

## ASSURANCE OF VOLUNTARY COMPLIANCE

In the matter of

eMusic.com, Inc.

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The undersigned state and agree as follows:

1. The State of Iowa ex rel. Thomas J. Miller, Iowa Attorney General, enters into this Assurance of Voluntary Compliance ("Assurance") with eMusic.com Inc. ("eMusic" or "Respondent") to resolve the Attorney General's concerns regarding Respondent's compliance with Iowa Code Ch. 552A, the Buying Club Memberships Law ("BCL"), and Iowa Code § 714.16, the Iowa Consumer Fraud Act ("CFA"), in connection with Respondent's marketing to Iowa residents of its programs providing access to songs and audiobooks for electronic download by customers.

2. This Assurance does not constitute an admission of any kind and, specifically, Respondent denies any and all allegations of wrongdoing or liability of any kind, but has agreed to enter into this Assurance in order to resolve consumer protection issues raised during the Attorney General's inquiry into Respondent's marketing of its programs in Iowa. Accordingly, the Attorney General releases Respondent from liability to the State of Iowa for violations of the BCL or CFA that occurred prior to the effective date of this Assurance.

3. Nothing herein shall be interpreted to prevent the Attorney General from taking enforcement action to address conduct occurring after the effective date that the Attorney General believes to be in violation of the law, and the fact that such conduct was not expressly prohibited by the terms of this Assurance shall not be a defense to any such enforcement action.

4. The effective date of this Assurance is the date of the last signature below.

5. **IT IS THEREFORE AGREED** that Respondent shall comply with the CFA in connection with any future enrollment of consumers residing in the State of Iowa in any program. Without limiting the foregoing, this paragraph requires clear and conspicuous disclosure to prospective purchasers of a program of all material aspects of the enrollment transaction and the program.

6. **IT IS FURTHER AGREED** that Respondent shall within five (5) business days of the effective date of this Assurance send a notice to Iowa residents (i) whose enrollment in the program occurred prior to the effective date of this Assurance, and (ii) whose participation in the program has involved no affirmative use of program benefits by the Iowa customer in the two calendar months of July and August 2012. Such notice shall provide the recipient an opportunity to indicate whether he or she wishes to continue as a member, and shall not deviate significantly from the attached template. Respondent shall, as soon as circumstances permit, cease billing recipients who affirmatively indicate in response to the notice that they do not wish to continue as a member, and shall, within thirty (30) days of the sending of the notice, cease billing recipients who have not responded at all by then.

7. **IT IS FURTHER AGREED** that Respondent shall, annually on or about the anniversary of the effective date of this Assurance, undertake reasonable efforts to ensure that Iowa consumers who (i) have made six or more consecutive monthly payments, (ii) have not made affirmative use of program benefits (e.g., download opportunities) after one month beyond the close of the trial period (or, if no trial period, after one month beyond the date of enrollment), and (iii) were not provided such notices on the immediately preceding anniversary; receive actual notice of the fact of enrollment, the amount and manner of charges, and how to cancel, through email and through a hard-copy mailing reasonably designed to effect such actual notice.

8. **IT IS FURTHER AGREED** that Respondent pay by check to the State of Iowa, within fourteen (14) days of the effective date of this Assurance, the sum of \$40,000.00, to be applied by the Attorney General in its discretion to making full or partial refunds of previously unrefunded amounts to Iowa consumers whose pattern of non-use reasonably suggests a possible lack of awareness of the fact of program participation pursuant to Iowa Code § 714.16(7). Respondent shall cooperate in providing such customer data (e.g., full name, mailing or billing address, email address, login history, download history, and prior payment and refund/chargeback information) as the Attorney General may reasonably request in connection with this refund payment process. Prior to making any such payments, the Attorney General shall furnish to Respondent such refund distribution data as is reasonably necessary to enable

Respondent to ensure that consumers do not receive double recovery, and to advise the Attorney General within two (2) weeks of Respondent's receipt of Attorney General's refund distribution plan regarding refunds that may otherwise be inappropriate under this Assurance and/or the CFA. Prior to making any such payments, the Attorney General shall consider any information provided by Respondent regarding refunds that may be inappropriate under this Assurance and/or the CFA. To the extent that Iowa consumers eligible for payments cannot be located through reasonable efforts, the money that is not paid to Iowa consumers shall be retained by the Attorney General to be used by the Attorney General for the administration and implementation of the CFA, pursuant to Iowa Code § 714.16(7), and shall be deposited into the fund created by Iowa Code § 714.16C (2011). No part of this payment shall be deemed a penalty of any kind.

9. **IT IS FURTHER AGREED** that Respondent shall make refunds of any previously unrefunded payments to Iowa customers who request a refund, if Respondent's records reasonably suggest a possible lack of awareness of the fact of program participation (e.g., no affirmative use of program benefits). This requirement shall not limit Respondent's established pre-Assurance policy regarding consumer-requested refunds as it applies to Iowans, which policy the Attorney General neither approves nor disapproves, nor shall this requirement be interpreted to limit in any way refunds to consumers by Respondent in circumstances in which a refund is not expressly required.

10. **IT IS FURTHER AGREED** that Respondent shall cooperate with reasonable requests for information from the Attorney General relating to compliance with this Assurance.

11. **IT IS FURTHER AGREED** that a violation of this AVC is deemed a violation of the CFA for purposes of enforcement by the Attorney General, and that in any enforcement action in an Iowa District Court in which one or more violations of this AVC are established by the Attorney General by a preponderance of the evidence, the Court shall apply the remedies provided in the CFA, in addition to any other remedies provided by law.


12. **IT IS FURTHER AGREED** that, pursuant to Iowa Code § 714.16, Respondent pay by check to the Attorney General, within fourteen (14) days of the effective date of this Assurance, the sum of \$3,000.00, which shall be deposited in the consumer fraud enforcement

fund referred to in Iowa Code § 714.16C (2011). No part of this payment shall be deemed a penalty of any kind.

The Undersigned who have the authority to consent and sign on behalf of the Attorney General of Iowa and Respondent hereby consent to the form and contents of this AVC.

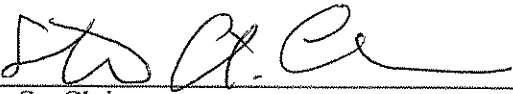
Dated: 1/4/13

EMUSIC.COM INC. *FM*

By:   
Adam Klein  
Chief Executive Officer

Dated: 1/9/13

IOWA ATTORNEY GENERAL

By:   
Steve St. Clair  
Assistant Attorney General

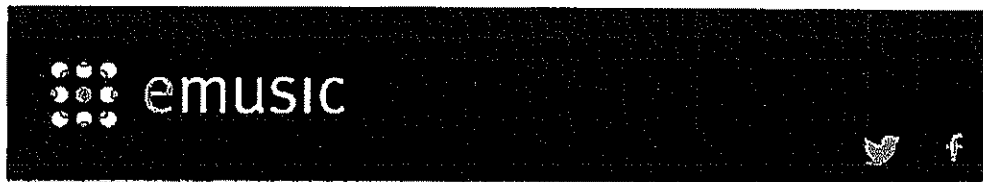


**Response Requested: Please confirm your membership**

Fran [redacted] <[redacted]@[redacted].com>  
To: Fran [redacted] <[redacted]@[redacted].com>

Mon, Dec 3, 2012 at 7:31 PM

Please add [emusic@info.emusic.com](mailto:emusic@info.emusic.com) in order to ensure email delivery.  
If you are having trouble viewing this email, please [click here](#).



Thanks for being an eMusic member. We noticed that you haven't been signing in lately, and wanted to make sure that there is no misunderstanding about your membership status.

As an eMusic Basic member, you are being charged \$11.99 every 30 days using your credit card or PayPal account. **If you wish to remain an eMusic member, please click on the following email address [memberships@emusic.com](mailto:memberships@emusic.com) and hit send to let us know.**

If we have not heard from you in 30 days, we will go ahead and cancel your account, so you won't be charged anymore.

**If you wish to cancel your membership now, please click on the following email address [cancellations@emusic.com](mailto:cancellations@emusic.com) and hit send to let us know.**

Thank you.

Sincerely,  
eMusic Member Services

P.S.

You will receive a \$10 complimentary music credit if you confirm your membership.