

SUPER AUDIO CD PLAYER COPY PROTECTION AGREEMENT

This Agreement is entered into this ____ day of ____, 2003 by and between

KONINKLIJKE PHILIPS ELECTRONICS N.V., having its registered office in Eindhoven, The Netherlands, (hereinafter referred to as "Philips")

and

[_____] , having its registered office in [_____] (hereinafter referred to as "Licensee").

WHEREAS, Licensee has entered into a Super Audio CD Player Patent License Agreement with Philips on even date and has thereby obtained the right to manufacture and sell Super Audio CD Players (as defined in the Super Audio CD Player Patent License Agreement) in accordance with the provisions of the Super Audio CD Player Patent License Agreement;

WHEREAS, Philips and Sony have developed a specific copy protection technology for the Super Audio CD System (hereinafter referred to as the "Super Audio CD Copy Protection Technology"), to prevent the unauthorized access to and copying and distribution of content material encoded on the basis of the Super Audio CD technology and have decided to incorporate such Copy Protection Technology as a key element of the Super Audio CD specifications;

WHEREAS, accordingly, Super Audio CD Player manufacturers will be offered a Super Audio CD Player Patent License Agreement only in conjunction with a Super Audio CD Player Copy Protection Agreement;

WHEREAS, the copy protection technology to be applied in Super Audio CD Players is embodied in Super Audio CD Copy Protection Technology (as defined hereinafter), Part III-General and Part III-Player;

WHEREAS, in order to apply the Super Audio CD Copy Protection in Super Audio CD Players Licensee must incorporate specific integrated circuits ("ICs") in such Super Audio CD Players, which ICs shall also comply with the Super Audio CD Copy Protection Technology (hereinafter referred to and defined as "CP Compliant ICs");

NOW, THEREFORE, in consideration of the mutual obligations and covenants hereinafter set forth, it is hereby agreed as follows:

Article 1 - Definitions

The following terms, when used in this Agreement, shall have the respective meanings ascribed thereto below:

“CP Compliant IC”: an integrated circuit implementing the PSP detection and decrypting function of the SACD Copy Protection Technology.

“Technically Essential CPT Patents”: patents, the use of which is absolutely necessary for compliance with the specifications defining the Super Audio CD Copy Protection Technology.

“Commercially Essential CPT Patents”: patents relevant to the Super Audio CD Copy Protection Technology, other than Technically Essential CPT Patents, for which no commercially viable alternative is available.

“Rights Owner”: a content participant (record company) which has entered into a Super Audio CD Content Participant Agreement with Philips.

“Eligible Content Participant”: Rights Owner (record company) who is in full compliance with its obligations under Article 2.01 of the Content Participant Agreement subject to the cure provisions set forth therein.

Any capitalised term used in this Agreement but not defined herein shall have the same meaning as in the Super Audio CD Player Patent License Agreement.

Article 2 - Compliance with the Super Audio CD Copy Protection Technology

- 2.01 For the term of the Super Audio CD Player Patent License Agreement and subject to the full and timely compliance by Licensee with the provisions thereof, Licensee is hereby granted the right to incorporate into Super Audio CD Players manufactured by it the Super Audio CD Copy Protection Technology.
- 2.02 Licensee shall ensure that all Super Audio CD Players manufactured by it incorporate the Super Audio CD Copy Protection Technology in accordance with Part III-General and Part III-Player (and any revised versions and/or updates thereof) as made available by or on behalf of Philips in accordance with the provisions of Article 5.

Licensee shall procure CP Compliant ICs only from IC manufacturers who have concluded a Super Audio CD IC Manufacturing Agreement with Philips. A list of

licensed IC manufacturers will be published by Philips on its web-site or otherwise communicated to Licensee.

- 2.03 Licensee acknowledges and agrees that the Super Audio CD Copy Protection Technology may be amended by Philips from time to time, with a view to technological developments relating to the protection of content material encoded on the basis of the Super Audio CD technology. A description of the currently planned amendments and enhancements can be found in Exhibit I. Except as appropriate to maintain the current level of protection of content material encoded or to correct errors or omissions, Philips will not make material changes in the Super Audio CD Copy Protection Technology, other than changes described in Exhibit I, that would (a) prevent pre-change and non-revoked Super Audio CD Players playing post-change Super Audio CD Discs with which such Super Audio CD Players would otherwise have been compatible, or that will prevent pre-change Super Audio CD Discs from playing on post-change Super Audio Players or (b) materially increase the cost or complexity of implementation of the Super Audio CD Copy Protection Technology.
- 2.04 Philips will notify Licensee in writing of any amendments to the Super Audio CD Copy Protection Technology. Licensee shall comply with amendments to the Super Audio CD Copy Protection Technology that do not require material modifications to product design or manufacturing processes within 90 days after such notification by Philips, and shall comply with all other amendments within 18 months after notification by Philips, provided that in case of a change to the LSI Package, a 42 month period shall apply, or within such other (shorter) reasonable period as Philips may specify in such notice.

Article 3 – Grant-Back and Limited Non-Assertion

- 3.01 Licensee, on behalf of itself and its Associated Companies undertakes and represents that it and its Associated Companies shall not assert or maintain against Philips or its Associated Companies, nor against any third party licensee under a Super Audio CD Disc and/or Player Patent License who has accepted a similar undertaking as contained in this Article 3.01, nor against any Rights Owner who has accepted a similar undertaking as contained in this Article 3.01 and described in Article 3.03, any claim of infringement under its or their Technically Essential CPT Patents, as well as under any trade secrets or copyrights which are essential to the Super Audio CD Copy Protection Technology, in respect of the application of the Super Audio CD Copy Protection Technology in the manufacture or distribution of Super Audio CD Players and/or Super Audio CD Discs and/or CP Compliant ICs and/or Super Audio CD Glass Masters and/or Stampers.

- 3.02 Licensee, on behalf of itself and its Associated Companies, undertakes and represents that it and its Associated Companies shall not assert or maintain against Philips or its Associated Companies, nor against any third party licensee under a Super Audio CD Disc and/or Player Patent License who has accepted a similar undertaking as contained in this Article 3.02, nor against any Rights Owner, any claim of infringement under its or their Commercially Essential CPT Patents, in respect of the application of the Super Audio CD Copy Protection Technology in the manufacture or distribution of Super Audio CD Discs.

Further, Licensee, on behalf of itself and its Associated Companies, undertakes and represents that it and its Associated Companies shall license, on request, on reasonable and non-discriminatory terms, its or their Commercially Essential CPT Patents to Philips and its Associated Companies and any third party licensee under a Super Audio CD Disc and/or Player Patent License who has accepted a similar undertaking as contained in this Article 3.02, in respect of the use of such Commercially Essential CPT Patents for any other application within the Super Audio CD System.

- 3.03 The grant-back and non-assertion provisions referred to in Articles 3.01 and 3.02 shall only apply in relation to the current versions of the Super Audio CD Standard Specifications and the Super Audio CD Copy Protection Technology in the form as per the date of this Agreement, and to those future additions, modifications and supplements to the Super Audio CD Standard Specifications and/or the Super Audio CD Copy Protection Technology as may be adopted and issued by Philips in accordance with the provisions of this Agreement, provided that such additions, modifications and supplements ("Compatible Extensions") shall be limited to application on prerecorded audio discs and in Players capable of playing back such pre-recorded audio discs. Further, Compatible Extensions shall be limited to a) feature enhancements (including, but not limited to, lyrics, cover artwork and jacket pictures) as were applied by any one or more of the major record companies to DVD-Audio discs sold to the public on or before March 1, 2002 and b) added functionality to Super Audio CD Discs, Super Audio CD Players, and CP Compliant ICs which are necessary to make it possible to revoke Super Audio CD Players as set forth in Exhibit I and c) bonus tracks that will play only in future Super Audio CD Players that are subject to revocation as referred to in Exhibit I.

Article 4 - Remedies

- 4.01 Licensee acknowledges that strict compliance with the terms hereof (notably, without limitation, the provisions of Article 2.02 and Article 6.01) is essential to maintain the value, integrity and effectiveness of the Super Audio CD Copy Protection Technology and that any failure by it to incorporate the Super Audio CD Copy Protection Technology in Super Audio CD Players manufactured by it,

will enable such Super Audio CD Players to be used for the unauthorised copying of content material recorded on Super Audio CD Discs, resulting in irreparable harm to the interests of the relevant Rights Owners in the content material, in addition to harming the interests of Philips and Sony, as co-owners and promoters of the Super Audio CD System.

- 4.02 The parties hereto agree that it would be impossible to assess the exact amount of damages in the event of certain breaches. Without prejudice to Article 6.01, in the event of a breach by Licensee (1) of the Super Audio CD Confidentiality and Non-Disclosure Agreement for Highly Confidential Information, Company shall be liable to Philips for an amount of US\$ 1,000,000 (one million US Dollars); (2) that involves the manufacture or distribution of Super Audio CD Players which fail to comply with the Super Audio CD Copy Protection Technology, Company shall be liable to Philips in an amount equal to its profits on such Super Audio CD Players, but in no event less than US\$ 1,000,000 (one million US Dollars).
- 4.03 Licensee acknowledges that monetary damages may not be a sufficient remedy for a breach by Licensee, either (1) of the Super Audio CD Confidentiality and Non-Disclosure Agreement for Highly Confidential Information; or (2) that involves the manufacture or distribution of Super Audio CD Players which fail to comply with the Super Audio CD Copy Protection Technology, and that Philips shall be entitled, without prejudice to any other right or remedy to which Philips may be entitled hereunder, to equitable relief as may be deemed proper by a court of competent jurisdiction, as well as to injunctive relief against the manufacture, distribution, commercial use and sale of Licensee's products which do not comply with the Super Audio CD Copy Protection Technology, and against disclosure of Highly Confidential Information (as referred to in Article 6) which affects the integrity or security of the Copy Protection Technology. Any such action by Philips shall not be exclusive of any right of any Third Party Beneficiary hereunder.
- 4.04 Licensee agrees that, in the event of any breach by Licensee of the provisions of Article 2.02 and/or Article 6.01, any one or more Eligible Content Participant(s) who have been harmed, or will be potentially harmed, by such breach, shall be entitled to bring a claim or action against Licensee. Accordingly, Licensee hereby confers a third party beneficiary right, upon Eligible Content Participants ("Third Party Beneficiaries"), in accordance with the procedures set forth in this Article 4.
- 4.05 Licensee agrees that, in the event of any breach by Licensee of the provisions of Article 2.02 and/or Article 6.01, each such Third Party Beneficiary whose interests have been so harmed, or will be potentially harmed, shall be entitled to bring a claim or action seeking any lawful remedy or claim in the relevant jurisdiction to enforce its rights against Licensee. Such remedies shall include injunctive relief against the

manufacture, distribution, commercial use and sale of Licensee's products which do not comply with the Super Audio CD Copy Protection Technology and against disclosure of Highly Confidential Information (as referred to in Article 6) as well as, in the case of actual harm (as opposed to merely potential harm), the right to claim damages from Licensee up to an amount of US\$ 1,000,000 (one million US Dollars). Any such action by any such Third Party Beneficiary shall not be exclusive of any right of Philips hereunder.

- 4.06 Any Third Party Beneficiary or Beneficiaries who have been or will be potentially harmed by a breach by Licensee of the provisions of Article 2.02 and/or Article 6.01 may commence an action seeking the remedies set forth in Article 4.05. Said Third Party Beneficiaries shall provide written notice to Philips within 5 business days of the commencement of said action, which notice Philips shall promptly provide to all other Eligible Content Participants. Any Eligible Content Participant who has been harmed or will be potentially harmed by the same breach shall have the right to join in said action by seeking to intervene within 30 days of the receipt of written notice from Philips, and may not bring a separate action with respect to such breach. It is the intent of this Agreement that only one Third Party Beneficiary action may be brought against Licensee arising out of the same breach, and this Agreement shall not be construed to create any Third Party Beneficiary right with respect to the same breach that is not joined in the same action. Licensee shall not object to any motion to intervene brought in compliance with this Article 4.06. For the purpose of this Article 4 (including, without limitation, both as regards the procedure and for the calculation of damages), any substantially related series of breaches shall be deemed a single breach. Failure by a Third Party Beneficiary or by Philips to provide notice hereunder shall not be a defense against any third party beneficiary claim nor shall such failure be grounds for delay in the granting of any preliminary relief.

In the event of a claim by a Third Party Beneficiary brought against Licensee in accordance with the provisions of this Agreement, the prevailing party in such action shall be entitled, in addition to any damages or other form of relief as may be awarded in such action, to recover from the non-prevailing party in such action, its reasonable attorneys fees in connection with said action.

Article 5 - Specifications, Technical Information and Support

- 5.01 Upon execution of this Agreement, Philips shall make available to Licensee for use by Licensee a copy of the then current version of the Super Audio CD Copy Protection Technology, Part III-General and Part III-Player.

- 5.02 Licensee will be notified in writing of any additions or modifications to the Super Audio CD Copy Protection Technology, Part III-General and Part III-Player.
- 5.03 Philips and Licensee each undertake to keep each other generally informed of any developments which may be relevant for the Super Audio CD Copy Protection Technology.

Article 6 - Confidentiality

- 6.01 Licensee acknowledges that the Super Audio CD Copy Protection Technology is highly confidential and proprietary to Philips and Sony and that any unauthorised use or disclosure thereof will cause irreparable harm to Philips and Sony and Rights Owners in the content and Licensee shall take all necessary measures to protect and preserve the confidential nature of Super Audio CD Copy Protection Technology made available by Philips, in accordance with the provisions of the Super Audio CD Confidentiality and Non-Disclosure Agreement for Highly Confidential Information signed on even date.
- 6.02 The obligations concerning confidentiality contained in Article 6.01 shall survive expiry or termination of this Agreement.

Article 7 - Indemnification and Limitation of Liability

- 7.01 Licensee shall indemnify and hold Philips and its officers, members, representatives, agents, directors, equivalent corporate officers, and employees harmless from and against any and all losses, deficiencies, damages, liabilities, costs and expenses including without limitation, reasonable attorney's fees and all related costs and expenses, to be paid or otherwise incurred in connection with the defense of any claim, action, suit, proceeding or litigation, which result from any breach of any obligation contained, herein, whether willful, inadvertent or negligent, and whether committed by Licensee, its Associated Companies or its employees or agents.
- 7.02 In no event shall Philips or its officers, members, representatives, agents, directors, equivalent corporate officers and employees be liable to Licensee or any of Licensee's Associated Companies for any direct, indirect, consequential, incidental, special or punitive damages, losses, costs or expenses arising under or relating to (1) any claim by a Content Participant against Licensee or any one or more of Licensee's Associated Companies, whether contemplated hereunder or not, (2) any claim that Licensee's use of any of the technologies identified in the Super Audio CD Copy Protection Technology infringes any intellectual property right or other right of any third party, or (3) any other claim otherwise related to or arising under

this agreement or to the compliance with the Super Audio CD Copy Protection Technology.

- 7.03 If, for any reason, article 7.02 is found to be unenforceable, in no event shall Philips be liable to Licensee under any cause of action arising under or related to this agreement or to Licensee's compliance with the Super Audio Copy Protection Technology for any amount greater than the total royalties paid by Licensee under the Super Audio CD Player Patent License Agreement for the immediate preceding calendar year.

Article 8 - Term and Termination

- 8.01 This Agreement shall enter into force on the Effective Date, as defined in the Super Audio CD Player Patent License Agreement and shall automatically terminate upon the expiry or termination of the Super Audio CD Player Patent License Agreement, unless terminated earlier in accordance with the provisions of this Article 8.
- 8.02 Philips may terminate this Agreement at any time by means of written notice to Licensee in the event that Licensee fails to perform any obligation under this Agreement and such failure is not remedied within 30 days after receipt of a notice specifying the nature of such failure and requiring it to be remedied. Such right of termination shall not be exclusive of any other remedies or means of redress to which Philips may be lawfully entitled, and all such remedies shall be cumulative.
- 8.03 Upon the termination of this Agreement, the Super Audio CD Player Patent License Agreement shall also be terminated and Licensee shall promptly return to Philips the Super Audio CD Specifications and the Super Audio CD Copy Protection Technology, Part III-General and Part III-Player as made available by Philips hereunder (and any and all copies thereof) and shall discontinue the use and application of the Super Audio CD Copy Protection Technology and shall discontinue the manufacture and sale of Super Audio CD Players.
- 8.04 Termination of this Agreement for whatever reason shall not affect Licensee's liability for breaches by Licensee of this Agreement that occurred prior to termination.

Article 9 - Miscellaneous

- 9.01 Neither the failure nor the delay of either party to enforce any provision of this Agreement shall constitute a waiver of such provision or of the right of either party to enforce each and every provision of this Agreement.

9.02 Should any provision of this Agreement be finally determined void or unenforceable in any judicial proceeding, such determination shall not affect the operation of the remaining provisions hereof provided that, in such event, Philips shall have the right to terminate this Agreement by written notice to Licensee.

9.03 This Agreement shall be governed by and construed in accordance with the laws of The State of New York.

Any dispute between the parties hereto in connection with this Agreement (including any question regarding its existence, validity or termination) and any third party beneficiary claims brought by Third Party Beneficiaries in accordance with the provisions hereof, shall be submitted to the competent courts of New York, New York or, at the election of Philips, insofar as it and defendant(s) is concerned, to the competent courts in the venue of Licensee's registered office or in the territory where the Super Audio CD Players not complying with the Super Audio CD Copy Protection Technology, Part III-Player and Part III-General are manufactured and/or sold or otherwise distributed.

Licensee hereby irrevocably waives any objection to the jurisdiction, process and venue of any such court and to the effectiveness, execution and enforcement of any order or judgement (including, but not limited to, a default judgement) of any such court in relation to this Agreement, to the maximum extent permitted by the law of any place whose law might be claimed to be applicable regarding the effectiveness, enforcement or execution of such order or judgement.

AS WITNESS, the parties hereto have caused this Agreement to be signed on the date first written above.

KONINKLIJKE PHILIPS ELECTRONICS
N.V.

[LICENSEE]

Name:
Title:

Name:
Title:

Exhibit I

Planned amendments and enhancements to the Super Audio CD Copy Protection Technology

This Exhibit sets out, in summary form a number of future amendments and enhancements to the SACD Copy Protection Technology which Philips intends to issue in the future, in accordance with Article 2.03 of this Agreement. The information contained in this Exhibit is provided on a provisional basis only. Philips shall not be liable in any way in connection with Licensee's reliance on the provisional information contained herein. Without limiting such provisional nature, the dates referred to below are not material to Article 2.03.

Philips intends to release an update of the Super Audio CD specifications in the third calendar quarter of the year 2002 that will contain additions and clarifications concerning interfaces between Super Audio CD player sub-units and between Super Audio CD players and other devices, whether within one housing or between separate housings. Some of these clarifications and additions are:

- a) Content from the HD layer of an Super Audio CD Disc shall not be transferred through a digital connection to any analog or digital recording device in the same housing as the Super Audio CD Player.
- b) The transfer of HD layer content through a digital connection to another device (including, without limitation, a recording device or any Super Audio CD Player sub-unit) in a separate housing is an "external digital output" and must comprise IEEE 1394 with DTCP.
- c) A Super Audio CD Player Sub-unit interface that is a digital connection to another Super Audio CD Player Sub-unit in a separate housing is an "external digital output" and must comprise IEEE 1394 with DTCP or be inoperable such that no HD Layer content may be transferred over it.
- d) No external analog output from a Super Audio CD Player or Super Audio CD Player Sub-Unit may transfer HD Layer content at a rate exceeding normal playback speed.

Philips intends to introduce the concept of "Approved Secure Recorders". The intention is to publish objective criteria for the approval of recorders as part of the updated Super Audio CD specifications that Philips plans to release in Q3 2002. Digital copying of HD layer of a Super Audio CD Disc is not allowed under the current specifications, but a copy of stereo content in CD-quality to an Approved Secure Recorder will be allowed. In the same release of the Super Audio CD specifications, the Copy Control Information on a Super Audio CD will be extended to allow the specification of number of copies that can be made and the quality level of such copies.

Philips intends to publish objective criteria for the approval of secure digital interfaces for the transport of content from the HD layer of a Super Audio CD Disc between sub-units in

separate housings, or between Super Audio CD Players and Approved Secure Recorders in separate housings.

Philips intends to create the possibility to play Super Audio CD Discs in software on a PC. The current specification does not allow for access by PC software applications to the HD layer of a Super Audio CD disc. The intended release date for the specification of this secure SACD-PC interface is Q3 2003.

Philips intends to introduce a revocation mechanism for Super Audio CD Players. The intention is to embed the revocation technology in a new version of the LSI –package that will be included in new versions of the CP Compliant ICs. The intended release date for the specification of the revocation mechanism is Q3 2003. Super Audio CD Players and CP Compliant ICs are expected to comply with the revocation mechanism within 42 months after the release of the specification. The revocation mechanism will have the following characteristics:

- a) Each individual Super Audio CD Player will have its own unique identification.
- b) A single Super Audio CD Player can be revoked, without affecting other Super Audio CD Players.
- c) Support for revocation in a new Super Audio CD Player shall not cause such new Super Audio CD Player to refuse playback of current Super Audio CD Discs.
- d) Support for revocation in new Super Audio CD Discs shall not cause such new Super Audio CD Disc to fail to play back content on a current Super Audio CD Player, except for: (i) Bonus Tracks. This new concept will be introduced in the Super Audio CD specification of Q3 2003. A Bonus Track is a track that is meant to play back only on Super Audio CD Players which support revocation. Bonus Tracks will occupy at most 20% of the playing time of a disc, and (ii) Associated content, such as images, text and lyrics, that are added to the Super Audio CD specifications in versions later than version 1.2.

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Reference copy