ATTORNEY GENERAL OF THE STATE OF NEW YORK

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IN THE MATTER OF

UMG RECORDINGS, INC.,

Respondent.

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

In 2004, Eliot Spitzer, Attorney General of the State of New York, initiated an investigation ("the Investigation") pursuant to the provisions of Article 22-A of the General Business Law and Section 63 of the Executive Law into practices relating to the promotion of music to radio broadcasting stations including practices engaged in by UMG RECORDINGS, INC. ("UMG"). The Attorney General finds that the practices discussed below are pervasive within the music industry and by no means unique to UMG. Further, the Attorney General makes no finding as to the artistic merit of the work of any of the artists mentioned in this document.

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

Preliminary Statement

1. UMG is a California corporation registered to conduct business in the State of New York with its principal place of business at 2220 Colorado Ave., Santa Monica, CA 90404. UMG is a subsidiary of Vivendi Universal, S.A.

2. UMG is engaged in the production and sale of pre-recorded music. UMG is the

largest recording company in the world, with a 25.5% market share[1] worldwide selling 31.7% of all albums, or nearly one in every three albums, sold in the United States in 2005.[2] UMG consists of numerous record labels including: Interscope Geffen A&M Records ("IGA" or "Interscope"), Island Def Jam Music Group ("IDJ" or "Island Def Jam"), Universal Motown Records Group ("UMRG"), Universal South ("Uni-South"), UMG Nashville ("Universal-Nashville"), and Verve Music Group ("Verve"). Each record label signs artists, produces records, and markets, promotes and sells those records.

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

4. UMG has illegally provided radio stations with financial benefits to obtain airplay and boost the chart position of its songs. Contrary to listener expectations that songs are selected for airplay on the basis of their popularity or artistic merit, UMG has obtained airplay for its songs through such deceptive and illegal practices as: (a) bribing radio station employees, on occasion, to play UMG songs; (b) providing a stream of financial benefits to radio stations, to assist with stations' overhead costs or to provide promotional support, on condition that UMG

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[1] *12th Annual Recording Industry in Numbers*, IFPI, August 2005 (the closest competitor being Sony Music with a 21.5% worldwide market share).

[2] *Universal Music Gains U.S. Market Share,* Los Angeles Times, Jan. 5, 2006

records receive airplay; (c) using independent promoters as conduits for illegal payments to radio stations to obtain airplay; (d) purchasing spin programs and time buys, and using syndicated programs to manipulate chart positions of UMG music; and (e) engaging in fraudulent call-in campaigns to increase airplay.

5. The Federal Communications Act prohibits undisclosed purchase of airplay, also known as "payola." 47 U.S.C. § 508 requires any employee of a radio station who accepts or agrees to accept money, services or other valuable consideration in exchange for the broadcast of any particular piece of programming, to disclose, this payment to the station. This provision makes a failure to comply with these disclosure requirements a misdemeanor and subjects the violator to imprisonment of up to one year and fines of up to $10,000. 47 U.S.C. § 317 requires radio stations to exercise due diligence to ensure that the prescribed announcements take place.

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

7. Section 349 of the New York General Business Law ("GBL") empowers the Attorney General to seek injunctive relief when any person or entity has engaged in deceptive acts or practices in the conduct of any business. Section 350-d of the GBL empowers the Attorney General to seek, inter alia, civil penalties in the amount of $500 for each violation of section 349, the Deceptive Practices Statute, and for certain other statutes. Finally, Executive Law §§ 63(12) and 63(15) empower the Attorney General to seek, *inter alia*, injunctive and

equitable relief when any person or business entity has engaged in or otherwise demonstrated repeated fraudulent or illegal acts in the transaction of business.

I. Modern Pay-for-Play

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

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

regularly over a period of several weeks.

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

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

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

13. In addition to employing the traditional device of delivering bribes to radio programmers – which now can take the form of expensive vacation packages, electronics, and other valuable items – record labels endeavor to gain airplay for their songs by providing such

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

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

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

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

17. By engaging in such an elaborate scheme to purchase airplay, increase spins, and manipulate the charts, UMG and the other record labels present the public with a skewed picture of the country's "best" and "most popular" recorded music.

II. UMG's Multi-Faceted Pay-for-Play Strategy

18. Rather than relying exclusively on the quality or originality of its music to obtain airplay for its artists' recordings, UMG has pursued all of the foregoing "pay-for-play" techniques. These practices have been carried out by the promotion departments of UMG's various label groups – which include Island Def Jam, UMRG, Interscope, Uni-South, Universal-Nashville, and Verve– and have been tolerated and condoned by senior promotion executives at UMG.

19. Each of the major UMG label's promotion department is headed by a senior or executive vice president of promotion, who receives reports from staff responsible for the specific music formats adopted by music radio stations, such as Top 40, Adult Contemporary, Alternative Rock, Urban and Adult Album Alternative.

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

21. In recent years, a significant portion of UMG's radio promotion budget has been used to purchase airplay and thereby create hit records. This practice is so fundamental to UMG's success as a record company that senior label executives frequently have been involved.

A. Gifts and Bribes to Station Programmers

22. UMG has provided items of value to radio station programmers personally, having delivered electronics, vacations, airfare, hotel stays, sporting events tickets, concert tickets, gift

certificates, and other gifts for programmers' personal use.

23. When employed, this practice is used both to secure airplay commitments on specific songs and to buy the good will of a programmer who, in return, commits to playing UMG music on a regular basis. In some instances, the gifts have been couched as radio contest prizes and other types of listener giveaways.

24. Some UMG promotion department employees went to considerable lengths to conceal such fraudulent transactions within UMG's accounting systems. Because the law requires UMG to record a winner name and social security number for each contest prize in excess of $600, UMG employees have solicited false "winner" names and social security numbers from the radio programmers who in actuality received the "prize."

25. For example, in January 2003, Donnie Anderson a/k/a Donnie Michaels ("Michaels"), then the program director for WFLY in Albany, New York, was provided with a hotel room in Miami in exchange for adding the song "Shoulda, Coulda, Woulda" by Brian McNight to WFLY's play list. Michaels' room was recorded as a contest hotel room in UMG's accounting system, even though it was for Michaels himself. In November 2003, a UMG national promotion director provided Michaels with a hotel room in Miami in exchange for Michaels adding a Nick Lachey single of WFLY's play list. [UMGEM 051031] [UMGEM 050347, 050362]. And, in April 2004, UMG provided Michaels - who by then had become associate program director for WHYI in Miami - with yet another hotel room, this one in New York and accompanied by Yankees tickets. UMRG booked the room under a false name, "Jamie Jones," and recorded a phony social security number in its accounting records. [UMGEM 051397].

26. During testimony before the Attorney General's office, an Island Def Jam vice

president of promotion admitted providing a hotel room for Vince Richards, a programmer in Houston, for "personal reasons" in order to foster a relationship with the programmer. An Interscope promotion executive admitted to providing concert tickets and sporting events tickets to program and music directors for their personal use. He added that in some instances, the tickets were for artists represented by other labels, and also admitted that "it's very common to be approached for promotions on a regular basis. In some cases the conversation takes place in the same conversation as discussing airplay."

27. At times, UMG staff have encouraged radio station employees to provide false "Promotion Letters" in order to conceal gifts to programmers as prizes for radio station listeners. In addition, UMG employees themselves have created false letters using phony station letterhead or no letterhead at all. [UMGEM 018714, UMGEF 001692, UMGEF 004408]. For example, UMG's records indicate that UMG provided an iPod to WZNE (Rochester, NY) in January 2004 to support a contest that the station was running. UMG produced a letter purportedly from WZNE's music director, Jeff Sottolano, in which he thanked UMG for its support. However, Sottolano's name was misspelled, the letterhead contained a telephone area code that had been discontinued several years earlier, and Sottolano testified that he did not write the letter and that WZNE had no iPod promotion in January 2004, and that he never received the item at issue. [UMGEF 001220].

B. Promotional Support in Exchange for Airplay

28. In addition to bribing individual radio station employees to secure airplay, UMG has regularly provided "promotional support" to radio stations in exchange for airplay of its songs. UMG has provided this support with the specific purpose of influencing the station's airplay

decisions, without disclosing the direct connection between the two to consumers.

29. In their regular direct contact with radio station programmers, UMG promotion department employees have dangled the prospect of promotional support as an explicit and implicit inducement for programmers to add songs and/or increase airplay. Radio programmers exacerbated the situation by frequently soliciting items of value in exchange for airplay.

30. For example, in testimony, a senior promotion executive at Interscope conceded that providing promotional support to radio stations enhanced his relationship with the stations, and that this relationship helped him gain access to programmers and thereby get adds and rotations for Interscope artists' songs. The director further stated that he was trained to "never say no to radio" and to "keep the lines of communications open, to have access." Similarly, a UMRG vice president of promotion admitted that providing items of value to stations helped secure airplay. Elaborating, the vice president testified: "There were cases in the past where I would provide a radio station with tickets even if my artist wasn't on the show." A July 2005 email exchange between promotion staff members at Interscope confirms the staff's accession to WFLY's request for a U2 flyaway to Madrid, so long as the best seats would be provided to the program director and the cheaper tickets would be given to contest winners. [UMGEM 114591].

31. UMG promotion employees created an atmosphere, where payments to radio stations in exchange for airplay were encouraged. As a result, employees throughout the company uniformly treated airplay as a commodity to be purchased with artists' favors, promotions, and personal gifts. UMG promotion executives trained, and pressured, their subordinates to buy airplay. This pressure can be gleaned from a July 2003 e-mail exchange between UMRG promotion employees and a senior promotion executive. The senior promotion executive

instructed the staff to "dig in" on the song, "Dream," and expressed displeasure with the airplay the song had received after UMRG spent significant dollars on promotion. The promotion executive wrote,

> This is embarrassing and a total lack of accountability. We have gotten ripped off beyond belief, we better turn this thing around or it's our a**. That's almost $300,000 dollars and they are looking for some heads, , , bad bad bad. *I don't want one invoice processed for indys, stations etc until their end of the deal is held up.* If I find out that deals were cut with lack of airplay and overnight spins starting with the nationals, as they say heads are gonna roll, including mine.

[UMGEM 126652] (emphasis added).

32. UMG promotion employees from various labels have admitted to providing promotional support to assist with radio station operating costs in order to secure airplay for UMG artists. Specifically, in April 2002, UMG paid a $500 invoice on behalf of WJMZ (Greenville, SC) for airplay on the Nine20 single; and UMG provided WHXT (Orangeburg, SC) with a $1,000 Mother's Day promotion for adds and airplay of Dave Hollister and Keke Wyatt. [UMGEM 123062]. In November 2002, UMG paid a $1,000 production invoice for WFHN (Fairhaven, MA) in exchange for the station adding the Aaliyah single "Miss You." Also in November 2002, the company paid a $150 invoice for web site maintenance, also on behalf of WFHN, in exchange for airplay of Big Tymers "Oh Yea." [UMGEM 050261]. In June 2003, WWHT (Syracuse, NY) had an invoice paid by UMG for adding Lumidee and for providing 11 spins. [UMGEM 044034]. And, UMG paid a $2,000 invoice on behalf of WPRW (Augusta, Ga) for rotation and spin increases of JAG. In March 2005, the cost of a trip for three to Cancun was covered by UMG to help a station "out of a jam," in exchange for airplay of Lindsay Lohan. [UMGEM 125716].

33. In addition to providing promotional support to assist with stations' overhead costs, UMG also has provided stations with flyaways, concert tickets, CDs and electronics for their listening audiences. UMG routinely has made aggressive promotion pitches to radio stations that plainly tie promotional support to airplay. UMG promotion employees admitted providing radio stations with trips for winners to see a band in a glamorous city, front row concert tickets, computers, artist "meet & greets," autographed items, iPods, theme park passes, gift certificates, gift cards, posters, t-shirts and CDs. One UMRG vice president of promotion admitted that in July 2003, he directed his staff to provide $400 in Metallica tickets to be given to WWHT in exchange for adding the Lumidee single "Uh-Oh", and providing KHTS (San Diego, Ca) with $1250 in Targets gift certificates in August 2004, for triple adds of Mase's, "Breathe, Stretch, Shake"; Jojo's "Baby It's You" and "What I Go To."

34. UMG promotion executives also have used national tours as opportunities to secure airplay from broadcast stations. Thus, when UMG participated in a Bud Light® promotional tour in which autographed directors chairs, an autographed guitar, and admission to the Bud Light® pre-show party, were being provided to radio stations for contest giveaways, a UMRG promotion executive directed the staff to use the promotion to "leverage airplay and rotations." [UMGEM 19157].

35. Often, quid pro quo exchanges for airplay have been carried out explicitly, with specific authorization by senior promotion executives. In January 2004, a Universal South promotion employee sent out an email to numerous stations, indicating that, as part of Universal South's "Six -0" Gotta-Go Pat Green promotion" if a station "add[ed] and accumulate[d] 60 spins . . . by Sunday, February 29," UMG would send a station staff member on an all-expenses paid

trip for two to see Pat Green anywhere in the United States. [UMGEM 9396].

36. If however a station failed to provide sufficient airplay, promotional support could be disallowed. In April 2005, a UMRG promotion employee refused to allow "presents" for a show sponsored by Q101(Albany, NY) because the station refused to add "3 Doors Down." The promotion employee then suggested that WTMX (Chicago, Il) which was giving "3 Doors Down" the most airplay, get the "bulk of promotions." [UMGEM 137333]. In June 2002, a promotion director pulled Robert Plant station visits and concert tickets from stations that were "not spinning [his single] a min of 2x per day. . . ." [UMGEM 27810].

37. At times, broadcast stations were not interested in the promotional support being offered but instead would ask the label employee to pay an invoice that the station owed to a third party vendor. Radio stations, well aware of UMG's eagerness for adds and spin increases, knew they need only ask UMG for a particular item and UMG would supply it.

38. For example, the program director at WBEE (Rochester, NY) asked Uni- South to pay for a $2,500 laptop computer for the station in exchange for WBEE adding two songs, one by Joe Nichols and the other by McHayes. [UMGEM 064460, 053007]. Uni-South then requested, and WBEE provided, a false letter stating that the computer was sent as part of a promotion, even though the station simply retained the computer for its own use. [ETM 056992].

39. Stations have not been shy about asking UMG for promotional support. A few examples stand out. According to one UMRG vice president of promotion, Tommy Del Rio at KSEQ in Fresno and Stevie Demann at WJHM in Orlando, almost always requested promotional support and often requested gift certificates. An Interscope senior promotion executive testified that "it's fair to say some always seem to ask for something," like WNKS in Charlotte, WFBC in

Greenville, and WKSE in Buffalo, noting that "We would be asked to pay for third-party vendors on behalf of the radio station, which was permitted by my boss and my company, what we would be allowed to pay for items that were being used by the radio station." These requests were often part of explicit or implicit agreements to provide airplay for UMG songs.

40. Finally, UMG routinely has arranged for its artists to perform at radio station events and concerts in exchange for airplay commitments. For example, a promotion director testified that the label provided a band, at its expense, to do a side stage show for the Z100 Summer Show. He admitted that the label would not provide an artist for performance for a station if the station were not playing the artist's song. On another occasion, the label offered the Rooney band to WKSS (Hartford, CT) in exchange for increased rotations for Rooney's song.

41. Other artist performances provided in exchange for airplay include: WPXY's (Rochester, NY) agreement to play a Rooney song four times a day in exchange for a Rooney show. [UMGEM 025070]; WLKT's (Lexington, KY) agreement to provide airplay for Ashlee Simpson and Rooney in exchange for a Rooney show. [UMGEM 025078]; a deal with KHTS for airplay on the Cherry Monroe single "Satellites" in exchange for making the artist available to the station. [UMGEM 138169]; and an agreement with WBLS (New York, NY) to add LL Cool J in exchange for a performance by the artist. [UMGEM 59611].

42. It was common for UMG promotion employees to strategize about how to use a show to obtain airplay from a station. [UMGEM 126914]. UMG promotion supervisors required their staff to explain whenever a spin commitment was not part of a deal to get a show. [UMGEM 008117].

43. UMG promotion personnel have monitored the spin commitments they have

obtained by using the services of BDS or Mediabase - the airplay monitoring companies that provide real time access to spins accumulating on current songs at radio stations across the country. As one vice president of Rock promotion testified, if he told an employee to leverage shows for spins, he would "look at [the station's] play list every week" to see if in fact spins had been added.

44. Such pay-for-play deals have constituted an integral part of UMG's business strategy and have proceeded with the knowledge and approval of the top promotion executives at each UMG label. According to one promotion employee, no one cautioned against offering promotional items in exchange for airplay; the practice was simply routine.

C. Independent Promoters

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

46. Many independent promoters have a financial relationship with radio stations. Although the financial arrangements between independent promoters and the radio stations they work with vary, the essence of this financial relationship is the same: money and promotional support supplied by UMG and other record labels are funneled through the independent promoters to the stations with the explicit understanding that the future level of support will depend on the

stations adding the songs promoted by the independent promoters. In this way, and through even more explicit communications, the independent promoters have served as de facto conduits for pay-for-play transactions.

47. UMG has often used exclusive indies to implement its pay-for-play strategy, including Jeff McClusky & Associates, Bishop, Bait & Tackle, Michele Clark Promotions, Kilgo Marketing, Bill McGathy and National Music. These independent promoters generally have been paid a fee, often referred to as an "add fee," each time one of the promoter's stations has added a UMG song to its play list.[3]

48. Although many of the independent promoters hired by UMG have exclusive arrangements with radio stations, these exclusive indies work for other record companies as well. The promotion departments of UMG labels have developed a pay scale for exclusive indies requiring a minimum number of spins at monitored stations before the indies receive payment. Concerned that some independent promoters might be working to remove UMG songs from station play lists after collecting the prescribed add fees, UMG promotion departments have developed detailed independent promotion policies requiring a minimum number of spins at monitored stations before the indies receive payment. Specifically, in August 2002, the UMG labels' promotion departments adopted a standardized independent promotion policy, which included a market size-based fee schedule with add fees ranging from $500 to $1,000 per add, depending on the label and the particular market served by the station making the add. In a letter outlining the new policy, an Island Def Jam vice president of promotion detailed the policy of

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[3] In certain circumstances, UMG also has paid exclusive indies retainer fees and bonuses, in addition to add fees, an inducement for the indies to favor UMG projects over the projects of other record companies.

paying indies $600 for markets 51-100+, $800 for markets 26-50, and $1000 for markets 1-25 (market 1 being the largest) along with spin commitments required for each station. [UMGEM 033555].

49. These policies were strictly enforced by senior promotion management. One UMRG senior promotion executive cautioned a promotion employee not to pay a particular independent promoter "if the spins don't come through." [UMGEM 8192]. A UMG national vice president of promotion emailed his staff that JMA would not get paid for the "Jimmy Eat World" add because WEDG (Buffalo, NY) dropped the record after only 29 spins. [UMGEM 112490]. Eventually the label agreed deliever the payment only "when/if the spins are up to an acceptable number" on WEDG. [UMGEM 112490].

50. These statements demonstrate that UMG's payments to independent promoters have been tied expressly to airplay at radio stations – right down to the number of spins a song must receive before payment will issue to the independent promoter. The pay-for-play nature of these payments is clear.

51. In addition to add fees, exclusive independent promoters have received the following types of payments from UMG:

- Indies occasionally have received volume bonuses for hitting a particular threshold set by the label. For example, a label might set a target of ten adds, at which point the indie would receive a bonus payment.
- Indies could receive spin bonuses if their group of stations collectively moved a record up a certain number of spins per week.
- Indies might also ask for and receive an additional fee per add if a song has proved particularly difficult to promote. This fee could amount to an additional $300 per add.

- Indies could also receive additional payment in the form of a "billback." When a station purportedly needed help with a promotional bill, the exclusive indie would request an additional fee from the label.

However, as an Island Def Jam promotion executive testified, "a minimum of 30 spins was required for an indie to collect a bonus."

52. Finally, exclusive indies would not be compensated if UMG had already spent a large amount of money on promotional support for play on a station with which the exclusive indie claimed to have a relationship. Simply put, UMG would not pay for the same airplay twice.

D. Spin Programs and Time Buys

53. UMG regularly purchases radio time to increase airplay and deceptively boost chart position for its artists. In particular, UMG avails itself of "spin programs" offered by certain radio stations and broadcasting conglomerates. Spin programs are simply blocks of advertising time during which UMG music is played. Because the monitoring services, BDS and Mediabase, detect these spins just like any other airplay that has not been purchased, the paid spins become part of the data used by Billboard and Radio & Records to compile the record charts.

54. Sometimes, these advertising "spots" sound like a commercial advertisement for a new song or artist. In fact, however, the purpose of spin programs is to generate additional spin detections by the airplay monitoring companies, even if the spins occur in the dead of night when relatively few people are listening to the radio. Nighttime spins may still prove effective as a means to improve song chart positions. Accordingly, UMG has purchased spin programs – frequently during overnight hours – to generate dozens, sometimes hundreds, of additional spin detections each week. UMG uses spin programs strategically to vie for a higher chart position and also to maintain a record's current position on the chart when it begins to show signs of weakness.

If a song does not produce enough of a spin increase from one week to the next, or its spins actually decrease, the song will fall in chart position and radio programmers, who watch the charts and weekly spin tallies, will consider dropping the song from their play list. Through spin programs, UMG can combat the perception that a song may be weak.

55. In recent years, UMG has purchased spins on Citadel's Airbound program for $2,500. When purchased, the song would be played on all of Citaldel's Top 40 stations nationwide. The purchases were made through Jeff McClusky Associates, the independent promoter responsible for selling slots on the program. The Airbound program generally aired on the weekends, either Saturday mornings, Saturday evenings or Sunday mornings. Spins were also purchased on Entercom's CD Preview spin program, and from National Music. Similar to Citadal's Airbound, spins purchased on Entercom's CD Preview would be aired on a number of Entercom stations, in a specified format, nationwide. Spins purchased from National Music would be aired on three independent broadcast stations - KZZU (Spokane, WA), WRHT (Greenville, NC) and WCGQ (Columbus, Ga). Entercom's CD Preview and National Music's spin programs would generally air songs between the hours of 12:00 a.m. and 6:00 a.m. An Island Def Jam vice president discussing the purpose for purchasing spin programs explained in testimony that they were used to "continue and show the health of a record in a given week where it was showing signs of aliment" and to "get detections and show that a record is in a healthy state." He stated that the programs that he primarily participated in included one that was sold out of Nashville by Brian Krysz, and another out of California sold by Quinn Media. The Island Def Jam executive also admitted to participating in the Entercom program and specifically recalled purchasing spins for the band Hoobastank on their first single, "Out of Control." He described the

participation as successful in that they were able to achieve "top 10 " status.

56. UMG promotion executives were aware that getting all or part of their songs played through such programs would deceive BDS and Radio & Records into raising the chart position of songs, and ultimately would mislead the listening public about the true popularity of the records those services track. For their part, radio stations specifically pitched their spin programs to UMG in terms of the number of times a song would be "detected" by BDS. Thus, in selling its CD Preview spin program to UMG, Entercom pledged that it would earn each participating record "28 detections" in exchange for a $2000 fee per slot. [UMGE 29361].

57. In March, 2004, a UMRG promotion director sought to manipulate the chart position of "Keep Away," a song by Godsmack, by paying ten stations to do twelve spins each. He pledged in an e-mail to his supervisor: "If all these [paid] spots hit this week we are guaranteed at least #8 on the BDS Chart." [UMGEM 50033]. In another instance, a vice president of promotion recommended participating in a spin program – despite qualms by some at UMG over its cost – because it would focus on a "bds station," i.e., one used to compile the Billboard chart. [UMGEM 49992].

58. UMG has also generated spins for its records by utilizing time buys. Unlike spin programs, time buys are radio advertisements for a particular artist or recording, in which only a segment of a song is played on the air. The broadcast of the segment registered as a full spin because until the Fall of 2004, the BDS monitoring service merely used a segment of each song, or thumb print, to detect and credit airplay of a song. UMG devised a technique for locating the thumb print for certain records, and included the thumb print in the time buy commercials, to gain credit for full spins. BDS' monitoring system captured the broadcast of time buys as if an entire

song had been played and reported this false data to Billboard for use in compiling Billboard's charts. As a result, UMG's music appeared to be more popular than it actually was.

59. According to an Interscope senior promotion executive, time buys would cost approximately $1,200 for 21 spots and the money was payable directly to the radio station.

60. The ability to gain chart position with time buys has been important to UMG's promotion efforts. When presented with the opportunity to purchase some "cheapy" spots at a series of radio stations in Los Angeles and Boston in October 2002, a UMG promotion director urged her co-workers to ". . . figure out how to isolate the BDS thumb print to make sure the investment in spots works." [UMGE 28467].

61. In an email later that day, a UMRG senior promotion executive made clear that the label encouraged the institutionalization of this fraud:

> *This is standard business practice* that we should know off the top of our heads, especially as nationals. I need the entire staff to submit any and all stations that participate on the alternative AND rock side on the below mentioned time buys and extra spin promotions *in order to achieve our chart positions*. . . . Make it a part of *each call you make with radio starting today.*

[UMGE 28467] (emphasis added). That same day, an e-mail was circulated seeking information from numerous label employees to compile a "masterlist" of spin programs available to UMRG. [UMGEM 018895, 028426]

E. Fraudulent Call-In Requests

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

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

63. Unbeknownst to the listening public, UMG has expended significant resources to manipulate the listener request process. Specifically, UMG has used its own interns, staff and outside vendors – such as "By Request," "Iced Media," "Take Out Marketing" and "Promo Squad" – to pose as listeners "requesting" that certain UMG songs be played by radio stations and syndicated radio programs. UMG's outside vendors hire teams of people who place call after call to radio stations while pretending to be avid listeners requesting their favorite new song. Often these callers know nothing about the song or artist they are requesting, or the station they are calling.

64. To make the calls sound authentic, UMG promotion personnel provide details about the stations and the songs that help the callers develop a believable script. To the same end, UMG requested that the companies have the callers identify themselves as being of a certain age and gender.

65. In July 2004, UMG began a campaign to push Ashanti's single, "Rain on Me." Island Def Jam hired "By Request" to drum up a false wave of public interest. [UMGEM 31461]

Island Def Jam paid $3500 for a six-week campaign. For the first two weeks, station WGCI (Chicago, Il) and WQHT (New York, NY) would receive 25 calls each week. During the remaining four weeks, 40 calls to these and other stations were to be generated requesting "Rain on Me." UMG specified the precise demographic of the requesters to be used: black females, between 18 and 24.

66. Apparently pleased with the results of this effort, the following month Island Def Jam hired By Request to insure airplay for Ludacris' "Stand Up" at numerous radio stations, including CKEY and WBLK in Buffalo, WAJZ in Albany, WPHR in Syracuse and WDKX in Rochester. [UMGEM 13859]. Def Jam mounted a similar campaign to push DMX's, "Where the Hood at." Def Jam provided By Request with percentage breakdowns of the "callers" by race and gender, and identified the times at which the radio stations were to receive "requests." [UMGEM 13858].

67. In February of 2005, a UMG label hired "Iced Media" to make phone calls requesting Brie Larson's single, "She Said" on Radio Disney, spending $1500 for a two-week call-in campaign which specified that calls be placed by 11-13 year old girls. [UMGEM 136376].

68. UMG did not solely rely on outside contractors to create the deceptive impression of interest in its artists. In March 2003, a UMRG promotion employee reported that stations were not getting many requests for Godsmack. To remedy the problem, a promotion executive asked his subordinates to find a college student working for UMG to call radio stations and make some website requests, in order to secure additional airplay for a Godsmack single. [UMGEM 9217].

69. A promotion executive testified that these falsified phone requests tended to create "a story" for a record, thereby encouraging radio stations to either add the record or increase its

rotation. As explained by the executive "the more airplay we get the higher up the chart the record will go. So ultimately we want to get as many spins as we possibly can to get up the charts."

70. In addition, UMG has utilized similar phony call-in campaigns to television music video programs to get its artists music featured. For example, in June 2005, a promotion executive sent an email, on which she copied both the president and chairman of UMRG, advising, "FYI we are hiring a request company starting Monday to *jack* TRL [Total Request Live] for Lindsay [Lohan]." [UMGEM 137868 (emphasis supplied)]. Having an artist's video featured on television music video programs such as MTV's Total Request Live encourages stations to add or increase airplay of the song.

IV. Statutory Violations

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

IT NOW APPEARS that UMG Recordings Inc. is willing to enter into this Assurance of Discontinuance, without admitting or denying the Attorney General's findings, but acknowledging that various employees and independent promoters acting on behalf of the company pursued some radio promotion practices that were wrong and improper, as set forth in UMG's Statement annexed hereto as "Exhibit A"; and that the Attorney General is willing to accept the terms of this Assurance of Discontinuance pursuant to Executive Law § 63(15) in lieu of commencing a civil action. This Assurance shall conclude any action the Attorney General could commence against UMG arising from or relating to the subject matter of this Investigation: provided, however, that nothing contained in this Assurance shall be construed to cover any claims that may be brought by

the Attorney General to enforce UMG's obligations arising from or relating to the provisions contained in this Assurance.

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between UMG Recordings Inc., and that Attorney General that:

1. This Assurance of Discontinuance shall be binding upon and extend to UMG, its employees, directors, officers, principals, divisions, subsidiaries, representatives, or any other person or entity, including joint ventures, whose acts, practices or policies with respect to radio are directed or controlled by UMG.

2. Within 90 days of the Effective Date of this Assurance, UMG will contribute and cause the total amount of $12 million to be delivered to the Rockefeller Philanthropy Advisors who will distribute these funds to New York State not-for-profit corporations, to inure to the benefit of the residents of the State of New York by funding programs aimed at music education and appreciation; and

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

BUSINESS REFORMS

4. Within 90 days of the effective date of this Assurance UMG shall implement the

Business Reforms set forth in "Exhibit B" annexed hereto.

COOPERATION WITH THE ATTORNEY GENERAL

5. UMG shall fully and promptly cooperate with the Attorney General with regard to the Investigation, and related proceedings and actions, of any person, corporation or entity, including but not limited to UMG's current and former employees, concerning the music and broadcasting industries. UMG shall use its best efforts to ensure that all of its officers, directors, employees, and agents also fully and promptly cooperate with the Attorney General in the Investigation and related proceedings and actions. Cooperation shall include without limitation: (1) production voluntarily and without service of subpoena of any information and all documents or other tangible evidence reasonably requested by the Attorney General, and any compilations or summaries of information or data that the Attorney General reasonably requests be prepared; (2) without the necessity of a subpoena, having UMG's officers, directors, employees and agents attend any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (3) fully, fairly and truthfully disclosing all information and producing all records and other evidence it its possession relevant to all inquiries reasonably made by the Attorney General concerning any fraudulent or criminal conduct whatsoever about which it has any knowledge or information; and (4) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by UMG indicating; a) the type of document; b) the date of the document; c) the author and recipient of the document; d) the general subject matter of the document; e) the reason for withholding the document; and f) the Bates number or range of the withheld document. The Attorney General may challenge such claim in

any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which has been described by UMG, its officers, directors, employees, or agents. Nothing herein shall prevent UMG from providing such evidence to other regulators, or as otherwise required by law.

6. UMG shall comply fully with the terms of this Agreement. If UMG violates the terms of ¶ 5 in any material respect, as determined solely by the Attorney General: (1) the Attorney General may pursue any action, criminal or civil, against any entity for any crime it has committed, as authorized by law, without limitation; (2) as to any criminal prosecution brought by the Attorney General for violation of law committed within 5 years prior to the date of this Agreement or for any claim that such prosecution is time barred on grounds of speedy trial or speedy arraignment or the statute of limitations.

MISCELLANEOUS

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

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

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

10. Unless otherwise provided, all notices required by this Assurance of

Discontinuance shall be provided as follows:

Terryl Brown Clemons, Assistant Deputy Attorney General
New York State Attorney General's Office
Division of Public Advocacy
120 Broadway - 25th Floor
New York, New York 10271
tel. (212) 416-6155
fax. (212) 416-8068

11. In any application or in any such action, facsimile transmission of a copy of any papers for UMG shall be good and sufficient service on UMG - unless UMG designates, in a writing to the Attorney General, another person to receive service by facsimile transmission - if served on counsel for UMG:

General Counsel
UMG Recordings, Inc.
2220 Colorado Avenue
Santa Monica, CA 90404

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

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

14. This Assurance may be executed in counterparts.

RIGHTS OF CUSTOMERS

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

against any third-party.

EFFECTIVE DATE

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

VIOLATION AS PRIMA FACIE PROOF OF LAW VIOLATION

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

ENTIRE ASSURANCE OF DISCONTINUANCE

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

WHEREFORE, the following signatures are affixed hereto this 10th day of May, 2006.

UMG RECORDINGS, INC.

By: _____
MICHAEL OSTROFF
General Counsel,
Executive Vice President
Business and Legal Affairs

ELIOT SPITZER,
ATTORNEY GENERAL
OF THE STATE OF NEW YORK

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

EXHIBIT A

STATEMENT OF
UMG RECORDINGS, INC.

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

EXHIBIT B

BUSINESS REFORMS

I. Within ninety (90) days of the effective date of this Assurance and Stipulation (hereinafter "Agreement"), UMG Recordings, Inc. ("UMG") shall undertake (to the extent not already undertaken) the following business reforms.

II. Definitions

A. **UMG**: UMG means any employee, director, officer, principal, division, subsidiary, representative of UMG or any other person or entity, including joint ventures, whose acts, practices or policies with respect to Radio are directed or controlled by UMG.

B. **Radio**: Radio shall be defined as in 47 U.S.C. § 153.

C. **Television**: Television means any entity that broadcasts music to consumers in the United States primarily through an audio-visual format, but not including entities owned in whole or in part by UMG.

D. **Airplay Monitoring Company**: Airplay Monitoring Company means Nielsen Broadcast Data Systems, Mediabase 24/7 or any other nationally recognized company or entity, known to UMG, that tracks or monitors Radio airplay in the United States for the purpose of charting or ranking music.

E. **Independent Promoter**: Independent Promoter means any person or entity, other than a UMG employee, that provides funds, services or items of value to a Radio station and whose compensation is tied in any manner, directly, or indirectly to airplay received by any song or songs.

II. Impermissible Activity

A UMG shall not give, offer, arrange for or provide anything of value to Radio, a Radio employee or a Radio contest winner except as set forth in ¶ IV.

B. UMG may engage in the activity set forth in ¶ IV subject to the following restrictions:

1. UMG shall not use any of the activity set forth in ¶ IV in an explicit or implicit exchange, agreement or understanding to obtain airplay or increase airplay of UMG music.

2. UMG shall not give, offer arrange for or provide cash, gift cards, gift certificates, or any monetary payment to a Radio employee.

3. UMG shall not give, offer, arrange for or provide cash, gift cards, gift certificates, or any monetary payment to a Radio contest winner.

4. UMG shall not give, offer, arrange for or provide cash, gift cards, gift certificates, or any monetary payment to Radio except in compensation for advertising and commercial transactions set forth in ¶ IV.

5. UMG shall not pay Radio for airplay of all or part of a song (such as a spin program, a paid-for spin, or a paid for advertising spin) for the purpose of generating spin detections.

C. UMG shall prohibit its employees, interns or others working on its behalf from:

1. contacting Radio and representing themselves as members of the public and requesting, or asking listeners to request, airplay of UMG music; and

2. manipulating voting features offered by Radio to falsely register public support for a UMG song or artist.

IV. Permissible Activity

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

A. **Contests or Giveways**: UMG may provide or pay for items of value for Radio to give away on the air, at a Radio event, or to charity, but not to Radio employees or their relatives.

B. **Commercial Transactions**: UMG may enter into commercial transactions with Radio pursuant to which it may license, sell or otherwise agree to distribute UMG music or records.

C. **Advertising**:

1. UMG may purchase advertising with Radio.

2. UMG may also pay for the broadcast of its music on syndicated Radio programs ("Syndicated Radio Advertising").

D. **Artist Appearances and Performances**: UMG may arrange for its artists to appear or perform at events sponsored by Radio. UMG may subsidize reasonable costs related to the appearance or performance of its artists at events sponsored by Radio provided that such expenditures are approved in advance by the

Compliance Officer.

E. **Nominal Consideration**:[1] UMG may provide that following items of value to Radio and Radio employees:

1. CDs: UMG may provide Radio with electronic copies of songs, and up to twenty (20) copies of each CD that it is promoting to Radio for the purpose of familiarizing Radio employees with UMG music. UMG may also provide Radio with electronic copies of songs for posting on Radio websites for the purpose of familiarizing visitors to Radio websites with UMG music.

2. Concert tickets: Each UMG label may provide each Radio station or Radio program with up to twenty (20) tickets for each concert and/or industry event to be used by Radio employees for the purpose of familiarizing Radio employees with live performances by UMG artists.

3. Modest personal gifts for life events and holidays: Each UMG label may give Radio employees gifts commemorating life events and holidays provided that the expenditure does not exceed $150 in value per recipient per year. UMG may give Radio employees gifts commemorating life events and holidays that exceed $150 in value per recipient per year provided that the expenditure is approved in advance and in writing by the Compliance Officer.

4. Meals and entertainment: UMG may pay for meals and entertainment for Radio employees in an amount not to exceed $150 per person provided that the event is attended by a UMG employee and has a legitimate business purpose. UMG may pay for meals and entertainment for Radio employees in an amount that exceeds $150 per person provided that the event is attended by a UMG employee, has a legitimate business purpose and is approved in writing by the Compliance Officer.

5. Travel and lodging expenses: Each UMG label may provide or pay reasonable travel and lodging expenses for Radio employees to attend live performances or appearances by UMG artists for the purpose of familiarizing Radio employees with live performances or appearances by UMG artists. Each Radio station shall be limited to twenty (20) such trips annually, to be allocated among the stations' employees at UMG discretion. For purposes of this provision, reasonable travel and lodging

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

expenses means commercial airfare (coach class), train or car service and lodging to cover a period within 24 hours of the live performance or appearance by a UMG artist. All travel and lodging expenditures must be approved in advance and in writing by the Compliance Officer.

6. Other promotional items: Each UMG label may provide Radio with promotional items that do not exceed $25 in value. Examples of such items include: T-shirts, key chains, coffee mugs, baseball hats, posters, pens, bumper stickers, and plaques commemorating an artist achieving "gold record" level sales. Such items may be for Radio station employees' personal use.

V. Mandatory Disclosure and Documentation

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

1. Contests or Giveaway Verification:

a. UMG shall not provide or pay for an item for Radio to give away on their air as set forth in ¶ IV A, unless it has obtained for the prior quarter a letter signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of the Radio station or Radio program that verifies, for each instance in which an item of value was provided to that Station that:

(1) the item of value was given away to people other than the employees of the Radio station or Radio program, or their relatives;

(2) an announcement that the item was paid for by UMG or one of its labels was included in Radio's broadcast of any on air contest or giveaway; and

(3) The Radio station did not provide or increase airplay for UMG music in connection with UMG's provision of this item.

b. For items that exceed the monetary reporting threshold established by the Internal Revenue Service, UMG shall, in addition to the documentation requirements set forth above, obtain a letter signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of

the Radio Station or Radio program verifying that a contest winner has been selected and providing the full name, address and social security number of the recipient(s) of the prize. UMG shall obtain this verification letter, complete with all requisite information, before shipping any item to Radio that exceeds the monetary reporting threshold established by the Internal Revenue Service.

2. Advertising and Syndicated Radio Advertising:

a. Advertising: UMG shall not advertise on a Radio broadcast unless, for each advertisement which contains music of a UMG artist that is more than 60 seconds long, before the advertisement is broadcast on Radio, UMG notifies the Airplay Monitoring Companies in writing of:

(1) the general time frame and date(s) of the broadcast of the advertisement, to the extent such information is obtainable by UMG;

(2) the length of the broadcast of the advertisement;

(3) the station(s) on which the advertisement is to be broadcast, to the extent such information is obtainable by UMG; and

(4) the fact that the broadcast is an advertisement and is not intended for detection by the Airplay Monitoring Companies.

b. Syndicated Radio Advertising: In advance of any broadcast of Syndicated Radio Advertising, UMG shall obtain a letter in writing signed by the general manager, licensee, owner or other authorized senior executive other than a member of the programming personnel of the syndicated Radio program that verifies:

(1) an announcement will be made immediately before and after the broadcast of each song paid for by UMG;

(2) the announcement will consist exclusively of the following unaltered statements broadcast in a manner that is audible and understandable to the average listener:

(a) announcement immediately before broadcast: The next song is a commercial advertisement that has

been paid for and selected by [insert name of UMG label].

(b) announcement immediately after broadcast: The song you just heard was a commercial advertisement that was paid for and selected by [insert name of UMG label].

(3) Notification to Airplay Monitoring Companies: UMG shall notify the Airplay Monitoring Companies in advance and in writing:

(a) the general time frame and date(s) of the broadcast of the Syndicated Radio Advertising;

(b) the length of the song contained in the Syndicated Radio Advertising;

(c) the station(s) on which is Syndicated Radio Advertising is to be broadcast; and

(d) the fact that the broadcast is Syndicated Radio Advertising not intended for detection by the Airplay Monitoring Companies.

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

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

1. track and generate reports by Radio Station or Radio program; and

2. be readily searchable by the categories of expense set forth in ¶ IV.

VI. Independent Promoters

A. UMG may hire Independent Promoters to assist UMG in promoting its music to Radio. However, solely for purposes of their compliance with this Agreement, all Independent Promoters hired by UMG shall be deemed to be representatives of UMG with respect to promotional activities they undertake on behalf of UMG, and subject to the terms of this Agreement and the Standards of Conduct established by UMG pursuant to ¶ VIII.

B. The following additional restrictions shall govern UMG's relationship with any Independent Promoter hired by UMG to promote music to Radio:

1. UMG shall not provide any item of value to an Independent Promoter to be distributed to Radio, a Radio employee or a Radio contest winner.

2. UMG shall not reimburse an Independent Promoter for any expense or purchase made for Radio, a Radio employee or a Radio contest winner.

3. UMG shall require any Independent Promoter it hires to certify in writing, on a quarterly basis, that the Independent Promoter agrees to be bound, in the same manner as a UMG employee, by the terms of this Agreement and the Standards of Conduct established by UMG pursuant to ¶ VIII.

C. UMG shall make reasonable inquiries into the promotion activities of any Independent Promoter UMG hires to ensure that the Independent Promoter is operating in compliance with this Agreement and the Standards of Conduct established by UMG pursuant to ¶ VIII.

D. The failure of UMG to make reasonable inquiries into the promotion activities of the Independent Promoter with respect to Radio will not shield UMG from liability for breach of this paragraph of the Agreement. If such reasonable inquiries are made by UMG and UMG is otherwise in compliance with the Agreement and Standards of Conduct established pursuant to ¶ VIII, it shall not be liable for a breach of this Agreement.

E. If UMG learns or determines that an Independent Promoter hired by UMG has violated any of the terms of this Agreement or the Standards of Conduct established by UMG pursuant to ¶ VIII, UMG shall notify the Compliance Officer

and terminate the Independent Promoter immediately.

VII. Television

A. UMG shall not offer anything of value to Television or a Television employee in an explicit or implicit exchange, agreement or understanding to obtain broadcast or increase broadcast of UMG music.

B. UMG may enter into commercial transactions with Television pursuant to which it may license, sell, or otherwise agree to distribute UMG music or records. Such transaction shall no be used as leverage to increase the broadcast of UMG music or records that are not the subject of the transactions themselves.

C. UMG shall prohibit its employees, interns or others working on its behalf from:

1. contacting Television and representing themselves as members of the public and requesting, or asking listeners to request, the broadcast of UMG music; and

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

D. Nothing in this section shall prohibit UMG from advertising on Television.

VIII. Standards of Conduct and Training

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

IX. Monitoring Compliance and Reporting

A. Compliance Officer: UMG shall designate or hire a Compliance Officer, subject to the approval of the Attorney General whose approval will not be unreasonably withheld, and staff to assist the Compliance Officer. They shall be responsible for ensuring UMG's compliance with this Agreement and the Standards of Conduct. UMG agrees that such compliance will be the primary focus of the Compliance

Officer until the systems and training sufficient to comply with this Agreement and Standards of Conduct are established. The Compliance Officer's responsibilities shall include:

1. Establishing, implementing and supervising a training program as set forth in ¶ VIII for all employees of UMG's promotion departments and all employees with supervisory authority over promotion departments and all employees with supervisory authority over promotion activity or expenditures.

2. Establishing a hotline for employees to call the Compliance Officer to obtain advice on compliance with the Standards of Conduct, and report violations of the Standards of Conduct.

3. Developing and implementing procedures designed to ensure UMG's compliance with the Standards of Conduct.

4. Monitoring, on an ongoing basis, UMG's compliance with the Standards of Conduct and all procedures and systems designed to ensure UMG's compliance with this Agreement.

5. Reporting, on a quarterly basis, to the General Counsel of UMG regarding the status of UMG's compliance with the Standards of Conduct.

B. Annual Reports to the Board of directors and the Attorney General: The Compliance Officer shall submit annual reports to the UMG Board of Directors and the Attorney General concerning UMG's compliance with this Agreement and with the Standards of Conduct for a period of five (5) years from the effective date of this Agreement.

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