

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Petitioner,

v.

TIME WARNER, INC., et al.,

Respondents.

[draft December 22, 1994]
Misc. Action No. 94-338 HHG

AGREEMENT, STIPULATION AND PROTECTIVE ORDER

The undersigned counsel for the parties in this action hereby stipulate that the following protective order may be entered by the Court:

I. As used herein, the following words shall have the following meanings:

a. "this action" means the present petition pending in this Court; this order does not purport to limit any confidentiality provision that may be entered in any subsequent proceeding against any party;

b. "party" or "parties" means the Petitioner or one or more of the Respondents in this action;

c. "non-party" means any natural person, partnership, corporation, association, or other legal entity not named in the miscellaneous action captioned above and pending in this Court;

d. "Petitioner" means the United States Department of Justice, its officials, employees or agents;

e. "Respondents" mean Time Warner, Inc. (Warner); Sony Corporation of America (Sony); PolyGram Holding, Inc. (PolyGram); EMI MUSIC INC. (EMI); and Bertelsmann, Inc. (BMG);

f. "protected person" means any party or non-party that furnishes any information or material in connection with this action or to the Department of Justice during its investigation of a possible antitrust violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2, namely a possible restraint or monopolization of domestic and international markets for cable, wire, and satellite-delivered music programming through price-fixing cartels and overbroad joint ventures;

g. "Court" means the United States District Court for the District of Columbia;

h. "disclosed" means shown, divulged, revealed, produced, described or transmitted, in whole or in part, except as otherwise permitted in Paragraph 3(c);

i. "outside counsel" means the attorneys specifically listed on this Order as well as (1) other attorneys or consultants employed or retained by the law firms listed on this Order; (2) any attorney subsequently retained or designated by the Respondents to appear in this action, or (3) any attorney representing any respondent before the European Commission or U.K. proceedings regarding MTV Europe's complaint(s), PROVIDED that any attorney or consultant covered under subparagraphs i(1), (2) or (3) is not involved in the business operations of the

Respondents, including the negotiation of license agreements. The provision of legal advice regarding a proposed license agreement will not be deemed to be a "negotiation of a license agreement."

j. "confidential" means competitively sensitive business or financial information or any trade secret or other confidential research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26(c)(7); and

k. "material" means documents or other forms of information submitted by any party or non-party.

1. Confidential material obtained by the Petitioner from a protected person, and all information contained therein, shall be used by the Respondents solely for the defense of this action including preparation, hearing and any appeal and shall not be disclosed for any other purpose.

2. Material designated as confidential pursuant to this Order may only be disclosed to the following persons:

a. the Court and any Court employee working on this action, as well as any independent court reporters working on this action;

b. attorneys, officials, other employees or agents of the Department of Justice;

c. outside counsel, except that outside counsel is not prohibited from providing in-house attorneys a copy of the Petitioner's brief and discussing the matters raised therein

without revealing the confidential information designated pursuant to this Order;

d. the clerical or administrative personnel of any of the above persons; and

e. authors or addressees of the material designated as confidential.

3. The provisions of subparagraphs 2 and 3 shall remain in effect until the termination of the Petitioner's investigation.

4. In the event that any confidential material is used in any Court proceeding in this action, it shall not lose its confidential status through such use, and the parties shall take all steps reasonably required to protect its confidentiality.

5. If any documents containing confidential material are filed at any time in this action, the documents shall be filed with the Clerk of Court under seal subject to further order of the Court.

6. Upon termination of the Petitioner's investigation, outside counsel shall return all documents and copies thereof designated as containing confidential material to counsel for the producing party. In lieu of return copies, counsel for the producing party may agree to accept a certification that all such copies have been destroyed. However, counsel for the parties may retain copies of all pleadings, briefs and memoranda filed in this action, provided that they do

not disclose protected information to anyone not entitled to receive it under the terms of this Order.

7. In the event that a party believes that another party has designated information as confidential that is not entitled to such protection, the parties shall discuss this contention and attempt to resolve the disagreement over the classification of the information. If the parties cannot resolve the matter, it will be submitted to the Court for resolution. In the case of information provided by a third party, the party that designated the information as confidential shall provide reasonable notice to the third party that the matter has been referred to the Court.

8. Any party may move for a modification of this Order at any time in the interests of justice.

9. Nothing herein shall be construed to enlarge or contract any right to use confidential material in the taking of depositions.

10. Nothing herein shall be construed to affect in any way the admissibility of any documents, testimony or other evidence in any other proceeding or trial.

11. The parties agree to abide by the terms of this Agreement, Stipulation and Protective Order pending the Court's

entry of this Order or any other order which the Court, in its discretion, may enter.

Respectfully submitted,

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SO ORDERED this ____ day _____, 1994.

UNITED STATES DISTRICT JUDGE