clause 1(e) of Article 3 shall not be applicable within the European Economic Area (EEA).)
  - (f) You will at all times comply with, and will not circumvent or attempt to circumvent, any of the restrictions on use set forth in this Article 3 or elsewhere in this EULA.
2. In the event that the owner of the LICENSED MATERIALS is a party other than SONY BMG (each, a "LICENSOR"), you agree that such LICENSOR shall be a third party beneficiary under this EULA and, as such, shall have the right to enforce the terms and conditions of this EULA that pertain directly to such LICENSOR'S rights in and to the LICENSED MATERIALS concerned as if such LICENSOR was a party to this EULA. The rights granted to a Licensor under this Article shall not be revoked.
3. SONY BMG and each LICENSOR reserve the right to use the SOFTWARE and/or any APPROVED MEDIA PLAYER to enforce their respective rights in and to the DIGITAL CONTENT, including any and all of the restrictions on use set forth in this Article 3, at any time, without notice to you.

#### Article 4. INTELLECTUAL PROPERTY RIGHTS

All title to, and intellectual property rights in, the LICENSED MATERIALS and any related documents are and shall remain owned and/or controlled solely and exclusively by SONY BMG and/or its LICENSORS. SONY BMG and/or all respective LICENSORS reserve all rights in the LICENSED MATERIALS not specifically granted to you under this EULA.

#### Article 5. EXCLUSION OF WARRANTIES

YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU ARE INSTALLING AND USING THE LICENSED MATERIALS AT YOUR OWN SOLE RISK. THE LICENSED MATERIALS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, TERM OR CONDITION OF ANY KIND, AND SONY BMG, ITS LICENSORS AND EACH OF THEIR LICENSEES, AFFILIATES AND AUTHORIZED REPRESENTATIVES (EACH, A "SONY BMG PARTY") EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A GENERAL OR PARTICULAR PURPOSE. NO ORAL, WRITTEN OR ELECTRONIC INFORMATION OR ADVICE GIVEN BY ANY SONY BMG PARTY SHALL CREATE ANY WARRANTY, TERM OR CONDITION WITH RESPECT TO THE LICENSED MATERIALS OR OTHERWISE. SHOULD THE LICENSED MATERIALS PROVE TO BE DEFECTIVE, YOU (AND NOT THE SONY BMG PARTY CONCERNED) AGREE TO ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIRS OR CORRECTIONS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, TERMS OR CONDITIONS IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY MANDATES LIABILITY, DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

#### Article 6. LIMITATION OF LIABILITY

NO SONY BMG PARTY SHALL BE LIABLE FOR ANY LOSS OR DAMAGE, EITHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, ARISING OUT OF THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, TERM OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY MISREPRESENTATION, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR ANY OTHER LEGAL THEORY ARISING OUT OF, OR RELATED TO, THIS EULA OR YOUR USE OF ANY OF THE LICENSED MATERIALS (SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, DOWN TIME AND USER'S TIME), EVEN IF THE SONY BMG PARTY CONCERNED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ENTIRE LIABILITY OF THE SONY BMG PARTIES, COLLECTIVELY, UNDER THE PROVISIONS OF THIS EULA SHALL BE LIMITED TO FIVE US DOLLARS (US \$5.00). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CERTAIN INSTANCES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS ARTICLE WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

#### Article 7. DAMAGES ARISING OUT OF YOUR ACTIONS

You shall defend and hold the SONY BMG PARTIES harmless from and against any and all liabilities, damages, costs, expenses or losses arising out of your use of the LICENSED MATERIALS, your negligent or wrongful acts, your violation of any applicable laws or regulations, and/or your breach of any provision of this EULA.

#### Article 8. UPDATES TO THE LICENSED MATERIALS

The SONY BMG PARTIES may from time to time provide you with updates of the SOFTWARE in a manner that the SONY BMG PARTIES deem to be appropriate. All such updates shall be deemed to be part of the SOFTWARE for all purposes hereunder. In the event that you fail to install an update, the SONY BMG PARTIES reserve the right to terminate the term of this EULA, along with your rights to use the LICENSED MATERIALS, immediately, without additional notice to you. The SONY BMG PARTIES shall not be liable for any loss or damage caused by reason of your failure to install any such update or your failure to do so in the manner instructed.

#### Article 9. EXPIRATION AND TERMINATION

1. The rights granted to you hereunder to use the DIGITAL CONTENT are conditioned upon your continued possession of, and your continued right under a license from SONY BMG to use, the original CD product that you purchased. In the event that you no longer possess or have the right under such license to use the original CD product, your rights hereunder to use the DIGITAL CONTENT shall expire immediately, without notice from SONY BMG.
2. Without prejudice to any other rights SONY BMG or any SONY BMG PARTY may have hereunder, the term of this EULA shall terminate immediately, without notice from SONY BMG, and all rights you may have hereunder to use the LICENSED MATERIALS shall be immediately revoked, in the event that you: (i) fail to comply with any provision of this EULA, (ii) fail to install an update of the SOFTWARE that was previously provided to you by the SONY BMG PARTIES

within the time specified, or (iii) file a voluntary petition or are subject to an involuntary petition under applicable bankruptcy laws, are declared insolvent, make an assignment for the benefit of creditors, or are served with a writ of attachment, writ of execution, garnishment or other legal process pertaining to any of your assets or property.

3. Upon the expiration or termination of this EULA, you shall immediately remove all of the LICENSED MATERIALS from your personal computer system and delete or destroy them, along with any related documentation (and any copies thereof) that you may have received or otherwise may possess.

4. Articles 4 (Intellectual Property Rights), 6 (Limitation of Liability), 7 (Damages Arising Out Of Your Actions), 9 (Expiration and Termination), 10 (Governing Law and Waiver of Trial By Jury), and 11 (General) shall survive and remain in full force and effect following the expiration or termination of this EULA.

5. To the extent relevant under applicable law, you and SONY BMG each agree, for the effectiveness of the termination clauses under this EULA, to waive any provisions, procedures and operation of any applicable law that might otherwise require judicial approval or a court order in order to effect the termination of this EULA.

#### Article 10. GOVERNING LAW AND WAIVER OF TRIAL BY JURY

1. THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS EULA SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER NEW YORK LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN NEW YORK COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS.

2. YOU HEREBY WAIVE ALL RIGHTS AND/OR ENTITLEMENT TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY TO THIS EULA OR THE SOFTWARE.

#### Article 11. GENERAL

If any provision of this EULA is subsequently held to be invalid or unenforceable by any court or other authority, such invalidity or unenforceability shall in no way affect the validity or enforceability of any other provision of this EULA. This EULA shall be binding upon the parties' authorized successors and assignees. Neither party's waiver of any breach or failure to enforce any of the provision of this EULA at any time shall in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every other provision. No modification of this EULA shall be effective unless it is set forth in a writing signed by SONY BMG.



Mark Lyon <marklyon@gmail.com>

## SONY BMG Email Inquiry Acknowledgment

1 message

contentprotectionhelp <ContentProtectionHelp@info.sel.sony.com>

Tue, Nov 1, 2005 at 8:27 PM

To: mark@marklyon.org

Thank you for contacting SONY BMG.

This message confirms that your e-mail has been received by our support team. You should receive a reply shortly.

Thank you,

SONY BMG Customer Service



Mark Lyon &lt;marklyon@gmail.com&gt;

**Re: ContentProtectionHelp Email Form  
(KMM15554332I21924L0KM)**

1 message

contentprotectionhelp &lt;ContentProtectionHelp@info.sel.sony.com&gt;

Thu, Nov 3, 2005 at  
7:04 AM

To: mark@marklyon.org

Thank you for contacting Sony BMG Online.

Sony BMG and First 4 Internet have just released an update that will completely remove the rootkit based DRM content protection software and replace it with a non-rootkit DRM technology that is compatible with all current security protocols. To ensure the security of your system, please visit their software update website to obtain and install Service Pack 2 at:

<http://updates.xcp-aurora.com>

If after this update, you still wish to uninstall our software, please visit the form below using the computer where the software is currently installed and you will be emailed an uninstall link within 1 business day (M-F).

<http://cp.sonybm.com/xcp/english/form9.html>

Your "Case ID" is: 3372231.

TIP: Our uninstall request form will require a small ActiveX plug-in (from First 4 Internet). Be sure to also temporarily turn off any pop-up blocker software. Although a non-ActiveX process is in development, currently, our online process is the only option. Should you prefer to wait for the next uninstallation version, one is due to be released later this month at:  
<http://cp.sonybm.com/xcp/english/updates.html>

Thank you for the opportunity to be of assistance.

The Sony BMG Online Support Team  
CC2X  
John

This message and any attachments are solely for the use of intended recipients. They may contain privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you receive this email in error please contact the sender and delete the message and any attachments associated therewith from your computer. Your cooperation in this matter is appreciated.

Original Message Follows:

Email Address: [mark@marklyon.org](mailto:mark@marklyon.org)

Case ID :  
Packet :

EXHIBIT "C" - 2 PAGES

Artist Name : Confidential Information  
Disk Title : Confidential Information  
Store Name : Confidential Information  
Country : USA  
Language :

Problem Type : GENERAL FEEDBACK  
Device Type :

Manufacturer :  
PC Brand :  
Model :  
OS :

Auto Mfg :  
Auto Model :  
Auto Year :

Message : Uninstall Request

## XCP-Aurora Support

If you have purchased a SonyBMG title disc with XCP2 technology and would like to update or uninstall it, please click on the link provided below which will take you to the officially released uninstall/update program.

<http://cp.sonybm.com/xcp/english/updates.html>

It is highly recommended that you use the official application which has been approved and independently certified.

### Software Updates

#### Latest Update

##### Service Pack 2a

**8 | November | 2005, 1.47Mb**

This Service Pack removes the cloaking technology component that has been recently discussed in a number of articles published regarding the XCP Technology used on XCP content protected CDs. This component is not malicious and does not compromise security. However to alleviate any concerns that users may have about the program posing potential security vulnerabilities, this update has been released to enable users to remove this component from their computers.

**Please note, Service Pack 2a is a maintenance release designed to reduce the file size of Service Pack 2. It includes all previous fixes found in Service Pack 1 and Service Pack 2.**

**[Download Now](#)**

Copyright © 1999-2005 First 4 Internet Ltd. All rights reserved.



Mark Lyon &lt;marklyon@gmail.com&gt;

## Notification of potential security issue (KMM15645011I21924L0KM)

1 message

contentprotectionhelp &lt;ContentProtectionHelp@info.sel.sony.com&gt;

Mon, Nov 28, 2005 at  
1:00 PM

To: mark@marklyon.org

Thank you for contacting Sony BMG Online.

Our records indicate that you recently sent us an email in connection with the purchase of a content protected CD, requesting a program to uninstall the XCP content protection software. We are sending you this email because we have been notified of a potential security issue that may arise in connection with the uninstaller program previously provided.

To be clear, the security issue is not raised by the presence of XCP content protection technology on the music CD you purchased. The security issue may arise when a user downloads the program to uninstall the XCP software files from a computer.

The likelihood that you have been exposed to any security risk by using the program to uninstall the XCP technology is minimal. Nevertheless, for your protection, we are sending this notice to provide you with instructions as to how you may remove the XCP uninstaller files from your computer, curing any associated security risk.

Follow these instructions to remove the original uninstaller files:

1. Using Windows Explorer, go to WINDOWS\Downloaded Program Files\
2. Locate CodeSupport
3. Right click on the file and select Remove from the pop-up window
4. The file is now removed from you computer system

If you cannot find the file in the Windows\Downloaded Program folder then you should run a search for the file as follows:

1. Click Start.
2. Click to open "My Computer."
3. Press the key combination Ctrl + F to open the search window.
4. In the "Search for files or folders named" box, type codesupport.  
The word "codesupport" does not contain a space.
5. Click Search Now.
6. If the file is located, right-click on the file to reveal a menu.
7. In the menu click to select the "Remove" option.  
This choice forces Windows to safely uninstall the control.

If the file CodeSupport is not found then your computer is not affected.

EXHIBIT "E" - 3 PAGES



We sincerely apologize for any inconvenience this may cause. We are in the process of providing an updated version of the uninstaller program for the XCP content protection software through our customer support site <http://cp.sonybmj.com/xcp>. This web site also contains general information about XCP protection as well as the various additional steps SONY BMJ has taken to address consumer concerns regarding the XCP software.

If you have any problems or questions regarding these instructions you may obtain help by clicking on the following link:

<http://cp.sonybmj.com/xcp/english/contact.html>

Your privacy is important to us. We have sent you this email to provide you with an important security update. We will not use your email for commercial purposes and will not provide it to any third parties.

Thank you for the opportunity to be of assistance.

The Sony BMJ Online Support Team  
CC2X  
John

This message and any attachments are solely for the use of intended recipients. They may contain privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you receive this email in error please contact the sender and delete the message and any attachments associated therewith from your computer. Your cooperation in this matter is appreciated.

Previous Reply Follows:

-----  
Thank you for contacting Sony BMJ Online.

Sony BMJ and First 4 Internet have just released an update that will completely remove the rootkit based DRM content protection software and replace it with a non-rootkit DRM technology that is compatible with all current security protocols. To ensure the security of your system, please visit their software update website to obtain and install Service Pack 2 at:

<http://updates.xcp-aurora.com>

If after this update, you still wish to uninstall our software, please visit the form below using the computer where the software is currently installed and you will be emailed an uninstall link within 1 business day (M-F).

<http://cp.sonybmj.com/xcp/english/form9.html>

Your "Case ID" is: 3372231.

TIP: Our uninstall request form will require a small ActiveX plug-in (from First 4 Internet). Be sure to also temporarily turn off any pop-up blocker software. Although a non-ActiveX process is in development, currently, our online process is the only option. Should you prefer to wait for the next uninstallation version, one is due to be released later this month at:  
<http://cp.sonybmj.com/xcp/english/updates.html>

Thank you for the opportunity to be of assistance.

The Sony BMJ Online Support Team  
CC2X  
John

This message and any attachments are solely for the use of intended recipients. They may contain privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that you received this email in error, and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you receive this email in error please contact the sender and delete the message and any attachments associated therewith from your computer. Your cooperation in this matter is appreciated.

Original Message Follows:

Email Address: [mark@marklyon.org](mailto:mark@marklyon.org)

Case ID :  
Packet :

Artist Name : Confidential Information  
Disk Title : Confidential Information  
Store Name : Confidential Information  
Country : USA  
Language :

Problem Type : GENERAL FEEDBACK  
Device Type :

Manufacturer :  
PC Brand :  
Model :  
OS :

Auto Mfg :  
Auto Model :  
Auto Year :

Message : Uninstall Request

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

In re: SONY BMG CD  
TECHNOLOGIES LITIGATION

Cause No: 1:05-cv-09575-NRB

---

**ORDER EXCLUDING MARK LYON FROM SETTLEMENT CLASS AND  
RELEASING MARK LYON FROM TEMPORARY RESTRAINING ORDER**

---

Upon the motion of Mark Lyon, Member of Settlement Class in the above-captioned class action lawsuit, this Court finds that reasonable cause exists in fact and in equity to exclude Mark Lyon from the settlement class and to release Mark Lyon from the temporary restraining order contained in this Court's order of January 6, 2006.

**IT IS HEREBY ORDERED** that:

1. Mark Lyon, an adult resident citizen of Rankin County, Mississippi who lives at 403 Eaglewood Lane, Florence, Mississippi is hereby released from the settlement class in the above-captioned class action lawsuit.
2. Mark Lyon is further released from the temporary restraining order contained in this Court's order of January 6, 2006.

Dated this, the \_\_\_\_ – day of \_\_\_\_\_, 2006 in New York, New York.

**SO ORDERED, ADJUDGED AND DECREED**

---

THE HONORABLE NAOMI R. BUCHWALD  
UNITED STATES DISTRICT JUDGE