

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
POLYGRAM HOLDING, INC.,)
a corporation,)
DECCA MUSIC GROUP LIMITED,)
a corporation,)
UMG RECORDINGS, INC.,)

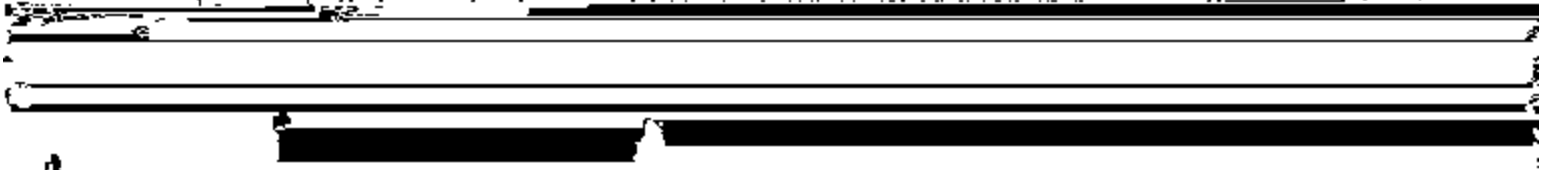
Docket No. 9298

and)
UNIVERSAL MUSIC & VIDEO)
DISTRIBUTION CORP.,)
a corporation.)

TO: The Honorable James P. Timony
Chief Administrative Law Judge

**COMPLAINT COUNSEL'S MEMORANDUM OF LAW IN OPPOSITION
TO RESPONDENTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Respondents have been provided with each and every non-privileged, responsive document that complaint counsel has reviewed or relied upon in connection with this case. Respondents do not dispute this. Because a long line of authority limits discovery by Respondents to the factual



Collaboration Guidelines, truncated antitrust analysis, joint venture analysis, and free riding.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

anyone outside of the Commission on any of these topics. What is clear from the very language of

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Schering-Plough, Order on American Home Products Corporation's and Schering Plough Corporation's Motions to Compel and on Non-Parties ANDRX Pharmaceutical Inc.'s and Aventis Pharmaceutical Inc.'s Motion for Protective Order at 5 (Sept. 7, 2001) (limiting production to

should be subject to discovery. In this matter, the only "relevant decision-makers" will be from the
office of Administrative Law Judges and the office of the Commissioner. [Redacted]

reports from other cases will not be a part of the administrative record.

Respondents cite *Exxon* for the proposition that it is entitled to "staff statements." The
section quoted by Respondents relates to an argument concerning the contemporaneous construction

requested discovery: "The undersigned agrees that the broad request for 'all subsequent policy

[REDACTED]

Respondents' reliance upon *U.S. v. Capitol Service, Inc.*, 89 F.R.D. 578 (E.D. Wisc. 1981),

is misplaced. The defendant made a specific showing that the Government's misclassification of

certain motion picture split agreements was factually relevant to its defense because the Department

of Justice had been regulating this practice under two percent decrees. *Id.* at 591. The court allowed a

III. The Discovery Sought by Respondents is Tangential, At Best, to the Issues At Hand

Respondents do not contend that the documents they seek are relevant factually or could be introduced into evidence in this case. Instead, they spin conjecture about documents that, if they exist, may help to bolster Respondents' legal arguments. However, it is clear that, other than the documents that are publicly available, and therefore equally available to Respondents and complaint counsel, the documents sought will provide no real assistance to them.

First, the articles, guidelines, directives, and manuals that Respondents seek are available in published reporters, treatises, law journals, and via on-line services. To the extent that the relevant decision-makers themselves have expressed an opinion that could be considered persuasive, the vast

IV. *Given the Marginal Relevance, Respondents' Request is Unduly Burdensome*

While the documents sought by Respondents are marginally relevant at best, the burden of complying with Respondents' requests would be enormous. Complaint counsel would be obligated to contact hundreds of lawyers, economists, and other employees of the Commission and ensure the search of their files. Complaint counsel would also have to retrieve from archives and search the

In this case, the excessive burden is exacerbated by Respondents' delay in bringing this

[REDACTED]

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Docket No. 9298

**ORDER DENYING RESPONDENTS' MOTION
TO COMPEL PRODUCTION OF DOCUMENTS**

For the reasons set forth in Complaint Counsel's Memorandum in Opposition to Respondents' Motion to Compel Production of Documents, and for good cause shown,

CERTIFICATE OF SERVICE

I, [REDACTED] Delina Mustafa, County Clerk certify that on February 7, 2007 I caused a copy of

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