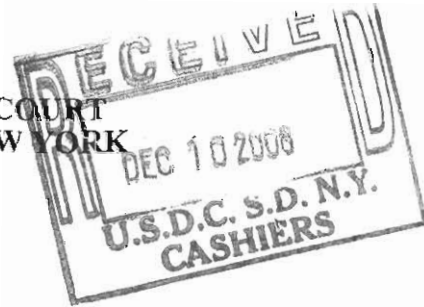


# EXHIBIT F

08 CV 10730

LEV L. DASSIN  
Acting United States Attorney for the  
Southern District of New York  
By: TOMOKO ONOZAWA  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-2721  
Fax: (212) 637-2686  
E-mail: tomoko.onozawa@usdoj.gov

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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

08 Civ. \_\_\_\_\_

COMPLAINT FOR CIVIL PENALTIES,  
INJUNCTION, AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children's Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506, 6502(c), and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for the defendant's violations of the Commission's Children's Online Privacy Protection Rule (the "Rule"), 16 C.F.R. Part 312.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).
3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

## **DEFINITIONS**

4. For purposes of this Complaint, the terms “child,” “collects,” “collection,” “Commission,” “delete,” “disclosure,” “Internet,” “online contact information,” “operator,” “parent,” “person,” “personal information,” “third party,” “verifiable consent,” or “website or online service directed to children,” are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

## **THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE**

5. Congress enacted the Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506, in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children’s personal information online by operators of Internet websites or online services. The Act directed the Federal Trade Commission to promulgate a rule implementing COPPA. The Commission promulgated the Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on April 21, 2000.
6. The Rule applies to any operator of a commercial website or online service, or portion thereof, directed to children that collects, uses, and/or discloses personal information from children, and to any operator of a commercial website or online service that has

actual knowledge that it collects, uses, and/or discloses personal information from children.

7. Among other things, the Rule requires a subject website operator to meet specific requirements prior to collecting online, using, or disclosing personal information from children, including, but not limited to:
  - a. Posting a privacy policy on its website providing clear, understandable, and complete notice of its information practices, including what information the website operator collects from children online, how it uses such information, its disclosure practices for such information, and other specific disclosures set forth in the Rule;
  - b. Providing clear, understandable, and complete notice of its information practices, including specific disclosures, directly to parents when required by the Rule;
  - c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children;
  - d. Giving parents the option to consent to the collection and internal use of their children's personal information without consenting to the disclosure of that information to third parties;
  - e. Providing a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
  - f. Not conditioning children's participation in an activity upon the children disclosing more personal information than is reasonably necessary to participate in that activity; and,

- g. Establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.
8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15 U.S.C. § 6502(c).

#### **DEFENDANT**

9. Defendant Sony BMG Music Entertainment (“Sony Music”) is a general partnership subsidiary of Sony Corporation of America registered in the state of Delaware. Sony Music’s principal office or place of business is located at 550 Madison Avenue, New York, NY 10022. Sony Music operates a series of music-related websites that are transmitted and accessible worldwide on the Internet. Sony Music is located and/or transacts business in the Southern District of New York.
10. The acts and practices of the defendant alleged in this Complaint were in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

#### **DEFENDANT’S COURSE OF CONDUCT**

11. Defendant Sony Music is a recorded-music company that represents hundreds of popular musicians and entertainers, including artists that are popular with children and teenagers. Since at least 2004, Sony Music has operated numerous U.S.-based websites advertising and promoting its recording artists and recording labels. The majority of these are general audience websites that require visitors to register in order to participate in various functions and services on the websites.
12. Sony Music currently operates over 1,100 music-related websites that collect registration data, including personal information, from individual users. On some Sony Music websites, such as <http://musicbox.sonybmg.com>, the registration forms have collected visitors’ email addresses together with date of birth, gender, zip code, country, and user

name. (See, e.g., Exhibit A, registration page for <http://musicbox.sonybmg.com>).

Numerous other Sony Music websites promoting the company's individual musical artists have collected a broad range of personal information through their registration pages, including user name, first and last name, date of birth, email address, mobile phone number, gender, city, state, and country. (See Exhibit B, registration pages for various recording artists). In some instances, Sony Music's website registration pages for individual musical artists additionally have collected full street addresses. (See, e.g., Exhibit C).

13. Sony Music's websites offer a variety of content and functions to their registered users. On many such websites, registered users are able to create user profiles in the form of personal fan pages, through which they may interact with other Sony Music fans, review artist's albums, upload photos or videos, post comments on message boards and in online forums, engage in private messaging, and vote on topics, among other activities. (See, e.g., Exhibit D (personal user profile page), Exhibit E (Sony Music Box review page); Exhibit F (official fan site)). Other websites offer only more limited functions, such as the ability to receive periodic newsletters and artist announcements, which are sent to registered users' email addresses or to their mobile phones (see, e.g., Exhibit G (newsletter sign up page)); the ability to participate in message boards (see, e.g., Exhibit H (artist forum)), and/or the ability to enter sweepstakes contests (see, e.g., Exhibit I (sweepstakes page)).
14. Since 2004, at least 30,000 children under age 13 have registered on Sony Music's websites. Through Sony Music's registration processes on these websites, the defendant had actual knowledge that it collected, maintained, and/or disclosed personal information from these children under age 13. Thus, defendant Sony Music is an "operator" as defined in the Rule.

**DEFENDANT’S INFORMATION COLLECTION, USE,  
AND DISCLOSURE PRACTICES**

15. Sony Music’s online privacy policy, applicable to each website at issue in this complaint, states that:

“If you are under 13 years of age, you should not provide any personally identifiable information on this site without the knowledge and permission of your parent or guardian. There are certain web pages within our website that require users to be at least 13 years of age; these pages require you to enter your date of birth, and anyone under the age of 13 will be restricted from participating in such web page activities. We use cookies to assure that this restriction persists. This may mean that you will be unable to participate in some activities on the site.”

Exhibit J (Sony Music privacy policy). In fact, users were asked to enter their date of birth as a part of the registration process for each of the relevant Sony Music websites. In many instances, users also were asked to check a box stating that they were over 13 (*see, e.g.*, Exhibit B (registration pages for various Sony Music artists); Exhibit C, at 2 (mailing list sign up)), or to review Sony Music’s privacy policy with respect to children under age 13 (*see, e.g.*, Exhibit G (fan group sign up)).

16. Despite the defendant’s representation that users who indicated that they were under 13 would be “restricted from participating in Sony Music’s web page activities,” Sony Music accepted registrations from users of all ages, including those who entered a date of birth indicating that they were under 13. Indeed, children who entered dates of birth indicating that they were under 13 years old were freely able to register on Sony Music’s websites; they were neither restricted from participating, nor did Sony Music use cookies to assure that any restriction persisted.
17. On certain of the company’s music sites, after collecting dates of birth from children indicating that they were under 13, Sony Music enabled children to create user profiles in the form of personal fan pages, through which children were able to interact with other Sony Music fans, including adults. Sony Music publicly posted and made available for viewing on the Internet certain items of information submitted by children in creating

their user profile, including any photos they may have uploaded, as well as their gender, age, city, and country. In addition, Sony Music made available to the public any reviews, comments, or other postings that children submitted in connection with their user profiles.

18. After collecting dates of birth from children indicating that they were under 13, Sony Music permitted children to enroll in fan clubs, through which they received periodic newsletters and artist announcements, sent directly to their email addresses or to their mobile phones.
19. As stated in Paragraph 15 above, Sony Music posted a notice of its information practices online. *See* Exhibit J. This notice did not clearly, completely, or accurately disclose all of the defendant's information collection, use, and disclosure practices for children, as required by the Rule, nor did it make other Rule-required disclosures, including listing the telephone number and email address of all operators collecting or maintaining personal information from children.
20. Sony Music did not take the steps required by the Rule to provide parents with direct notice of its information practices prior to collecting, using, or disclosing their children's personal information.
21. Sony Music did not take the steps required by the Rule to obtain verifiable consent from parents prior to collecting, using, or disclosing their children's personal information.
22. Sony Music did not provide the procedures required by the Rule for parents to review the personal information collected from their children and to refuse to permit the information's further use or maintenance.
23. In at least 30,000 instances, Sony Music collected, used, and/or disclosed personal information from children without first providing their parents with notice of its information practices, either on the defendant's websites or directly; without obtaining verifiable consent from the parents prior to the collection, use, or disclosure; and without



providing parents with reasonable procedures to access their children's information and to refuse to permit its further use or maintenance.

**DEFENDANT'S VIOLATIONS OF THE CHILDREN'S  
ONLINE PRIVACY PROTECTION RULE**

24. Since at least 2004, Sony Music has operated its music websites, through which it collected, with actual knowledge, personal information from children.
25. In numerous instances, including the acts and practices described above, Sony Music collected, used, and/or disclosed personal information from children in violation of the Rule, including:
  - a. Failing to provide sufficient notice on the Sony Music websites of what information the defendant collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
  - b. Failing to provide direct notice to parents of what information the defendant collects online from children, how it uses such information, its disclosure practices, and all other required content, in violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);
  - c. Failing to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, in violation of Section 312.5 of the Rule, 16 C.F.R. § 312.5(a)(1); and,
  - d. Failing to provide a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance, in violation of Section 312.6 of the Rule, 16 C.F.R. § 312.6.

**DEFENDANT’S UNFAIR OR DECEPTIVE ACTS OR PRACTICES  
IN VIOLATION OF THE FTC ACT**

26. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”
27. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. § 6503(c).
28. Through the statements in the Sony Music privacy policy referenced in Paragraph 15 above, defendant has represented, expressly or by implication, that users who indicate that they are under 13 on its website registration pages will be restricted from participating in Sony Music’s web page activities.
29. In truth and in fact, Sony Music accepted registrations from children who entered a date of birth indicating that they were under 13. Therefore, the representation set forth in Paragraph 28 was false and misleading.
30. Defendant’s false and misleading representation, as set forth in Paragraph 28 above, constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

**THE COURT’S POWER TO GRANT RELIEF**

31. The defendant has violated the Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
32. Each collection, use, or disclosure of a child’s personal information in which the defendant has violated the Rule in one or more of the ways described above, constitutes a separate violation for which the plaintiff seeks monetary civil penalties.
33. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and

Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule.

34. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against the defendant's violation of the FTC Act, as well as such ancillary relief as may be just and proper.
35. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from the defendant's violations of the Rule.
36. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by the defendant's violations of the Rule and the FTC Act.

#### **PRAYER**

WHEREFORE, the plaintiff requests this Court, pursuant to Sections 5(a)(1), 5(m)(1)(A), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 57b, and the Court's own equitable powers to:

- (1) Enter judgment against the defendant and in favor of the plaintiff for each violation of the Rule alleged in this Complaint;
- (2) Award the plaintiff monetary civil penalties from the defendant for each violation of the Rule alleged in this Complaint;
- (3) Permanently enjoin the defendant from violating the Rule and the FTC Act; and
- (4) Award the plaintiff such additional relief as the Court may deem just, proper, or necessary to redress injury to consumers resulting from the defendant's violations of the Rule.

DATED: December 10, 2008


OF COUNSEL:

MAMIE KRESSES  
PHYLLIS HURWITZ MARCUS  
Attorneys  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail Drop NJ-3212  
Washington, D.C. 20580  
(202) 326-2070;2854 (voice)  
(202) 326-3259 (fax)

FOR THE UNITED STATES OF AMERICA:


GREGORY G. KATSAS  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice

LEV L. DASSIN  
Acting United States Attorney

By:   
TOMOKO ONOZAWA  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
(212) 637-2721 (voice)  
(212) 637-2686 (facsimile)  
tomoko.onozawa@usdoj.gov

EUGENE M. THIROLF  
Director  
Office of Consumer Litigation

KENNETH L. JOST  
Deputy Director  
Office of Consumer Litigation

By:   
ALAN J. PHELPS  
Trial Attorney  
Office of Consumer Litigation  
U.S. Department of Justice  
P.O. Box 386  
Washington, D.C. 20044  
202-307-6154 (voice)  
202-514-8742 (facsimile)  
alan.phelps@usdoj.gov