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Quality Responsibility for Online Digital Music Distributors

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Abstract

Today, the transactions of music has significantly changed in the way that the transaction objects have become more intangible as they are no longer transacted along with a physical carrier such as a record. Moreover they are transacted over the internet. The consumer protection acts were not designed with these new ways of transacting music in mind. This implies that the transactions of intangible goods such as digital music through the internet may be treated differently than what is the case if the music would be packaged more tangible and then transacted upon. For consumers this may imply less protection from receiving defaulted goods which is one of the fundamental protected rights in all purchase laws. For business actors this uncertainty implies that it is difficult to make a risk assessment on what rules one has to follow when creating consumer agreements and to what extent consumers will complain or leave the business if one is using doubtful contractual stipulations. Such uncertainty may lead to higher transaction costs than what otherwise would have been the case.

The focus of this thesis is to investigate quality responsibility within the field of digital music. This has been done through investigation of legal acts, case law and studying both legal and other kinds of literature. In order to illustrate the current situation, a brief case study have been conducted through investigating the actors, Spotify, Last.fm and iTunes Store which all provide different kinds of digital music solutions over the internet. They have also all in some way defined what kind of defaults a consumer may claim through their end-user agreements. Finally, the legislative conclusions have been put in relation to the norms of the public arena and the consumer collective in order to assess whether business actors may risk other claims than merely civil right ones when using certain kinds of contractual stipulations. The reason for this more than risk assessment is to assess whether a potential legal movement may suggest legal changes to existing laws, in the near future.

The result of this study shows that the Consumer Sale of Goods Act shall be applied to the transactions relevant here. It further shows that two out of three actors use quality disclaimers that might be doubtful in relation to the laws regulating physical goods. However, as this field is still emerging and that no clear case law exists, it is difficult to state exactly how these disclaimers would be judged in court. Even if three out of two actors use these kinds of disclaimers, it shall be noted that the third and biggest actor, iTunes, does take on responsibility for the quality of its goods. Furthermore, social movements are assessed to exist in the field of digital music. Currently, these are mostly focused towards legalizing free downloading of copyrighted music but may have potential to steer towards the feasibility of contractual stipulations of being forced to adhere to the current legislation and use the legal alternatives. This could imply risks for business actors using non-consumer friendly agreements as consumer protests may risk hurting their brands with a potential of general loss in consumers as a following consequence to this.

The conclusions in relations to this is first that there are existing laws that may be applied to these kinds of goods due to the similarity in transaction objects and the protection needs of consumers. Second, the warranty disclaimers have the potential to be disclaimed through the contract act. Third, a more consumer friendly business norm may be emerging with reference to the fact that iTunes today take on quality responsibility. Fourth, the consumer agency is strong internationally and may take actions within this field. Finally, there is a risk that the consumers otherwise organize into social movements to change this due to consumer dynamics in this field.

Foreword

This thesis has its focus on quality responsibility in relationships between internet solution businesses within the music industry and consumers. I first came across this subject while studying the course Advanced ICM at the master program Intellectual Capital Management at CIP¹ which I took as my specialization to my L.LM at Gothenburg University. Having spent some time with reflecting over the subject, I found that the issue was so complex that I at least needed to spend my thesis time with it in order to come to any clarity.

Half a year after this choice of subject, my initial thought on complexity has been confirmed. However, I have also managed to find paths that has lead me to a much more profound understanding of these matters. For this, I have several persons to thank.

First, I direct a special thanks to my supervisor, Kristoffer Schollin who helped me find my way when I thought I had lost all concepts (or at least mixed them up entirely). Second, I thank all my great classmates at the ICM education who are always up for discussions whether it be ethical subjects or the latest technology (or both combined). Third but not last, I thank my family and especially Daniel for making the seemingly end-less and sometimes lonely writing process much more agreeable.

¹ CIP is a development center for knowledge-based business based on collaboration between Chalmers University of Technology and University of Gothenburg currently located in Gothenburg, Sweden. See <http://www.cip.chalmers.se/> for more information.

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1. Introduction

1.1 Introduction

This thesis will investigate the issue of quality responsibility for distributing actors in the online digital music industry. The research will be conducted by investigating traditional legal sources such as the relevant legal acts, their subsequent preparatory works and case law as well as the normative behavior among business actors, consumers and administrative actors within this field. The purpose with this is to give a more full answer on what legal implications one might expect as not only legal texts or their preparatory works decide how legal questions will be solved as law is constantly constructed in relation to the surrounding environment.

Therefore, the thesis will hold several different chapters related to these different parts of the environment. First, the reader will be oriented to the business context where three business actors, Spotify, Lastm and iTunes will be presented as examples of this field. These actors will then be used as examples also in the subsequent parts of the thesis in order to give examples on how the legal constructions can be used towards this field as well as how these actors themselves shape the law. They will also be put in relation to actions from the administrative arena and the interactions with the consumer group. Within the presentation of the business arena, the consumer group will also be briefly presented.

Following the business field orientation, there is a chapter that orients the reader in the legal questions relevant to quality responsibility for the business actors within this field. The focus is on consumer acts as this is the target of this thesis and also the main buying parties of these distributing actors. Continuing this, a chapter with a legal assessment in relation to quality responsibility for digital music files will follow. This assessment will take into consideration both if there is no contract between the parties and if there is one in place as the legal systems under which the problems are to be handled differs depending on this (however, there are also connections between these systems, which will be seen below).

Following the legal assessment there is a short chapter on how the business actors themselves are shaping quality responsibility. The general ways the contracts of the business actors and what implications these may have in relation to the normative power of each business actor will be analyzed. The reason for this is that such business practice may set the rules for behavior at least as much as state regulated rules may. Also, such business actions may of course also flow into the legal system after a while in use.

After this, the sight is lifted from civil law to public law where it is investigated whether there are risks for actors within the relevant field of business to become attacked for the use of quality disclaimers. Following this analysis, there will be a discussion on what repercussions the three actors might risk on the business arena through the potential of consumer power which to some extent is linked to the actions on the public law arena. Also, these perspectives will then be analyzed in relation to legal and business aspects and the relation to brand management for mitigating potential risks is discussed.

Finally, conclusions on what rules apply to the market of digital music distribution when it comes to quality responsibility will be assessed.

1.2 Background

The field of internet business is constantly growing. From having watched how physical stores moved out to the internet to reach more consumers with their physical goods to seeing how stores were established on the internet only for the same purpose, we today see internet stores that focus on selling and distributing music online without the record format. These online digital music solutions are targeting consumers. This makes them an interesting subject for legal investigation when it comes to the quality responsibility as consumers have a more protected position when it comes to warranty disclaimers in Swedish Law. This applies to purchases of movable physical goods as well as services made to these. This stands in contrast to the fact that within this field of business there is a tendency to disclaim such responsibility towards consumers through end-user agreements.

1.3 Problem Definition

1 What legal protection for the quality of products/services has consumers purchasing digital music?

2 What other factors than legislation, preparatory works for legal acts and case law do the distributing actors within this field need to consider when designing what quality responsibility they take on within this field?

3 What freedom to design the end-user contracts do the business actors have in relation to the potential of consumer reaction/action?

4 What consequences could far-stretching warranty disclaimers have for business actors within this field?

1.4 Delimitations

First, as transactions on the internet makes nation boundaries obsolete to some extent as the transacting parties can be situated anywhere, especially difficult problems on which legal arena that in such case will be applicable exists. Even if the transactions on the internet now are without borders, the legislations guarding these are certainly not. This may of course, as stated by Hultmark, lead to a situation where business actors use the lack of legislation which is specifically severe in business to consumer transactions where a higher level of protection is needed for the consumer group.² As that discussion is so complex that it in my opinion deserves its own thesis (at least), this discussion has been disregarded in this thesis. However, a brief explanation of how to judge which nation's law is applicable will follow here.

According to the Rome Convention Article 5, paragraph 2, a consumer may not, through choice of legislation (in the agreement) be deprived the rights he/she enjoys through non-disposable legal acts in the country he/she stays in under certain conditions. The only relevant condition here which may make this rule applicable and thus the Swedish laws with consumer protection is if in the country where the consumer stays in, the consumer before he/she entered into the agreement had been

² Hultmark, C. "Elektronisk handel och avtalsrätt" p. 76.

targeted with a specific proposition or had been targeted through advertisement.³ From an e-commerce way of thinking, it is of course difficult to assess whether an offer targeting the consumer has been made or whether advertisement has been made in the country of the consumer as no such territorial boundaries exist on the internet. According to Hultmark, it is not enough that an advertisement exists passively on the internet in order for it to be assessed to specifically target Swedish consumers. Examples of more active ways to target the consumer is to establish hyperlinks from a Swedish to a foreign page (if created by the foreign business actor) or if the advertisement is being made in Swedish.^{4,5} Even if these are not clear-cut answers to when the Swedish consumer laws should be applicable, we should however through this be able to analogize and state that for web-pages that use versions in Swedish, one can state that they aim at directly targeting Swedish consumers. In these cases, Swedish consumer protection acts will be applicable according to the Rome Convention. All of the actors subject to investigation in this thesis except Spotify uses such versions and can thus be said to answer before Swedish consumer acts. Spotify is however also subject to Swedish laws as they have entered Swedish law as applicable law for their transactions through their current end-user contract.⁶

As all of the three actors which will be further investigated here, to some extent choose to frame their value propositions to the consumers as services, it is interesting to note that according to the Rome Convention Article 5, paragraph 4, point 2, these rules shall not be applied to services provided in another country than the one where the consumer has its regular settlement. This could imply that consumers may lose protection which they are granted through the countries which they live in. This also opens up for country shopping for the most business actor generous legislation among the business actors which are not willing to take responsibility. However, what can be said about the transaction objects today is as they are not the traditional kind of services where someone serves another through physical aid they are neither provided in a defined geographical context. Consumers may carry their computers or listening devices with them and it is most likely that most people would perceive that their music “services” are being enjoyed in the country they listen to it and not in the country from which it is being wired.

This view is also enforced by the fact that Spotify, for copyright access reasons, limits their consumers to enjoy their “service” in relation to which nation they are situated in. Thus, it would be very difficult at least for Spotify to claim that their “service” is being provided in the country where they have their office as the consumption of the service is limited in relation to where the consumer is located. Also, one should keep in mind that whether the business actors choose to name their transactions as services or sales of goods is not what is relevant. The legal assessment still needs to be done in relation to what the business is most similar to in relation to the existing laws.

This thesis is furthermore limited to disclaimers of responsibility related to quality of a product/service in the field described in the introduction. This implies that it does not cover disclaimers related to damages more than indirectly by the fact that disclaimers of quality of course

³ To see what the other conditions imply, you may refer to Hultmark, C. *“Elektronisk handel och avtalsrätt”* p. 77.

⁴ Hultmark does not handle the problems which arise in countries where the language is not exclusive to that national territory. It does not seem feasible that the consumers of such countries should enjoy less protection just because their language is being used worldwide.

⁵ Hultmark, C. *“Elektronisk handel och avtalsrätt”* p. 83

⁶ See appendix 1. Spotify end-user agreement.

also affects the possibilities to damages stipulated by law (since you cannot claim damage for default if there is no default). By stating that it does not cover damage disclaimers, I refer to disclaimers both about the claiming of damages for a specific part as well as disclaimers on damages up to a certain sum. The reason why I have excluded these warranties is merely of disposition causes as I think that the thesis would become too large if also these subjects would be treated here. My appraisal is though that a lot of the more principal oriented thinking in the thesis could also be applied to those kinds of disclaimers as well.

It should also be said that as the aim with this thesis is to investigate the digital music distribution exemplified by three business actors the large arena of illegal downloading of music is outside the scope of this thesis. Some references will however be made to this field by exemplifying the connections of this arena to the legal alternatives as it affects the legal alternatives to some extent and thus the environment which they have to operate in.

1.5 Method

To answer the above standing questions, a qualitative investigation of the business arena of internet solutions in music towards consumers has been carried out. The reason why a qualitative method has been chosen is because a more in-depth analysis of a few actors is assessed to be more giving when it comes to investigating the potential use of far-stretching warranty disclaimers within this field than what would have been possible if one would e.g. investigate how many of all of the actors within this field that use warranty disclaimers. Such quantitative approach would merely show the practice of the business area but would not view how these disclaimers relate to the rest of the contractual stipulations that builds up the business relationship with the consumer.

To compensate for the lack of quantity, the three chosen actors that have been investigated are providing three slightly different solutions and thus conclusions about the general use of warranty disclaimers can be drawn to the extent that one can see whether there are any differences and similarities. Also, as iTunes is studied, general conclusions on what the business practice within this field is may also be drawn as iTunes is dominating the current market with around 70% of the market share.⁷ Furthermore, the lack of quantity will be solved by having a more general outlook on the field of internet business where is needed and a lot of conclusions are assessed to be general to the field of internet solution business (towards consumers).

Furthermore, traditional legal methods with investigation of legal sources have been used. To compensate for the jurisprudence that one risks falling into, a separate theoretical framework which will be further explained below has been used.

1.6 Theoretical Framework

This thesis does not solely use what commonly has been referred to as conventional legal method and what mainly can be considered to be jurisprudence. The reason for this is that I adapt a social constructivist view⁸ on law and thus view law as constant subject to change from outside as it is only part of an ever-changing system where technology and economy plays large parts when it comes to questions like the one subject to this thesis. Practically, this implies an approach to analyze legal

⁷ http://en.wikipedia.org/wiki/iTunes_Store accessed the 2nd of June 2009.

⁸ See e.g. Searle, J R. *“Konstruktionen av den sociala verkligheten”*

questions in a broader way than investigating case law and the preparatory works and then suggest a solution from this.

The reason why I think such approach is necessary is that law is under the constant influence of its surrounding environment. This implies that a legal act may be due to change in relation to its context at any time. If one has not considered this outer environment when giving legal advice, the advice both risks being void quickly as well as dangerous financially to the business actor which was not highlighted on all aspect surrounding the legal environment. Furthermore, legal judgments in court have little validity if they are not embraced in the field of business as business actors will then weigh the costs for breaking them with the gain of complying and changing established practice. The judgments are thus not accepted as laws. Therefore, of course also courts need to take other consideration than strictly legal practice and preparatory works into account when judging in the individual case.

Concrete, in this thesis, I will complement the common studies of legislation and their applicability to the unclear legal question subject to investigation with a way of approaching the problems with a theoretical framework developed at CIP⁹ by professor Ulf Petrusson referred to as the three arenas. This framework is developed around the thought that norms are simultaneously created and reified on three different arenas. These arenas are the judicial, the administrative and the business arena.

The judicial arena is the arena where laws are being reified which is the court system. This implies that studies of the case law in the relevant legal arena will reveal judicial norms on how to behave in certain business settings. The relevant legal arena in its turn is decided by where the business parties are to answer for their actions if turned into disputes.

The business arena is the relevant market of the business parties where norms develop through the behavior in trade. When looking at technological businesses, technology implications can also be considered to be part of what happens on the business arena. From a legal point, this arena is of course not new considering that the importance of business norms is widely discussed in doctrine, especially when it comes to purchase and contract law. However, what this theoretical framework allows us to do is to make a deeper analysis over the business arena to be able to foresee how it will develop in relation to the needs based in the goods/service that are being traded. Considering the fact that the business that is to be studied in this thesis has quite a special outlook compared to traditional consumer business as it has detached much of the physical packaging, I think this approach is specifically valuable.

The third arena is the administrative arena. This arena is focused around the administrative process which guards e.g. the granting of intellectual property rights. For the purpose of this thesis, the administrative arena will mean those government agencies that guard the market but does not have judicial power on their own. In this thesis it is interesting to study the administrative arena as it may both steer the boundaries for what is allowed in the business as well as it may be a tool for consumers that could want to fight for changes on the business arena due to the legal situations they face today.

⁹ Center of Intellectual Property, Göteborg <http://www.cip.chalmers.se/>

To these three arenas, one can also add a fourth arena- the political arena in order to analyze what is being done and can be done in and by what can be referred to as the civil society. When looking at this arena in this investigation, the focus will be on the potential impact of consumer power. This implies studying whether consumers have the potential to form into social or legal movements. As the thesis cover questions within a field that is subject to quick change, I assess that this view is much more feasible than studying e.g. party politics in order to discover potential changes as threats to the current legal field.

1.7 Sources

In this thesis, several different kinds of sources will be used. Below I will present the ones adherent to larger blocks, how they are used and explain the purpose with each type of source in relation to the study object.

1.7.1 Legal Acts and Preparatory Works

Several legal acts in relation to their preparatory works have been studied. The reason for this is that the purpose with this thesis is to large part to investigate what legal rights respectively what obligations a business actor has when it comes to grant quality responsibility for the objects traded to consumers. As this is a legal thesis, the intuitive starting point from a lawyer's perspective is then to investigate the legal acts and what normative power these may have in relation to the specific situation.

1.7.2 Legal Literature

Legal literature written by established legal professors in Sweden has been studied in order to understand the purpose of the legal acts and to give normative support to the legal reasoning portrayed in the thesis. Also, legal literature of less normative importance, such as student essays have been used as benchmarking and inspiration for how to study this field. However, as little (nothing from what I have found) has been written about this exact field in the legal literature, most of the reasoning by the sources within the group of legal literature has served mostly as a framework which the argumentation in this case had to consider.

1.7.3 End-User Agreements

As the reason with the thesis is to investigate the quality responsibility in relation to the field of business, it becomes necessary to investigate whether the actors of this field has established norms that guards their relationship. This is here most feasible done through investigating the written agreements which the business actors impose on the consumers when they agree to pay for their objects. Since time limitations (and difficulties to detect all actors) hinder the investigation of all end-user agreements within this field, the sources used within this group is mainly the end-user agreements of Spotify, Last.fm and iTunes.

1.7.4 Business Field Literature

In order to understand the thinking in the field of business, several books and some market reports have been studied. These have then been incorporated in the chapters on business orientation and the thinking around how the legal acts relate to the business aspects.

1.7.5 Web-blogs

Several web-blogs have been consulted in order to investigate the potential discontent of consumers when it comes to the lack of quality responsibility structures in the field of digital music. Web-blogs

function well as a source in this case as they are very well spread among common people who may have these kinds of problems. As most blogs tell the stories of private persons' lives which implies discontent with products is therefore assessed that web-blogs will give a picture on whether there even is a problem with lack of quality responsibility today among consumers and thus any relevance for this thesis (at the time).

1.7.6 Wikipedia

Wikipedia¹⁰ has been used as this source is assessed to give updated information which regular dictionaries cannot give as the phenomena investigated are too new and under constant change. Wikipedia has been used to give information about the business and technologies of the three business actors further investigated in this thesis. The purpose is thus to be able to paint a picture of the business and technological fields which are out there.

¹⁰ www.wikipedia.org

2. Definitions

2.1 As-is-disclaimer

In several places of this thesis, I refer to “as-is-disclaimers”. With this I mean a disclaimer that uses writings stating that the goods/services is transacted to the consumer “as-is” and “as-available” or similar. An example of such disclaimer is:

“(…) The Spotify Software Application and the Spotify Service is provided on an “as is” and “as available” basis.(…)”¹¹

2.2 The Three Actors

When referred to the three actors in this thesis, Spotify, Last.fm and iTunes is meant even though technically when it comes to the case of iTunes the service/product is offered through iTunes Store while the actor behind it is Apple. The idea to use “iTunes” as the name here is taken from the end-user agreement in which the business actor is referred to as exactly that.¹²

2.3 Quality Responsibility

The aim with this thesis is to investigate what responsibility the distributors of digital music has over the quality of the goods they transact to the consumers. This kind of responsibility differs from other types of responsibilities which a seller may have in the way that it only considers the quality of a sales object. It does not cover damages which a product may cause to other products in the environment which it is a part of.

¹¹ Section 13, Spotify end-user agreement accessed the 26th of April 2009, see appendix 1.

¹² See the iTunes end-user agreement, appendix 2.

3. Business context

3.1 Field of business

The field of business which this thesis will center around is the field where music is being transacted online from companies to consumers. According to a market survey from IFPI¹³, the digital platforms today account for around 20 per cent of all recorded music sales. This implies a trade value of around 3.7 billion USD.¹⁴

This is in a time where illegal downloading is still a large problem for music providers and even if it has been debated how much is lost in sales through illegal downloading it seems as if the Swedish court judges that it at least a somewhat higher turnover would be possible if illegal downloading would not be the case.¹⁵ As digital file transfer online rapidly replaces the old ways of purchasing music, this field of business will certainly grow.¹⁶ Taking into account the recent developments in relation to the Pirate Bay ruling¹⁷, it seems as it now is at least possible to take actions against larger actors facilitating downloading, even if they are not the sole facilitators to this, in case these actors are subject to contributing to illegal downloading willfully. This could level the field for the legal actors as more of the consumers supposedly will have to purchase their music if the illegal market is being cleared.¹⁸

Today there are several different actors that offer an array of different ways to purchase music as digital information over the internet. Two examples are CDON music store's downloading service at www.cdon.com another example is Myspace's service enabling downloading as well as streaming of artists choosing to join as well as constituting a networking platform for artists www.myspace.com. What will be the focus of this thesis is however three other well-known music "service" providers¹⁹

¹³ IFPI is representing worldwide music recording companies by aiming to fulfill the vision of promoting the value of recorded music, safeguarding rights of record producers and expanding the commercial uses of recorded music. www.ifpi.com accessed the 29th of April 2009

¹⁴ IFPI "Digital Music Report 2009" p.4

¹⁵ This is based on the fact that the court submitted the defendants to pay damages of amounts higher than the actual costs for the single copies of infringed copyrighted objects. This means that damage had been made to the sales of these objects and the plaintiffs were therefore in the right of damages compensating such loss. "The Pirate Bay Case" Case number B 13301-06.

¹⁶ IFPI "Digital Music Report 2009

¹⁷ "The Pirate Bay Case" Case number B 13301-06.

¹⁸ The impact of the recent judgment in the Pirate Bay case has been highly scrutinized in media, before as well as after the ruling. See for example: <http://www.gp.se/gp/jsp/Crosslink.jsp?d=286&a=489671>, <http://www.aftonbladet.se/ledare/article4933235.ab>, <http://www.aftonbladet.se/debatt/lottagroning/article4928651.ab>, <http://www.aftonbladet.se/debatt/lottagroning/article4928651.ab> However, if the Pirate Bay-ruling will persist in the current form also in the appealing court(s), the judgment can be assessed to of such important principle quality that the actors in the music industry efficiently can use it as a tool to fight illegal music downloading, no matter what techniques are being used. The reason for this is that high focus is targeted towards the fact that the technology provided though a website does not need to be the sole technology required to infringe copyrights. Even though the Swedish newspapers, see e.g. assess that anonymity will increase on the internet, the judgment in conjunction with the newly adopted rules on Civil Rights Sanctions in the Intellectual Property Field (Civilrättsliga sanktioner på immaterialrättens områden Ds 2007:19) is assessed to be efficient tools to reach copyright infringers in the digital music field.

¹⁹ The reference to these three actors as service-providers does not imply that they provide services in the legal sense. The choice of wording has been made solely with reference to what these three actors themselves choose to call what they are offering.

under the names of Spotify, Last.fm and iTunes. These three actors have been chosen as they (currently) represent three different ways of offering digital music. They have also been chosen since they are somewhat perceived to represent three different philosophies and sizes where iTunes is the established, mainstream downloading service which is most well-known over the world. Spotify is instead the name of the latest thing with its on demand streaming concept which quickly became a must have amongst tech and music savvy young people sometime in the autumn of 2008 in Sweden and then spread also to other countries. Last.fm is being perceived as somewhere in between these two, being something of the choice for alternative music listeners where music can be either streamed or downloaded.

All of these actors will be further presented below in this chapter. However, before that will follow an introduction to what objects are being transferred and how these diverge and coincide with the ways music used to be transacted upon.

3.2 Transaction objects in the music industry

Most people today seem to agree that we are moving away from a music industry where music is being transferred through highly tangible physical carriers which set the scope of the musical works. What is now being transferred is solely the digital information packaged as software to be implemented in a computer or music device environment and as will be discussed below, the transfer of the specific music object does not even need to be permanent.

3.2.1 The old objects

As stated above, the old ways of transferring music (live music excluded) consisted in packaging the music in the shape of a physical carrier. The carrier was thus tightly connected to the music it held. There have been several carriers over the years of course, such as the vinyl record (LP), the CD's and the minidisks. All had in common that they limited the amount of music which they could carry, creating a record industry. The transactions between companies to consumers implied that a purchase was made of a highly physical object which was transacted permanently to the consumer.

3.2.2 The new objects

In the new way of transferring objects, the objects being transferred look a bit different. The most obvious difference is of course that the physical carrier which directed the scope of the musical work has been taken away. This has had incremental meaning for the music industry which was very much focused on selling records rather than music no matter the packaging. As these carriers now have been removed, the music has to large extent been freed from formats and is thus more intangible. Of course it is still depending on physical carriers to be traded (even live music is carried by someone) but as it can be traded over the internet, the technological transaction solution of the digital music is more central. The disconnection of the physical carrier put into the internet environment of internet also makes the new ways of transacting music much quicker, easier and as we will see below, more varied.

3.3 Spotify

Spotify, which can be found at www.spotify.com was quite recently²⁰ launched to the public as a service for instant music listening covering access to the music catalogues of several large record

²⁰7th of October 2008 <http://www.spotify.com/blog/archives/2008/10/07/weve-only-just-begun/>, accessed the 2nd of June 2009.

companies and with more to come. From the release, Spotify quickly grew to become the latest thing in music which everyone was craving to have- but not everyone could have for free. The reason for this is that there are currently²¹ two main ways to enjoy Spotify in Sweden, either you get an invite which allows you to listen to parts of the Spotify library for free, or you can buy access to the entire library²², currently²³ for about 12 USD²⁴/month or around 1.2 USD²⁵/day. The access to music is entirely depending on what copyrights Spotify can negotiate with the holders of these.

As stated above, the music transferred by Spotify is transferred through streaming. There is no digital information permanently stored on the computer being transferred to the computer for the user to gain access after the streaming has ended. Thus, no data have been transacted definitely to the consumer's computer. As will be seen below, this may be somewhat problematic when put into a legal perspective as sale of goods generally implies a permanent shift in possession from the seller to the buyer. If no such shift takes place, it may be close at hand to define a transaction object as a service from a legal point of view. This is also how Spotify themselves choose to define their transaction whether they are aware of the legal constructions or not.

3.4 Last.fm

Last.fm was founded way back in 2002 but put into its current form in July 2008²⁶. The idea with Last.fm is to use a recommendation system²⁷ which suggests songs to the end-user based on a net of the end-user's taste in music by recording what music the end-user listens to/likes. This music can then be listened to through Last.fm radio or downloaded if an artist has granted such copyright access.²⁸

Considering the fact that Last.fm offers both streaming and downloading of music, attempting to make an assessment of whether the transfer could constitute sales of goods or providing of service may differ among these two transaction types as streaming may be a bit more difficult to put in the sale of goods context. In such case one will most plausibly have to separate among these to services also if they are being transacted from the same actor even if the actor uses the same legal environment through e.g. end-user agreements for both kinds of transfers.

3.5 iTunes

iTunes Store is probably the most well known digital music store existing today considering its massive market share.²⁹ As iTunes Store is offering downloads of music data, it provides transactions

²¹ The 24th of May 2009.

²² It is not exactly true that you will have access to the entire library since there are restrictions in access related to which country you are listening from, however, this is not going to be dwelled into further here.

²³ The 29th of January 2009

²⁴ About 100 SEK the 29th of April 2009.

²⁵ About 10 SEK the 29th of April 2009.

²⁶ <http://blog.last.fm/2008/07/17/lastfm-the-next-generation> Last.fm Blog. 2008-07-17. Accessed the 30th of January 2009.

²⁷ Audioscrobbler

²⁸ Last.fm can also be seen as a social network for music in itself as well as it offers a kind of Wikipedia covering about 200 000 artist profiles. <http://www.rmmlondon.com/archive/lastfm-platform-of-brand-utility/> As this part of Last.fm is not relevant to what is being transacted as digital music to the consumers these functions will be disregarded in this section. However, these functions will be further discussed in relation to the consumer branding, see section 13.4 Last.fm's Brand among Consumers.

²⁹ As up until January 2009, iTunes had been accounting for 70% of the digital music online sales according to http://en.wikipedia.org/wiki/iTunes_Store accessed the 29th of April 2009.

in the new way of transferring music most alike to the old kinds of objects. Even if the music does not have a defining physical carrier anymore, it is still shifting hands in a way since the consumer actually gets to keep the digital data holding the music at its computer as the music has been transacted to the consumer. Therefore, these kinds of trade objects may be easier to analogize to existing sale of goods stipulations. This will be further discussed below under section 5.1.

3.6 The Consumer Collective

The consumers of digital music today are to large extent illegal consumers. According to the market survey by IFPI which has previously been quoted, around 95 per cent of all digital music consumption is taking place through illegal means.³⁰ The implications such large group of illegal users has also for the legal alternatives and what kind of contractual stipulations being used for these will be further deconstructed and analyzed below.³¹ For now it suffice to conclude that it seems like record companies see high potential in turning this very large group of illegal users into legal ones. The fact that this would be possible is supported by a survey made by the University of Hertforshire on behalf of British Music Rights young adults (18-24) are willing to pay for music if they were to be offered an attractive service model.³² Out of this large group of digital music consumers, there is then a group of 5% that actually are paying to receive their music. This group is of course the most relevant for this thesis as the investigation considers legal alternatives and which default responsibility can be claimed. The US analyst firm, Jupiter Research concluded in 2005 that most of the paying consumers are between the ages of 25 and 44.³³

Maria Styvén has analyzed what are the most important values of potential digital music consumers and from this can be concluded that e.g. stable sound quality, flexibility in use (which exempts the use of DRM protection) and brand trust were values raised by the consumer group. Furthermore, there is risk awareness towards virus infections on the computer while such consciousness towards lack of performance is lower. Styvén explains this as adhering to the fact that consumers are aware of the fact that many of the companies within this field disclaims responsibility for defaults to hardware of consumers caused by the transacted file.³⁴

The questions is if consumers really can be said to be aware of this is as actors, as will be seen below, use disclaimer which disclaims also defaults inherent in the product per se. Also, when it comes to the contractual perspective of this consumer group, it can be concluded that the agreements which are being entered into have a tendency to not be read. According to a new study from Borås högskola this may depend on the fact that consumers may think it is feasible to accept a certain agreement without reading it since a lot of people in its closest network has accepted the agreement before. However, when it comes to agreements where the transactions concern monetary

³⁰ IFPI "Digital Music Report 2009" p.5

³¹ See section 12 The potential for Consumer Interaction

³² Accessed the 29th of April 2009.

³³ <http://digital-lifestyles.info/2005/11/30/legal-digital-music-downloaders-not-kids-shocker/> accessed the 6th of April 2009

³⁴ Styvén, M. "Exploring the Online Music Market..." p. 206, 207

compensation from the consumer to the other contract party, more people reads the contracts.³⁵ Whatever the reason for this is, it suffices to state for the purpose of this thesis, it is not certain that the consumer group actively takes part of the agreements they are entering into. Therefore they are thus not aware that the business actors disclaim quality of the objects they purchase even though performance is an important factor for this group.

³⁵ Smedberg, R "*Internetavtal...*" p. 40

4. Technological Context

4.1 Introduction

In order to understand the business reality and what risks the three actors and other actors within this field are subject to one need to understand the technological building stones which make up the transaction objects. In relation to these, one can discover what general problems these technologies may give rise to. As we will see below, all of the three actors use warranty disclaimers in relation to their consumers and this of course is so due to business considerations. These are then based on technology assessment as the technologies used to transact the digital music objects are core of the transaction objects being the physical platform which a consumer meets in the transaction. With that said, as my background in technology is not sufficient enough to explain the technologies in depth, this contextualization will be quite brief and mainly focus on the most evident technical defaults that may derive from certain kinds of technology choices. In relation to the legislative default context, more specific potential defaults of each of the three actor's transactions and what legal responsibility the actors may be subject to will be analyzed.³⁶

4.2 Streaming Media Technology

Both Spotify and Last.fm uses technology for streaming media. This technology represents a way of transmitting music (or other multimedia) through a flow which implies that the music is being presented to the user in the same time as it is being transferred from the delivering party. Streaming can be offered on demand or live where an on demand streaming service. Live streams are offered only at a particular time comparable to live TV while on demand streaming allows storage of streams on a server for a long period of time and is available at a user's request.³⁷ Both Spotify and Last.fm can be said to offer on demand streaming services.

As streaming implies a constant flow of information during the entire time it is taking place, listening to music with help of this kind of technology is more vulnerable to external interruptions as the stream needs to be constant to perform. This can in parts be helped through caching³⁸ which enables the music information to be stored on the end-users hardware in order to sidestep small interruptions. As this caching is only being done by smaller amounts of information at the time (since nothing is permanently transferred) the streaming and thus the music listening can anyway be interrupted if external disturbances occur. It can therefore be generally said that music accessed through streaming technology may be subject to a larger amount of external disturbances compared to music that is being permanently transacted and stored on the end-users computer.

4.3 Downloading Technology

In the case of iTunes and other internet stores where music is transacted upon similar to the way music used to be transacted upon, an object packaged as a digital file is being transacted. In iTunes' case, the format of these files is of Advanced Audio Coding (AAC) which is the MPEG-4-specified successor to MP3.³⁹ These files are being transferred immediately after the purchase and then stored locally at the end-user's computer which implies that they, compared to streaming transactions are

³⁶ See sections 7 Legal Default Responsibility... and 8 Contract Law (Section 36)

³⁷ http://en.wikipedia.org/wiki/Streaming_media accessed the 23rd of April 2009

³⁸ <http://en.wikipedia.org/wiki/Caching> accessed the 23rd of April 2009

³⁹ http://en.wikipedia.org/wiki/Itunes_store accessed the 23 of April 2009

less vulnerable to external influence during the transfer of information. However, as they are physical pieces of information they can of course be defaulted in themselves and these defaults are then also permanent for these files (as these are permanently transferred as defined objects of codified information). This implies that the risk for defaults when using this kind of technology primarily lies in the transferred file.

5 Orientation Legal Responsibility for Defaulted Objects/Services

5.1 Sale of Goods or Providing Services?

5.1.1 Introduction

When it comes to transactions of music objects, there used to be high clarity in the way that music which was packaged in the shape of a record would be subject to sale of goods. Today, however, all of the three actors which are under investigation in this thesis define their transaction objects as services why it is highly relevant to investigate whether this definition would hold legally and what consequences this may have for the consumers.

Today, in Sweden, there are legislative differences in how to treat transactions based on whether they are services or goods that is being transacted, where the sale of goods area is much well-developed area of law. Looking into the general Swedish legislation for Sale of Goods “Köplag (1990:931)” which will be much more explored below, it can be concluded that sales of goods can include more than just tangible goods. Examples of such are intellectual property and stocks.⁴⁰ What it does not include are objects which may be defined as real estate or services.

First, investigating only the object being transferred as has been done above, it can be stated that the transferred objects are no longer as tangible as what we have been used to. The question is then whether this has any significance to how we define the transactions. When it comes to sales of goods an important water-mark from when the goods has been transacted to the buying party is when it has left the control sphere of the seller to enter into the equivalent sphere of the buyer. This action implies that possession is being shifted permanently from the seller to the buyer and with this also most of the responsibility of the goods is shifted from the seller to the buyer.⁴¹ When it comes to services, no such permanent shift takes place as the object for a service-provider is merely to provide work-force to the one willing to pay for it. You may leave your shoes for reparation but the one who helps you with this service will return your shoes when done. Thus no permanent shift in possession takes place.

In relation to this, some questions concerning the new transaction objects arise such as whether the ownership of the new transaction objects are due to shift in possession. In relation to this it is also relevant to mention that it does not matter what the actors names their transaction as the agreement needs to be interpreted objectively. The question whether the services may be classified as transactions of goods or services will be further analyzed in relation to each actor below and the conclusions of this will then be presented in the end of this chapter.

5.1.2 Downloading Technologies

In the case of downloading technologies, as described above, the selling party is transacting a digital file to the consumer. This is a defined physical object as it consists of software material which enables functionality in the computer and digital music playing device environments which is being transferred permanently. In this aspect such objects are very much similar to the objects which clearly fall under the power of purchase law. However, what can be problematic when defining the

⁴⁰ Håstad, T. “Den nya köprätten” p. 29,30

⁴¹ Commentaries to the Sale of Goods Act section 6-11 commentary 17, Karnov database.

objects as exactly similar to the more tangible objects such as CDs is that the tenure actually is not always shifted entirely.

Taking iTunes as an example, songs that you buy to your iTunes library may be subject to later alterations by iTunes which you as a consumer has to agree to in order to continue to use your purchased files. Even though you have paid for your files you have thus not the entire potential to dispose as you wish over your bought material. Of course, if you have burnt your music files onto CDs, you can perfectly mimic the CD transactions as the companies such as iTunes cannot break into your home and have you alter the content of the CD as you own this physical copy. But what is then the difference implying that they can do so towards the digital files? Obviously, there is a different mind-set around the transactions of downloadable files respectively the transactions of CDs, at least in the case of iTunes. However, considering the fact that physical objects are being transacted and as the buyer can store these objects and access mostly at any time in the same format he/she left it, it can be said that a consumer to large extent holds the possession over the object. This therefore speaks in advantage to defining objects of downloading as sale of goods in legal terms.

One could of course still claim that it is not a sale of goods as the possession has not been entirely shifted. However, as it is the selling party that without any evident advantage for the consumers that keeps parts of the possession, it may be suggested that a stricter judgment on behalf of the consumers' protection is being made. This shall be specifically pointed out in context to the fact that consumers have a lot of rights when it comes to transactions of more tangible music objects today and that the legislation on consumer services is much more difficult to apply on these situations, as will be seen below. Therefore, the reasons to define this as a sale of goods weigh heavier.

5.1.3 Streaming Technologies

Compared to downloading alternatives, the actors using streaming to transfer music, such as Spotify and Last.fm, might stand before a bit different situation when it comes to defining the transactions they offer. Compared to downloading, when streaming music, no sustainable physical object is transacted. However, there are differences among actors also in the field of streaming when it comes to the amount of possession shift which has taken place. In the case of Last.fm, the consumer cannot steer the flow of music in any other way than adjusting preferences through tagging and other community based activities (such as letting Last.fm record all the listening a person makes through its computer or Mp3). This implies that a lot of the power over the object is still in the hands of Last.fm. Therefore it is difficult to claim that the possession is held by the consumer and thus no sale of goods can be said to have taken place. However, as consumers still can modify what is being streamed to them at which time, it is not feasible to say that Last.fm has the entire power over the objects either.

In the case of Spotify's streaming service however, one could potentially, state that also streaming services are transacted as an object as the object is a constant flow which the consumer might access after its preferences at any time (within the limitations of what is granted access to). What speaks in advantage of defining this as a sale of goods transaction is that the "service" can be accessed after the preferences of the consumer (the songs to be played are not decided by Spotify) at any time and this opportunity starts immediately after the end-user has entered into the agreement. Thus, the end-user has much disposal power which may speak in the direction of a possession shift.

However, as can be stated above in the case of iTunes, Spotify also keeps the possession in the way that they can change the content which the end-user may listen to. This is not possible in

transactions where the possession has been entirely handed over to the buyer. However, the fact that Spotify transacts copyrighted material which may be due to continuous changes in access due to the copyright holders will implies that it would probably not be possible to offer these kinds of transactions without such possession limitation. Another aspect is that Spotify keeps the right to interrupt the streaming flow with commercials in the free versions. This thus also inflict on the tenure of the consumer. On the other hand it may be stated that a consumer could be said to have the tenure over a commercial sponsored streaming flow on demand why the possession shall be considered shifted to this object. The aim with the transaction in whole is therefore still that the end-user shall be able to access it at any time why it is closer to state that a tenure shift has taken place than the other way around. Also, the reasoning around the higher consumer protection in sale of goods regulations due to its higher level of regulation, as in the case of iTunes above, still applies. Therefore there is a high potential of classifying the Spotify “service” as sale of goods.

5.2 Legislation

To investigate the questions of this thesis, it is necessary to study several legal acts as they converge in several ways when deciding what legal quality responsibility an actor shall be subject to. First, there is a differentiation between civil rights law and public rights law which implies that some parts of the law adheres to disputes between legal or physical persons (civil rights law) and some parts adhere to disputes between the state and a legal or physical person (public rights law). In this thesis acts of civil rights that will be handled are the Consumer Sales of Goods Act and the Consumer Sales of Services Act as the focus is on consumers. Furthermore the General Contract Act is studied as all of the three actors have end-user agreements which may set other rules for quality responsibility if these contract stipulations cannot be held invalid through this act. As when it comes to public law, the act regarding Contractual Agreements towards Consumers will be further investigated in the chapter concerning the potential of consumer agency interaction.⁴²

The acts converge in the way that they are based on the same principles, however the public and civil rights acts are not mandatory linked to each other when it comes to the application of these in court.⁴³ Below, please see a map over the general application fields of each of the acts that will be further applied in this thesis.

| Act | Relationship contracting parties | Application Scope | Geographical Scope |
|-----------------------------|----------------------------------|----------------------------|--------------------|
| Consumer Sales of Goods Act | B2C | Loose goods | Sweden |
| Consumer Sales of Services | B2C | Services to lose goods | Sweden |
| General Contract Act | B2B, B2C, C2C, C2B | Pure contractual questions | Sweden |
| Contract Conditions Act | B2C | Contract Conditions* | Sweden |

*This act is a tool for the consumer agency to investigate contract conditions from a state view why it cannot be directly asserted by private persons.

⁴² See chapter The Potential for Consumer Agency Interaction.

⁴³ See e.g. Grönfors “Avtalslagen” p. 177.

6 Legal Default Responsibility Consumer Sale of Goods Act

6.1 Introduction

The Consumer Sale of Goods Act was created to clarify the special need of protection consumers have when they purchase products that are common in their daily lives. According to section 1, the act is applicable to transactions where business actors trade movable physical objects to a consumer. The question here is whether digital music files may be defined as movable physical objects. The fact that the files are built up by technological constructions and can be looked at visually as software code speaks highly in advantage of considering them to be so.

The fact that separate downloaded files are possible to move around between playing devices also make them clearly movable. In the case of streaming, it is however more difficult to state that the streaming flow which is closest at hand to define as the transaction object is truly movable. The reason for this is that a consumer cannot take the flow outside of the streaming application which is bound to a physical artifact such as a computer. However, streaming is neither un-movable as the flow is transacted easily all over the world to consumers with internet access and thus highly movable in its kind. However as the sale of goods for consumers require more than for an object to be non-movable which is the case in the regular sale of goods act, some hesitance shall still be put in relation to the application of these rules on streaming “services”. On the other hand it does not seem feasible to make distinctions between trades of digital music objects just because of this slight difference in business models.

Furthermore, the reason why the Consumer Sale of Goods Act is limited to movable goods can mainly be assessed to be due to the fact that these were the goods that, at the time of the creation of the law, were the goods that were purchased by consumers in their daily lives. The stipulations in the Sale of Goods Act may therefore be applied to both of the investigated technological alternatives however with keeping in mind that streaming is not as clear-cut a physical object as downloaded files are why more restriction in the application may be needed to be considered in the specific case.

6.2 Delivery of Goods

The time point of when a good is delivered is a fundamental point for the application of the rules in the Sale of Goods Act as according to section 6, the delivery goods have occurred when the possession of the goods has been shifted from the seller to the buyer. Defaults incurred before this point implies that the goods is defaulted in the sense of this legal act and most other defaults incurred after this point will not be possible to hold the seller responsible to according to section 8 of this act.⁴⁴ Thus it becomes important to consider when in fact the digital music is delivered in the case of the three actors as the quality responsibility these actors have shall be put in relation to this time-point.

In the case of downloading services such as the ones offered by iTunes and Last.fm, it is quite natural to state that the downloaded files are in fact delivered to the consumers when the downloading has been fully concluded as the consumers receive full tenure of the digital files to be stored on their computers (or music listening device of choice). In the case of streaming services, the criterion of when in fact the music as the fundamental object of the services has been delivered is a bit more

⁴⁴ Håstad, T. *“Den nya köprätten”* p. 38,39.

difficult to state. The reason for this is that there is no final stage where the music leaves the hands of one party to the other as the streaming flow is continuous and in Spotify's case on demand from the consumer. For the sake of protecting a purchasing party of such service from defaults, it however seems most feasible to state that the goods are continuously delivered why defaults to these never-ending flows can be made at all times after the sound has been transferred through streaming in the first place. This gives the seller a chance to hinder defaults before making music available for streaming and the purchaser a chance to receive streamed music free of defaults which he/she has not caused by himself/herself.

6.3 Default Definitions

6.3.1 In Relation to the Agreement

According to section 16 of the Sale of Goods Act a traded goods shall be consistent in relation to what has been agreed among the parties when it comes to type, quantity, quality, other characteristics and packaging. In the case of the digital music which is provided by the three actors, no such specifications have been made in the agreements why it is not possible to claim defaults in relation to this. The fact that no such specifications follows from the agreement is logical as it is the business actors that solely decide on the contract terms and therefore do not want to give the consumers more rights to claim defaults than necessary.

Instead, two out of three actors have used far-stretching disclaimers in relation to the goods they transact (as can be seen in next chapter). This implies that they want to limit their responsibility for the transaction objects as much as possible. According to section 17, however, these kind of "as-is" disclaimers which Spotify and Last.fm use can imply that a good may still be considered as defaulted in some cases as the disclaimer can be considered as being too far-stretching to be held valid. The reason why such far stretching disclaimers may be limited is that they are being used in a way which does not rise suspicions among the buyers why they are buying into something they think is not defaulted.⁴⁵

According to section 17, paragraph 1 in the Consumer Sale of Goods Act, a goods that is sold "as-is" may be considered as default in spite of the disclaimer if it is of *less* quality than the consumer could have expected in relation to price and other circumstances. In the case of digital music, one could say that defaults such as virus defected files, streaming interruptions, corrupted files and lack of copyright clearance of transacted music as these defects all affect the core of music transfer as they may affect the music experience fundamentally. Therefore these default types all have potential to be raised towards a business actor even if he/she uses an "as-is" disclaimer. The criterion is though also that the seller should have known of these errors. In the way the stipulation is written it is hereby assessed that such knowledge needs to be connected to each specific default why a general knowledge about problems with streaming technology is not enough to hold a seller responsible for defaults due to this.

In the case of Spotify it is very interesting to notice that they with knowledge of the problem offered digital music which lacked copyright clearance which resulted in the exemption of these songs from

⁴⁵ Håstad, T. "Den nya köprätten" p. 79, 85.

the Spotify music catalogue.⁴⁶ As this affected the core of music listening for the consumers of this catalogue, the “as-is” disclaimer could thus be assessed to be held invalid. However, for this to have effect it is required that one can successfully argue that Spotify offers a defined set of songs to the end-user which may not be altered. According to my assessment, such interpretation is too far stretching in relation to what Spotify is today.

6.3.2 If There is No Agreement

According to section 16, paragraph 2 point one, in case there is no agreement about quality of the goods, the goods shall still be traded in a state suited for the purpose to which goods of the same kind generally are being used. This implies that the object needs to fulfill the core functions which one may expect from it. As music is defined as organized sound, whether it is being generated through e.g. a voice or through electro acoustic technique, broken sounds can thus be assessed to be defaults to the music per se. Also, all kind of defaults that defers the music listening substantially can be assessed as a default to the core functions as one generally expects to use music as it cannot produce a good listening experience.

When it comes to downloading services, it is quite evident that a file which cannot perform music is defaulted. In the case of iTunes which was previously subject to a lot of complaints about Digital Rights Management when their products could not be played in all music playing devices for these types of music, it is interesting to note that this implied that the product in fact could not fulfill its purpose at all instances. As iTunes are now moving away from DRM-protection, the question whether limited playing of a digital music files may constitute a default in the goods will not be further dwelled into. However, it shall be noted that this was definitely something that affected the core of the digital music file and as others could provide DRM-free digital music, one could potentially expect that all digital music files could be played in all digital music environments such as computers and Mp3-players.

A problem with this kind of default when the music is transferred through streaming is of course that some disturbances to the playing of music may be disturbed due to logical causes as streaming technology is more vulnerable to external disturbances. If such disturbances were to occur, the default would however most likely not be permanent. Therefore distributors of streaming cannot be said to be expected to deliver a goods free from disturbances to the core of digital music playing. However, one cannot exclude that in the case of these problems were to occur frequently, responsibility for such defaults could be claimed as it would imply a serious deviation from the purpose with these objects. The reason for this is that it is the core of a music product to deliver music why one strictly should be able to expect this performance of distributors of digital music.

In relation to section 16, paragraph 3 point 2 of the Consumer Sale of Goods Act a consumer may also claim that a good is defaulted in relation to that the seller has refrained from informing the buyer of such condition concerning the characteristics of the good or use of it which he knew of and the buyer could reasonably assumed to have been informed of if this can be assessed to have affected the purchase.

⁴⁶ For more information, see: <http://www.spotify.com/blog/archives/2009/01/28/some-important-changes-to-the-spotify-music-catalogue/> accessed the 2nd of June 2009.

When putting this into relation to the streaming services offered by Last.fm and Spotify and the general problems these may have due to external disturbances, this could imply that they should inform the consumers that interruption to the streaming flow can take place as a consumer most likely expects that a streaming service shall be able to deliver a constant flow of streamed music.

In the case of downloaded music, the seller could need to inform the buying parties about the potential risks of virus infected files since this may destroy other parts of the computer as well as if the files have DRM protection which hinders music playing on all devices or is intrusive to other parts of the computer. A consumer could reasonably expect to want to know this as these are facts that may affect both their listening experience and other goods which they use for listening to the purchased objects. These risks are most likely not known to all users of these downloading services, especially not when the consumer base has expanded to persons who are less used to internet.

6.4 Sanctions

6.4.1 Introduction

Here, the potential sanctions to the contract breach which a defaulted good imply will be briefly handled. The reason for mentioning the sanctions is to put them into relation to the specific context of the transactions within the field of investigation of this thesis. As will be seen, not all of the potential sanctions are appropriate to use due to the fact that they are created with more physical property in mind. The rules for sanctions can be found in sections 25-29 in the Consumer Sale of Goods Act.

6.4.2 Correction of Default or Redelivery

According to section 26, the buyer has the right to require of the seller to correct a default without any cost for the buyer if this can be done without any unreasonable costs for the seller. If the costs are unreasonable, the seller may instead choose to redeliver the goods to the buying party. The costs for repairing music which has been transacted through either streaming or downloading may vary as defaults to the streaming service is assessed to generally be of network disturbance character while in the case of downloading, a separate file may be defaulted. The reparation costs for a file is thus generally much lower than for repairing a network. As a distributing actor to pay for such reparation or having such requirements as a distributing actor to the third parties delivering the network, is assessed to be quite costly as it seems as the internet always may be due to external disturbances which are hard to foresee or costly to mitigate beforehand.

However, also in the case of downloading, it is assessed that it would be unreasonable to require of the distributing actors to repair the technology as a redelivery most likely is much less costly. The reason for this is, in the case of downloading that the distributing actor then only needs to repair the file once and then redeliver it to all parties who have received the same originally defaulted file.

Thus, in general, reparations cannot be considered as an appropriate sanction when it comes to this field of business due to the characteristics of the potential defaults. Instead redelivery should be used where this is feasible.

6.4.3 Price Reduction and Annulment

If no reparation or redelivery can be made, the buyer has, according to section 28 the right to demand price reduction or demand the transaction to be annulled. According to section 28, such

price reduction shall be calculated according to the relationship between the price of the goods at the time of the transaction and the value deduction based on the default. First, when considering the goods offered by the three actors, one should note that two out of three actors offer services for free. However, all three actors also have paying services. When it comes to the free services, of course no price reduction is possible. As for the paying services (Spotify) and the downloadable objects which are being paid for (Last.fm and iTunes) however, price reduction is at least theoretically possible. However, when it comes to streaming services where the defaults are likely to be of repetitive temporary art due to network disturbances, it is hard to estimate how much such default burdens the original service price-wise. The reason for this is that there is most likely no streaming services where such network problems are avoidable why no default-free services exist to benchmark towards.

When it comes to the downloadable files however, benchmarking the value of an undamaged file and a damaged might be a bit easier. As stated above, a default may be subject to several kinds of defaults such as being corrupted so the music cannot play or being infected with virus. When it comes to corruption, the file is most likely useless as no music can be played. In these cases it is not useful to use price reduction as a tool as it does not compensate the buyer enough. Instead it is better to claim redelivery. As for virus infections, the damages caused by the file are potentially larger than what the virus does to the file itself why price reduction of the specific file is not a feasible solution. Thus, it seems as it is also difficult to utilize price reductions as a kind of sanction to these types of goods/services as it is difficult to imagine a situation where a file would only be slightly defaulted and thus acceptable to a consumer if he/she received reduction on the price.

As for annulment of the agreement according to section 29, this is possible in the case where the relevant default is of significant meaning to the buyer. In the case of music services/products where the music does not play, it should be considered as evident that this is of high significance to the buyer as this is the core of music products/services. Thus annulment should be possible in the case of these kinds of transactions.

An annulment however implies that both sides of the transaction will get their transacted objects back. This therefore implies that in the case of downloading, a buying party returns a digital file and the seller returns the reimbursement for this file. As a file is not of any value to the seller, it can be questioned what value it is to receive this file back when a contract is annulled, thus, neither this solution is optimal. In the case of streaming services, there's really not anything else for the buyer to give back than the right to its user's account while e.g. Spotify would have to pay back subscription fees covering the period the user has agreed to. Also, when this has been done, there are then no hindrances for the buyer to register again to the same service and get a new user's account. Thus, in the case of such services, the annulment implies that only the buyer gets something back. Potentially such a solution could be altered with reference to section 36 in the General Contract Act to better suit the value of what the buyer has received until the annulment. However, such possibilities will not be further investigated here.

6.4.4 Damages

According to section 30, the buyer may be entitled to damages for the harm he/she has suffered due to the defaulted goods. According to the section 31 this right also covers damages to other property than the bought goods if these are goods he/she uses outside of business activities. In the case

where a digital music file has been contaminated by virus which has destroyed the computer, damages can thus be claimed also in relation to this. In order to avoid that a consumer claims such damages, the business actors may of course disclaim, specifically, that they do not take any responsibility for these kinds of damages. However, when this has not been done, the consumer has the right to claim damages as stated above.

6.5 Conclusions

As can be deducted from this chapter, several of the rules in the Consumer Sale of Goods Act may be applied to digital music transactions even if they are not the typical type of objects which the legislator sought to regulate when the law was created. In the case where the business actors have regulated his/her responsibility through general contractual disclaimers as in the case of two out of three of the studied actors, there is still a chance that these actors may be subject to responsibility for the quality of their products as they use too wide warranty disclaimers.

The most feasible sanction for defaults to downloadable music files is redelivery as this can be done without much cost for the seller and fully compensates the buyer of a defaulted file as the new file will have exactly the same content as the first file was aimed at having. When it comes to streaming solutions, the only available sanction that seems feasible is annulment of the contract. All other sanctions appear to be too demanding to the seller. However, also in case of an annulment it is problematic that a buyer will get his/her money back while the seller will get nothing back since physical goods has not been traded in the first place and thus there is nothing for the seller to get back.

7 Legal Default Responsibility Consumer Sale of Services Act

7.1 Introduction

When it comes to services, the Consumer Sales of Services Act is regulating what can be considered as a default slightly differently. According to section 1 the act targets services made to physical goods, some sorts of estates and storage of loose goods. However some stipulations are of more general character, also when it comes to defaults and could therefore be of interest when trying to evaluate the responsibility for defaults for those internet transactions of music which are more alike services than goods such as streaming sometimes might be. Also, as the three actors themselves claim that they provide services and not goods, it is interesting to see whether the current service regulation for consumers is applicable to any extent. The stipulations in the Consumer Sales of Services Act regarding what can be classified as a default is to be found in sections 9-15.

7.2 Performance Requirements

According to section 9, a service is defaulted if the result of the service diverges from what the consumer can claim in relation to the business actor's performance. Basically this means that the service shall be done in relation to what is considered good craftsmanship within the area. This rule can be quite difficult to transfer to the "services" which the three actors provide, however it can be assessed that what this rule adhere to is the fact that the service shall be provided in relation to what can be expected of a certain service and is thus related to criteria 16 in the Sales of Goods act and section 17 in the Consumer Sales of Goods Act which have been addressed above.

7.3 Information Duty

According to section 11, the service shall also be seen as defaulted if the seller has omitted to leave information to the buyer about the service's state and function which the service provider knew about or should have known about which he should have assessed to be of importance for the buyer. This default stipulation can however only be asserted if the lack of information is assessed to have affected the decision of the buyer. It is doubtful whether this stipulation is directly applicable to services of intangible goods as it is stated in the doctrine that it is of specific importance that information has been given regarding a certain service's appropriateness when the service concerns a way of using a certain kind of goods. Examples of this mentioned is that certain kinds of paint is inappropriate for wet areas and such.⁴⁷ However, as stated above the information criteria is to be found in a similar way also in section 16 in the Consumer Sales of Goods Act why this can be seen as an important stipulation in business to consumer relations in general.

7.4 Conclusions

The Consumer Sale of Services Act targets significantly different services than what the investigated actors refer to when they call their business objects this as the act targets services made to chattels. However, some of the rules of general character are of similar art as the Consumer Sale of Goods Act. However, it is here assessed that these rules do not add anything new to what has been discussed in the chapter above.

⁴⁷ Gerhard, P. "Köprättens grunder" p. 176, 177.

8 Contractual Quality Responsibility (Disclaimer)

8.1 Introduction

All of the three actors have taken the opportunity to regulate their default responsibility. As has been seen above, even if the Consumer Sale of Goods Act most likely is applicable to the transactions targeted in this thesis, there is still some uncertainty. Also, even if this non-dispositive act sets the norms of behavior in business to consumer relations, there is still some room for contractual agreements also in these kinds of relations. Therefore, a presentation of what kind of warranty disclaimers the three actors use and how valid these may be in relation to general contract law will be handled. Following this, there will be a section analyzing whether these contractual agreements can be invalidated or altered through the General Contract Act.

8.2 Spotify's Contractual Quality Commitment

8.2.1 Warranty Disclaimer

"13. No warranty

The use of the Spotify Software Application and the Spotify Service (including but not limited to its content) is at your own risk. The Spotify Software Application and the Spotify Service is provided on an "as is" and "as available" basis. There is no warranty, expressed or implied, as to the quality, content and availability or fitness for a specific purpose of the Spotify Software Application or the Spotify Service (...)"⁴⁸

8.2.2 Brief Comments

Spotify stipulates that the service is sold "as-is" and "as-available" (further referred to as "as-is"-disclaimer) which has the purpose to disclaim all kinds of defaults on the service in the state it is delivered to the consumer. The introductory as-is disclaimer is continued by a specification as follows: "There is no warranty, expressed or implied, as to the quality, content and availability or fitness for a specific purpose of the Spotify Software Application or the Spotify Service". This can be viewed as a trial to make the disclaimer more specific and thus potentially more valid (as will be discussed below⁴⁹) but is also a very general writing which only has the purpose to disclaim everything and sell the service as it is under any condition of use by the consumer.

8.3 iTunes' Contractual Quality Commitment

8.3.1 Warranty Responsibility

"18. Your rights in case of delays or defaults. Limitations of Responsibility

- a) iTunes is making an effort to deliver the Products without defaults or defects. If a delay or defect still arises, you have the right to demand delivery/redelivery or price deduction. If the delay or defect is material you have the right to cancel your order. You have also the right to demand compensation for economical damage which you have been subject to as a direct

⁴⁸ The subject for analysis is the part of section 13 in Spotify end-user agreement that targets quality of the service provided. For details on the full warranty clause, please refer to

<https://www.spotify.com/en/legal/end-user-agreement/>

⁴⁹ See chapter Contract Law (Section 36)

result from the delay or defect. Responsibility according to this stipulation is however limited as follows (...)"⁵⁰

8.3.2 Brief Comments

As can be easily detected above, iTunes does not disclaim defaults. Instead it grants the consumers several rights to compensate and/or correct these defaults. Of course some limitations are being put forward such as force majeure section 18 a (i) and defaults caused by independent contractors, section 18 a (ii).

Worth noticing is that iTunes does not take responsibility for indirect damages which e.g. implies that that according to section 18 (v) 4, and 18 (vi), consumers cannot claim default responsibility if the iTunes Store product damages products interlinked to the iTunes Store product if iTunes has not acted in a gravely negligent or in a willful way to cause this damage. Being a limitation in the rights of the consumers, the clause is still assessed to be balanced as iTunes at least takes responsibility for willful and gravely negligent causes.⁵¹ Also in section 18 (c) iTunes makes a distinction considering the responsibility for loss due to delays or other shortcomings in content when this concerns free products/services. iTunes responsibility is then limited to what has been caused by iTunes through grave negligence or willfulness. This is interesting as iTunes most likely has incomes also for the products that are free and the consumers thus pays for this in some way even if it is not through traditional economical means. However, as iTunes at least does not disclaim all kinds of responsibility, this writing shall at least be considered to be balanced compared to the other two actors' disclaimers.

8.4 Last.fm's Contractual Quality Commitment

8.4.1 Warranty Disclaimer

13. Disclaimer of Warranties⁵²

THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, ALL CONTENT, SOFTWARE, AND FUNCTIONS MADE AVAILABLE ON OR ACCESSED THROUGH OR SENT FROM THE WEBSITE, ARE PROVIDED "AS IS," "AS AVAILABLE, " AND "WITH ALL FAULTS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, LAST.FM AND ITS PARENTS, SUBSIDIARIES AND AFFILIATES MAKE NO REPRESENTATION OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) ABOUT: (A) THE PROPERTIES; (B) THE CONTENT AND SOFTWARE ON AND PROVIDED THROUGH THE PROPERTIES; (C) THE FUNCTIONS MADE ACCESSIBLE ON OR ACCESSED THROUGH THE PROPERTIES; (...) LAST.FM DOES NOT WARRANT THAT THE PROPERTIES, ANY OF THE PROPERTIES' FUNCTIONS OR ANY CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; OR THAT THE PROPERTIES OR THE SERVERS THAT MAKE THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. (...)"

⁵⁰ This text has been directly translated from the Swedish end-user agreement which is entirely in Swedish. For the original text, please refer to the end-user agreement in Appendix 2.

⁵¹ Compare previous critique by a joined collective of national consumer ombudsmen <http://www.konsumentverket.se/mallar/sv/pressmeddelande.asp?lngArticleId=4807&lngCategoryId=509> accessed the 30th of April 2009.

⁵² The subject for analysis is the part of section 13 in Last.fm end-user agreement that targets quality of the service provided. For details on the full warranty clause, please refer to Appendix 3.

8.4.2 Brief Comments

As can be seen above, the disclaimer of Last.fm starts with stating that the Last.fm service is provided on an “as-is”, “as available” and “with all faults”-basis. It has further some more specifications to make the quality disclaimer more specific but it is, just like in the Spotify case, quite general and the aim is more or less to disclaim everything possible from a quality perspective. A difference between the Spotify and the Last.fm warranty disclaimers is that Last.fm uses capital letters in their warranty disclaimer. This refers to the American contract making where capital letters imply that the terms are of such importance that it needs to be portrayed in a conspicuous way.⁵³ This can only be said to furthermore strengthen the case that the disclaimer is quite far-stretching as it has to be displayed in such manner.

⁵³ <http://www.law.cornell.edu/ucc/1/article1.htm> accessed the 29th of April and <http://ask.metafilter.com/51519/What-do-all-capital-letters-in-legal-documents-signify> accessed the 29th of April

9 Contract Law (Section 36)

9.1 Introduction

In relation to what has been seen above, two out of three actors are using far-stretching warranty disclaimers which differ from the potential quality responsibility which a consumer could claim according to similar non-dispositive rules of the Consumer Sale of Goods Act. This does however not necessarily imply that the consumers have to accept that they are not entitled to correction of defaults in the products/services offered by these actors. The reason for this is that we in Sweden, as has been briefly stated above, have a stipulation in the General Contract Act which stipulates that some contractual writings may be held invalid or be subject to alteration if they appear as unreasonable to one of the contracting parties. An investigation to whether such warranty disclaimers more or less similarly used by Spotify and Last.fm could be deemed as unreasonable according to this section 36 of the General Contract Act will therefore be conducted here.

9.2 Introduction to Section 36

As has been stated in the legal introduction, a contractual stipulation may be altered or be exempted from application in a specific case if the contractual stipulation is unreasonable in relation to the content of the agreement, later occurred situations or due to other circumstances around the contractual relation. If this stipulation has incremental meaning for the application of the contract in general, the entire agreement can be altered or rendered void. When making an assessment according to this clause, specific consideration shall be paid to the need of protecting consumers as they have an inferior position compared to business parties.⁵⁴

The central criterion when applying section 36 is the unreasonable-criterion, which implies a relational concept. Specifically this means that an assessment about a relationship between two parties in relation to a stipulated contractual fact needs to be done. One therefore needs to ask in comparison to what the contractual stipulation should be reasonable. According to the preparatory works, the points towards what one should measure this are several and can be grouped into two headings, those points that consider a “concrete assessment” and those that consider an “abstract assessment”.⁵⁵ Concerning the concrete assessment the points of reference concern what kind of norms that are included in the specific agreement which could render the contractual stipulation unreasonable. This should be compared to the abstract assessment which considers external norms such as non-dispositive legislations within the field.⁵⁶

Following, an assessment over the reasonableness of the warranty disclaimers used by the three actors will be made. The assessment will follow the structure of abstract and concrete criteria. Grönfors deals with the application of these criteria in the order of first handling the concrete criteria followed by the abstract ones.⁵⁷ This is also a good idea when handling a case before court as it should generally be easier to prove a stipulation unreasonable with reference to the specific contract. However, as the focus here is on the validity of specific warranty disclaimers per se, the abstract assessment is a natural starting point as this can be made freely from concrete contractual stipulations other than the warranty disclaimer. Examples in relation to the criteria will be taken from

⁵⁴ Grönfors, K. *“Avtalslagen”* p. 173

⁵⁵ Grönfors, K. *“Avtalslagen”* p. 178

⁵⁶ Grönfors, K. *“Avtalslagen”* p. 178, 179

⁵⁷ Grönfors, K. *“Avtalslagen”* p. 180-190

the end-user agreements of the three actors where such can be found. In the end the reasonableness of the three actors' warranty disclaimers will be walked through separately in the form of conclusions of this chapter.

9.3 Abstract Assessment

9.3.1 Deviation from Non-Dispositive or Dispositive Legal Rules

According to the government proposition, the one who claims that a contractual stipulation is unreasonable shall be able to do so in relation to the content in other legal stipulations, non-dispositive as well as dispositive ones.⁵⁸ According to the head of the department during the creation of section 36, when a contractual stipulation goes against a non-dispositive legal stipulation, the sanctions related to that legal stipulation may be claimed as a correction to the contract stipulation differing from the legal act.

Analogical application to non-dispositive acts shall primarily be considered in the cases where some parts subject to non-dispositive legislation has been left outside the scope due to regulatory technical aspects and similar. In the cases where the non-dispositive-rules are different than the dispositive rules, the reasons to apply non-dispositive rules are much less feasible as the point in those case are to enable free contracting between the parties.

Dispositive rules are meant to serve as a help in the application of section 36 in the way that they shall be viewed upon as an example to what is the normal solution in the relevant situation. They can also have impact in the way that they guide what an unreasonable stipulation shall be replaced with when it is being altered or deemed as void. According to Grönfors, dispositive rules shall mainly serve as measuring points when they are of legal political kind. Whether the relevant dispositive rules are of such nature can be found in the preparatory works of the relevant act.

Finally also public law ruling can be a norm onto which one can measure the reasonableness of a contract stipulation when making an abstract assessment.⁵⁹

In the case of warranty disclaimers disclaiming defaults due to the fact that the goods were sold "as-is" which two out of the three actors use for the Swedish market, there are, as partly has been seen above, norms in both non-dispositive and dispositive law that stipulates how such disclaimers shall be perceived. Even if these acts are not immediately applicable to the sales of goods and/or services subject to this thesis, as can be seen above, it is enough that these rules exist in similar fields. It can reasonably be concluded that the field of sales/service providing of digital music is in fact very similar to the sales of recorded music. As has been seen above, the biggest difference is that the packaging has been removed (and that more of the sold objects/services are subject to internet sales).

Section 19 in the Sales of Goods Act then stipulates that goods sold "as-is" still can be perceived as defaulted if

1. The good does not correspond to information about its characteristics or use that the seller has given the other party before the sales which can be assumed to have affected the purchase.

⁵⁸ Proposition to the General Contract Act p. 121 and Grönfors, K. "Avtalslagen" p.187

⁵⁹ Grönfors, K. "Avtalslagen" p. 188, 189

2. The seller before the sales have refrained from informing the buyer about such substantial relation about the characteristics of the goods or use which he/she must be assumed to have knowledge about and which the buyer reasonably could count on receiving information about, under the condition that refraining from this can be assumed to have affected the purchase.
3. The goods are in a *substantially worse* state than what the buyer could reasonably expect in relation to the price of the goods and other circumstances.

According to section 17 in the Consumer Sale of Goods Act a goods that has been sold with an "as-is" disclaimer or similar general disclaimer shall be considered as default if it is in *worse* state than what the buyer could reasonably expect in relation to the price of the goods and other circumstances.

The conclusion that can be derived from these two stipulations is that the external norms stipulate that "as-is" disclaimers are not always valid. From a section 36 point of view, it can therefore be noted that some restrictiveness already exists towards these kinds of contractual writings and thus they can be seen as unreasonable compared to these norms. It shall also be noted that a stricter application of this norm follows from the consumer protection act which stipulates that a default can be claimed already at a stage where a goods is sold in *worse* state whereas the state required in other cases is referred to as *substantially worse*. Thus, these kinds of disclaimers have a lesser scope towards consumers than towards business actors.

The abstract evaluation of external norms according to section 36 further allows taking into consideration public laws that guards the same area. In this case this implies that decisions in court made with reference to the Contract Conditions Act can be taken into account. As of today no full-blown cases exist in the field of interest. However, there are cases where the Consumer Ombudsman has notified iTunes on the use of far-stretching warranty disclaimers⁶⁰ as well as a case where an actor in a similar field has been subject to court proceeding⁶¹. The outcome of these cases prevail that warranty disclaimers subject to disclaiming all kinds of responsibility has been strictly looked upon and that it is not allowed to take no responsibility when it comes to defaults caused with intent or grave negligence by the business actor.

As a starting point when looking at the use of warranty disclaimers in this field of business towards consumers it can thus be concluded that some restriction is required in order to be able to claim that the clauses are reasonable. They can however not be assessed to be unreasonable in themselves as both the Sale of Goods Act and the Consumer Sale of Goods Acts "allows" "as-is"-disclaimers to a certain extent. Furthermore, no general forbid has been judged by the court around these sections even if certain restrictiveness is called upon. Therefore, it cannot be stated from this first criteria in the abstract assessment that these kinds of disclaimers are invalid in themselves why also the other abstract criteria as well as the concrete criterion needs to be taken into account.

9.3.2 Deviation from Good Business Practice

The business practice within the relevant business may serve as a reference point towards which one can measure the reasonableness of a certain stipulation according to the investigation conducted in

⁶⁰ See chapter 11 The potential for Consumer Agency Interaction.

⁶¹ See "Oskälig friskrivning från skadeståndsansvar/Nordnet Securities Bank AB"

http://www.konsumentverket.se/mallar/sv/artikel_datum.asp?lngArticleID=3806&lngCategoryID=1624

relation to the creation of section 36. What is good business practice of course varies among different fields of business. However, what should be noted is that just because a practice is established within a certain area, it does not mean that it can be considered as good in the way that it is reasonable in relation to the contracting parties. This fact shall be specifically considered in contractual relations between business actors and consumers as what is practice within a certain field may have been established before the times of consumer care thinking came along and established several consumer protection acts.⁶²

Today, it can be assessed that the business practice within the relevant field goes in two directions since two out of three actors in this study are using fairly far-stretching disclaimers while the biggest actor on the other hand does not. Other actors such as Pandora⁶³ and JukeBoxAlive⁶⁴ also use similar disclaimers. This implies that the business practice is diverse but it cannot be stated that the business actors use these stipulations in contrast to the established practice within the field. However, as has been stated above, this neither implies that this practice should be accepted as good in relation to what can be seen as reasonable just because it is established to some extent. The reason why these practices have been established can speculatively be due to the fact that this is an unregulated part of the market which very well could be looked strictly upon in the future when/if legislation catches up. The fact that this is the case shall be seen in light of the complaints raised by Consumer Ombudsmen in several European companies when it comes to several contractual stipulations used within this field.⁶⁵

The fact that the biggest actor uses more generous business practice could imply that a court would deem this practice to be established. In that case, these disclaimers could be judged as unreasonable per se. However, there are still some uncertainties whether this practice would be assessed to be established why a concrete assessment where the separate agreements including these warranty disclaimers shall be subject to also needs to be done at this stage.

9.4 Concrete Assessment

9.4.1 The Content of the Agreement

The head of the department conducting the investigation before the creation of section 36 specifically made clear that the content of the agreement shall be put in relation to the contractual stipulation which is being claimed as unreasonable. The reason for this is that one clause may be quite unreasonable towards one party due to the fact that this party is being compensated through more favorable terms in other parts of the contract.

As an example to what kind of contract sections that might be held as unreasonable due to their content, the section 36 investigation mentions stipulations that gives one party the single decision power over a certain question. One example of such clause that is mentioned is the case where one party gets to decide over price raisings due to occurred changes. Another example discussed is the

⁶² Grönfors, K. "Avtalslagen" p. 190.

⁶³ Please refer to section 10.1 in the Pandora Terms of Use which can be found at <http://www.pandora.com/legal/> accessed the 7th of May 2009.

⁶⁴ Please refer to the last sentence of section 10 in the JukeBoxAlive Terms of Service which can be found at http://www.jukeboxalive.com/statement_tos.php accessed the 7th of May 2009.

⁶⁵ Please read more in chapter 11 The Potential for Consumer Agency Interaction.

case where the seller can decide solely whether a good⁶⁶ is defaulted or not. Other kinds of situations where an adjustment of the contract may be made are those when there is a disproportion between the benefits of the parties, however this does not imply that all unequal contracts may be set aside.⁶⁷

As in the cases of Spotify and Last.fm which are the two parties exemplified here as using far-stretching “as-is” disclaimers, they also have other parts in their end-user agreements that may seem offensive in terms of reasonableness but of course also some more balanced stipulations.

The contract of Last.fm starts in a fairly unbalanced way stating that Last.fm can change the terms of use without any notice to the end-user and it is up to the end-user to find these changes by revising the contract from time to time. The changes are indicated by the date on the top of the agreement which to some extent relieves a part of the burden of the end-user to revise the contract regularly however it is still up to the consumer to become informed about this. Furthermore, section two states that Last.fm may add, change, remove, suspend or discontinue any of the services at anytime. This seems as a quite unbalanced section but as this must be assessed to concern only the content which Last.fm makes available for free to the consumer, the benefits provided to the consumers can be assessed to make this section more balanced. Otherwise, the contract of Last.fm is fairly balanced why it is difficult to state that the contract in itself is unreasonably unbalanced. However, it is also difficult to state that the consumers are entitled to so many benefits that the far-stretching warranty disclaimer can seem fairer.

The fact that the consumers receive the service for free can of course be seen as a general advantage compared to consumption of music in the old formats, however one should also remember that nothing ever comes for free. Instead of paying with money, the contractual agreement between the business actors and the consumers imply that consumers are paying through watching advertisement while watching the website of Last.fm which can seem as a high price to pay indeed.⁶⁸ However, it is not at all certain that a court would approve of such reasoning of more philosophical art why it here can be stated that the contract of Last.fm in general is not too unbalanced to state that a far-stretching warranty disclaimer becomes unreasonable in the light of it.

In the case of Spotify the end-user agreement is on the other hand perceived to be more unbalanced. As an example to this, it can first be mentioned that section two in the agreement states that Spotify can make changes to the agreement at its sole discretion and it is up to the consumer to check the website regularly for such changes as continued use of the Spotify service implies accepting these terms. This is of course not a balanced writing as it gives one party the power to change the terms guarding the agreement whenever it wants to. Also, this party (Spotify) is not required to leave a specified notice that it has changed the agreement but this is up to the other party to look out for.

Furthermore, in section three of the agreement, the end-user is limited to use the Spotify service in its home country. As Spotify is limiting access to the service based on what nation the consumer is situated in, it is natural that the company wants to limit the potential of listening to Spotify outside

⁶⁶ Goods or “vara” in Swedish is the concept used by Grönfors when discussing this principle, however, I see no purpose in separating between goods and services in this discussion as it is of principle value and section 36 concerns both service and sales of goods agreements.

⁶⁷ Grönfors, K. *“Avtalslagen”* p. 180,181

⁶⁸ Please refer to Klein, N *“No Logo”* p. 27-152 who in the chapter “Utan Plats” (or “No Space” in English) discusses the loss of areas free of commercial messages and the impact this has for our lives and perceptions.

of the national borders. However, as a consumer, you most likely think that the product/service you buy will be able to follow you over national borders as this is the case with basically all movable things you can buy. Another issue of question in this section is the fact that Spotify chooses to limit the access based on nationality and not in relation to which place you were located when you downloaded the application which could seem a bit more feasible.⁶⁹

Reading section four concerning purchase of the Spotify Premium service in relation to section six concerning pricing and seven concerning automatic subscription renewal another unbalanced tendency of the contract is to be found. My interpretation of these clauses is that Spotify charges the fee for the service directly from the credit card after a designation from the consumer of this to be billed. After this Spotify draws the fee for the service automatically and according to section six such fee can be changed by Spotify at any time and take effect from the term after the one that has been paid for. The price-change is posted on Spotify's webpage and the consumer is herself responsible to be updated on this. According to section seven, the subscription is automatically renewed at the end of each subscription period if the consumer has not terminated the service. This implies that if a consumer does not check the website for price changes, the credit card may still be billed for the upcoming period with the higher price without the consumer having been directly notified of such change. Of course this is an unbalanced stipulation as it is a high risk that Spotify can adjust their prices to a higher level without the consumers notifying this but still automatically are paying for the service.

Furthermore, section 9 point iii forbids reverse reverse-engineer, decompiling, disassembling and similar of the Spotify Software Application or the Spotify Service or any part thereof. This contradicts Swedish copyright law to some extent as section 26g in the Swedish Copyright Act allows reverse-engineering of computer programs for the sake of functionality with other computer programs as well as for correction of defaults. This part of section 26g can however be disclaimed through contracts. The right to investigate the software to learn what ideas and principles that the program is built up around can however not be restricted through contracting according to the same section. In the case of Spotify it is however not certain that the entire streaming service offered can be considered to be computer software why the law may not be applicable. According to the government proposition 1992/93:48⁷⁰ a computer program can however normally be defined as a series of instructions required for a computer to work. In this case the word work is assessed to not only imply work in the fundamental sense but to make use of the hardware of a computer. In relation to this, it could be stated that the stand-alone application of Spotify is what makes the music streaming work together with the hardware functions of the computer. However, the definition which was made in 1992 is not clear-cut. If one however would be successful in claiming enough similarities with computer programs, Spotify thus attempts to limit the rights of the consumers also here.

According to section 12, the consumer can at any time chose to end its subscription. The consumer will however not be reimbursed for the subscription fee related to this period. This is not

⁶⁹ Otherwise persons that are not registered as habitants of a certain country will not be able to listen to Spotify within this country which implies that e.g. a lot of exchange students are not granted a right to listen to Spotify's content in the country which they live. Neither are they allowed to listen to content that is available in their home country as they themselves are outside of their home country.

⁷⁰ See page 112.

unreasonable in itself but taking into consideration that a consumer's only choice if he/she is not happy with the service due to e.g. defaults is to leave the contract (as will be seen from the warranty disclaimed below), this may seem a bit harsh considering the fact that the longest subscription term is twelve months.

Finally, Spotify limits its liability strongly according to section 14 of the contract. Spotify stipulates that they have no liability for what can be closest described as product responsibility⁷¹. The only right granted by Spotify to consumer when facing these issues is for the consumer to uninstall the Spotify software and stop using the service.

All in all, there are thus several unbalanced contract stipulations in the Spotify agreement. Therefore, there are stronger reasons to hold the warranty disclaimer as unreasonable according to section 36. However, as a full assessment needs to be made no final conclusions will be taken from this just yet, however the reader is encouraged to keep this in mind.

9.4.2 The Circumstances at the Time of the Contract Settlement

The head of the department of the section 36 committee specifically stressed that an assessment concerning whether a contract stipulation is unreasonable has to be seen in the light of the circumstances at the time of the settlement of the contract as they can affect how balanced a specific clause is. Examples of circumstances which cannot lead to invalidity through other legal stipulations and therefore instead could be of importance when making an assessment in relation to section 36 are according to Grönfors e.g.:

- When a party got the other party to agree through aggressive behavior
- When a party got the other party to agree through using surprise tactics, or
- Through other abuse of the negotiation position.

In general, a party should be able to claim unreasonableness also in other situations when a more powerful party has used inappropriate methods at the time of the settlement of the agreement. It is specifically noted that this implies that section 36 therefore can act as a complement to the Sale in Homes Act⁷² which has now been replaced by the Distance- and Sale in Homes Act^{73 74}.

None of the parties subject to further investigation under section 36 can be assessed to have used any of the exemplified tactics above. First, no aggressive behavior can be detected considering the fact that the consumer is free to enter the contracts at any time of their convenience without any other human being directly involved.

Furthermore, for the same reasons it is difficult to claim that a consumer is being surprised during the transaction as he/she can take as much time as needed to read and understand the agreement. Of course, there is a factor that many consumers may be surprised over the content in the agreements as a large part of the consumer collective does not appear to read the contracts they are agreeing to.⁷⁵ However, as long as the business actors do what they can to make it clear that the consumer is entering into a contract, by noticing the consumer about the fact that it should read and

⁷¹ "Produktansvar" in Swedish.

⁷² Hemförsäljningslag (1981:1361).

⁷³ Distans- och hemförsäljningslag (2005:59).

⁷⁴ Grönfors, K. "Avtalslagen" p. 183, 184.

⁷⁵ Smedberg, M. "Internetavtal- hur de kan förändras så att användare läser dem".

agree to the contract before the service can start or the product can be transferred, the consumers need to take the blame for such surprises. The reason for this is that it is a large burden for a business party to be solely responsible for the fact that the consumers should read the agreements as they otherwise could claim that they were surprised by the content of these. However, at least some requirement needs to be put on the business actor to make an effort to have the consumers read the agreements in order to have the consumers understand what they are entering into. In other cases, the business actors would actually be able to hide from the consumers the fact that they are entering into an agreement and take advantage of this.

Finally, it is hard to claim that abuse of a negotiation position has taken place. Naturally the business party can to some extent abuse its dominant position as the one setting the standard for the transactions of this kind. As he/she is the seller, there will however always be some attempt to get the best deal while however no direct abuse of such position can be detected here.

The specific consideration to the weaker position a consumer is exposed to in situations where the Distance- and Sale in Homes Act is applicable however also deserves some remarks. In the case of the transactions subject to this thesis it may be stated that this act is applicable to the kind of goods/services that are being transacted according to chapter two, section one as the transactions concerns music packaged as digital copies or streaming flows. The aim of the act is to protect consumers as they are in a psychologically inferior position when being targeted by business actors in their homes where they feel safe and thus dare to take bigger chances than if they were to be offered the same service/goods at a regular physical business place. Here, the fact that these kinds of services are always offered at a distance and without any human contact should be seen as a case where the consumers dare to take more risks and thus may need more protection.

None of the parties can thus however be assessed to specifically burdening the consumers further by unreasonableness in their contracting due to the criterion of this section. On the other side, it shall however be kept in mind that the fact that the transactions are taking place on a distance is a negative factor to calculate into the full assessment.

9.4.3 The Connection to Another Agreement in the Concrete Case

As an agreement may consist of several physical (or digital) agreements that control the business between the parties, consideration may need to be taken also to the effects of these when assessing whether a specific stipulation is unreasonable.⁷⁶

It is quite common among the investigated parties to have several contractual agreements guarding different parts of the transaction. In this case however, these agreements are not assessed to make the current contractual stipulation of interest more unreasonable as they do not set any standards for defaults and such. The core of the business transaction which can said to be under investigation here is actually regulated in the same agreement while supporting documents concerning privacy rights complement this.

9.4.4 The Implication of the Party's Own Contract Practice

In the cases where a contracting party generally applies a more favorable business practice in similar agreements, this might have implications for an agreement which does not follow these norms. This

⁷⁶ Grönfors, K. "Avtalslagen" p. 184, 185.

implies that general agreements shall be applied as favorably for all parties subject to contracting with that party if no good reason to sidestep this exists.⁷⁷

As the question here is about the unreasonableness of a specific contract stipulation in what can closely be seen as a standard agreement, no deviating agreements to separate consumers are being investigated. No assessment under this criterion can thus be made.

9.4.5 The Agreement in Whole in Relation to Changed Circumstances

According to the investigating group of section 36, the reasonableness of a specific contractual stipulation shall be seen in the light of whether the circumstances for the contractual relation have changed. Making an alteration or declaring a contractual stipulation void due to this requires however that the changes are substantial to the extent that it could be seen as unreasonable to withhold the contractual section in the existing form. Therefore, this mainly targets long-term contractual agreements.⁷⁸ Considering that both business parties are allowed to leave both Spotify's and Last.fm's agreements at any time, no further investigation of unreasonableness can be made under this criterion.

9.5 Conclusions

To conclude, there are reasons that speak for assessing far-stretching warranty disclaimers as unreasonable in themselves according to section 36. These reasons circulate around the legal acts applicable and in analogous fields where "as-is"-disclaimers are limited to some extent in the way that defaults can still be claimed if the consumer could expect a better or significantly better state of the goods he/she had bought. However, as these rules do not make "as-is"-disclaimers unreasonable per se, it would be too far reaching to claim that these kinds of writings would be void according to section 36. However, they might very well be up to some alteration. As neither this is certain due to the lack of substantial case law and the fact that it is not certain how big differences one should attribute to the business fields legislated and the field relevant to this case, I assess that it cannot be stated that these kinds of stipulations are unreasonable per se. With this said, in relation to the rest of the contractual clauses making up the agreement, this clause may seem unreasonable in the concrete case.

Here, Spotify is using the most unbalanced agreement towards its consumers. If any of the actors would be subject to claims for using an unreasonable warranty disclaimer, Spotify would therefore most likely be the one that fell short. The main reason why I assess this as the most unreasonable contract is that a consumer might be bound to a twelve months long subscription when a default arises and as he/she cannot claim defaults according to the warranty disclaimer, the only right to then leave the transaction implies that he/she is still subject to pay the subscription fee for this period. The consumer may thus be stuck with a default for a long period or just lose money leaving the service as he/she is without a right to have the problem solved. However, the severity of this shall not be overestimated as Spotify is offering a streaming service which, as can be seen above, in general should suffer from less lasting defaults than a downloading service. On the other side this shall neither be underestimated as we have not yet seen the full market for this service and thus defaults may arise at a later stage. In that case however, the conclusion is, as stated that the Spotify

⁷⁷ Grönfors, K. "Avtalslagen" p. 185, 186.

⁷⁸ Grönfors, K. "Avtalslagen" p. 186, 187.

warranty disclaimer should be able to at least alter with reference to section 36 in the General Contract Act.

10 Quality Responsibility Business Norms

As can be deduced from the legal assessment above, two out of three actors within the field of business use quality disclaimers stating that they do not take any responsibility over the quality of the goods/services they provide. Thus, this points at a tendency within this field to take little quality responsibility over the transacted goods. This kind of behavior may of course play a large part in setting the arena for other business actors within this field as well as what consumers are willing to accept. Thus, in the absence of law or law enforcement, such shaping of the market may play a substantial part in defining what the rules of the market are.⁷⁹

However, when taking into account that two out of three actors are not willing to take responsibility for the quality of their goods, it shall also be noted that the third actor which actually takes responsibility, is iTunes. iTunes has dominated the market of digital music transactions for several years and is today assessed to have around 70 % of this market (in the distribution field).⁸⁰ iTunes can therefore be assessed to have a quite significant role as a market actor and with this, a potential to shape the market by itself. The fact that iTunes today have changed their end-user contract to include some quality responsibility can put pressure on other actors within this field to voluntarily change their contracts.

The question is then how likely such voluntary change is. As may be seen today, both Last.fm and Spotify e.g. mainly trades with objects that are slightly different than what iTunes is trading. Therefore, they may still assess that the fact that iTunes is taking on quality responsibility do not really apply to them. However, as they both are moving into to the downloading segment, it is not unlikely that they will feel the normative pressure from a business actor such as iTunes to offer better quality assurances than they are offering today. This kind of quality responsibility could then potentially also spill over to the streaming “services” they offer. With this said, there is thus a potentially strong business norm on quality responsibility that has the possibility to grow even more in force. And what more is, this norm speaks in advantage of the consumers.

⁷⁹See e.g. Petrusson, U. *“Intellectual Property & Entrepreneurship...”* p. 120 where it is stated that the normative space of an actor on the business arena always need to be put in relation to the normative space in the judicial arena. An interpretation of this is that as there is here less clarity in the judicial arena, the normative space on the business arena has a larger potential to be claimed.

⁸⁰http://en.wikipedia.org/wiki/iTunes_Store accessed the 2nd of June 2009.

11 The Potential for Consumer Agency Interaction

11.1 Introduction

As stated initially in this thesis, the aim here is not only to take current legislations, case law and legal doctrine into account while investigating what kind of responsibility the business actors within the relevant sector have for the goods/services they offer to the consumers. Therefore, it is important to consider also external parties/processes which may change the landscape in which the business actors act. From a Swedish perspective, one such important cluster of actors is the public agency centered on consumer protection. Therefore, this group of actors and their roles will here shortly be presented along with their tools to take action as well as their previously conducted actions on this area or similar. From this, conclusions will be made on what implications this may have for the business actors within this field regarding their legal operative space.

11.2 The Actors

The Swedish agency of control over business to consumer commerce is called Konsumentverket. Konsumentverket is located in the middle of Sweden. It works with consumer questions of different types but is also responsible for education of the well spread function of persons called Konsumentvägledare who is to guide the consumer on their rights against companies.⁸¹ These consumer guides works as local presenters of the consumer interests. The purpose is to have these kinds of persons close to the people all over Sweden in order to provide them with help in questions related to their rights as consumers against companies.

The general counsel of Konsumentverket also functions as the consumer ombudsman, KO⁸², of Sweden. KO is supervising the business to consumer market with help of several legal tools of which the most relevant for this thesis will be further explored below.

11.3 The tools of the Actors

11.3.1 Consumer Contract Conditions Act⁸³

The main legal tool for the Consumer Ombudsman of Sweden to be used against unfair contract stipulations is the act on Contract Conditions towards Consumers. The act aims at clearing the market from unfair contract conditions and is the governing tool for surveillance of the market by the Ombudsman. The Ombudsman does not pose judgments itself with reference to this law but can draw companies in front of court with reference to this act⁸⁴. The criterion in section 36 in the General Contract Act is connected to the second section of this act which means that also this act guards the reasonableness of agreements. The argumentation around this law should thus be made in a similar way as for section 36 in the contract act⁸⁵.

⁸¹ http://www.konsumentverket.se/mallar/sv/forstasida_lista1.asp?lngCategoryId=421 retrieved the 13th of February 2009

⁸² This is short for the Swedish name "Konsumentombudsmannen".

⁸³ (Lag (1994:1512) om avtalsvillkor i konsumentförhållanden)

⁸⁴ http://www.konsumentverket.se/mallar/sv/lista_artiklar.asp?lngCategoryId=567 accessed the 13th of February 2009.

⁸⁵ See above, section Contract Law (Section 36)

11.3.2 International Collaborations

Several countries today host governmental departments working with and for consumer protection.⁸⁶ Since at least the necessary function and understanding of these problems are in place, international collaborations in consumer questions among these departments could take place. This kind of international collaboration has also taken place in previous cases, as will be seen below. The benefits of the potential to easy access international collaboration in these questions shall of course be highly valued as a means to change injustices that consumers are being subject to, especially on the internet where the national borders do not exist. From a company perspective this can evidently be seen as a higher risk related to becoming subject to complaints from consumer agencies worldwide.

11.4 Previous Cases

11.4.1 Quality Responsibility

There are no full-blown cases covering the exact clause which is the focus of this thesis, neither in this arena. However, in relation to iTunes, the Swedish Ombudsman has made a statement that the fact that iTunes is disclaiming all kinds of responsibility that the products may cause shall be seen as unreasonable and non-acceptable towards consumers.⁸⁷ It seems as if these complaints were however settled in a dialogue with iTunes Store⁸⁸ which may also explain the fact that the end-user agreement of iTunes Store, as stated previously in this thesis, is fairly reasonable when it comes to quality responsibility.

There are also some other interesting cases where iTunes have been challenged on other parts of their value proposition towards the consumers which shows the strength of these actors and the potential for consumer groups to go through these channels if they want to lodge a complaint. A short summary of these cases and what conclusions that can be drawn from them in relation to the “as-is”-disclaimers will follow below.

11.4.2 Against iTunes Unreasonable Clauses

The consumer Ombudsmen in Sweden, Norway and Denmark have jointly formerly attacked some of iTunes contract clauses to be unreasonable. That time, the complaints were targeted towards disclaimer of all responsibility for the service as well as a clause stipulating that iTunes could change the terms on how the service was to be used at any time.⁸⁹

11.4.3 Against iTunes DRM-strategy

The Norwegian Consumer Ombudsman started the attack on iTunes Store’s use of DRM which was later supported by other consumer organizations from several European countries. The standpoint of the ombudsman was first that the DRM technologies accompanying the transferred files were to be seen as a part of the contract between Apple and the consumers. This implied that the implications of the DRM had the potential to be held unreasonable due to contract law and the principles which

⁸⁶ <http://www.ftc.gov/oia/authorities.shtm> accessed the 5th of May 2009.

⁸⁷ <http://www.konsumentverket.se/mallar/sv/pressmeddelande.asp?lngArticleId=4807&lngCategoryId=509> accessed the 27th of April 2009.

⁸⁸ <http://www.konsumentverket.se/mallar/sv/pressmeddelande.asp?lngArticleId=4874&lngCategoryId=509> accessed the 27th of April 2009.

⁸⁹ <http://www.konsumentverket.se/mallar/sv/pressmeddelande.asp?lngArticleId=4807&lngCategoryId=509> accessed the 12th of February 2009

have been further explained above. The reason why the DRM technology was to be seen as an unreasonable part of the agreement was that it created lock-in effects as consumers could only listen to their purchased music files through Apple's music playing device, iPod.⁹⁰

As Apple recently released the news that they are going to drop their DRM system creating the lock-ins, the consumer ombudsman of Norway decided to drop this case before legal trial. Considering the fact that iTunes Store is accounting for more than 70% of the sales in the online digital music industry⁹¹, the future of DRM must be considered as being quite uncertain after these happenings. In relation to this case, it is also interesting to note that the Swedish ombudsman participated in the actions in the beginning but then backed down from its claims, however awaiting the outcome of the case with interest.⁹²

11.5 Conclusions

As can be seen, there has been at least some success by the agency actors (even if one cannot state surely that the success depended only on these actors) when it comes to the compliance of iTunes in the DRM case. This is a risk that the companies should calculate with when deciding how to design all of their contract clauses and especially when it comes to "as-is"-disclaimers in consumer relations as these have been looked upon stricter in other business fields. Also, it can be noted that it seems as Apple has changed their quality responsibility for iTunes Store after a dialogue with the consumer ombudsmen of the Nordic countries. Even if this is not the exact case, it is obvious that the ombudsmen have opened their eyes to far-stretching damage disclaiming clauses which are closely linked to general default responsibility.

Furthermore, specific notice shall be paid to the fact that there has been some collaboration over nation boundaries in this field which could imply that the power of the administrative arena can become even stronger in the future as these parties could continue to join forces.

Finally, the note that Sweden did not support the Norwegian ombudsman to the end is interesting as this can show a general resistance to fight such a large actor as iTunes. The reason for this may then be that the Swedish ombudsman felt that there was a risk that iTunes would close the iTunes store towards the Swedish market and thus was not willing to take such risk.⁹³ The fact that an ombudsman chooses to not support an international collaboration towards a smaller actor may however of course makes it more vulnerable in relation to big business actors in the future.

⁹⁰ <http://www.pcmag.com/article2/0,1895,2087065,00.asp> and <http://forbrukerportalen.no/Artikler/2006/1149587055.44> accessed the 27th of April 2009.

⁹¹ http://en.wikipedia.org/wiki/Itunes_store accessed the 27th of April 2009.

⁹² <http://www.idg.se/2.1085/1.182722> accessed the 2nd of June 2009.

⁹³ The fact that iTunes could take such actions is briefly discussed here: <http://arstechnica.com/old/content/2006/06/7007.ars> as a threat to smaller countries accessed the 15th of March.

12 The Potential for Consumer Interaction

12.1 Introduction

Continuing on the theme that the existing legislation and case law does not set the ultimate rules to what is considered legal in a society as the law is in a stage of permanent change the potential of consumer interactions will here be further investigated. Making a risk assessment from a business perspective in relation to e.g. contractual stipulations without taking in the potential for consumer interactions could be downright dangerous. This is why this chapter will focus on the important arena of change which is in the hands of social movements.

The relevant social movement that will be analyzed here is the movement of consumers of digital music. Before digging deeper into this social movement, a short introduction will be given to social movements as a concept and their potential to make legal change. Following this, what can be said to be the current digital music consumer movement will be introduced. Furthermore, the potential existing legal tools which this movement could use will be investigated. Finally, a short risk assessment based on the legal movement today and the potential changes to the movement due to legislative changes will be made. This risk assessment is meant to serve as a help for companies in the digital music industry when deciding on what kind of risks they are taking when it comes to putting forward certain contract stipulations towards consumers of which this movement could form a part.

Before dwelling into more organized forms of consumer interactions, it shall also be noted that the fact that business actors do not take responsibility for defaults to their products/services can be solved quite simple from a consumer point by the means that the consumer decides to not be faithful to the company offering defaulted items in the future. The specific risks of such behavior in relation to the relevant business will be studied in the next section. After this will then follow a discussion around the potential of more organized formations of consumers.

The conclusions that can be drawn from these two perspectives (as well as the previous chapter concerning the cluster of consumer protecting actors) shall then be kept in mind while reading the chapter following this regarding what kinds of brand governance the business actors may take in order to mitigate the risks of complaints from these actors.

12.2 The Risks for Consumer Unfaithfulness

As consumers are being more and more empowered through the new ways of distributing music where they are not only consumers anymore but often have direct contact with the artists they like through communities,⁹⁴ it is assessed as a risk to not consider this increased status. Being empowered and treated more as an equal to the one holding the original copyright to the music, it is also likely that consumers will not respond well to being treated as they in fact are only consumers. Therefore, it is assessed as wise also from a music distributor actor to mitigate the risks of consumer unfaithfulness through treating their consumers with the new won respect they may very well deserve when they are participating actively in forming many of the distributing solutions. The simple punishment from a consumer perspective is otherwise to stop using the services or buying the

⁹⁴ Kusek, D. *"The future of music"* p. 13.

products. As can be derived from Ifpis market survey from 2009, consumers pose high requirements to the legal services as they otherwise rather choose to download, free of charge to them.⁹⁵

12.3 Social Movements and Legal Change

Social Movements are important means to reach change in society. People lacking access to formal power can actively mobilize in order to push suggestions to change which would otherwise never be implemented. Even if living in a democracy, legal change usually takes time and some questions have larger difficulties than other questions to reach the political agenda.⁹⁶ For example a certain cause may be uncomfortable to the ruling society and pushed down in order to avoid disagreements.

Obvious examples of movements having put forward questions that were foreign to the existing societal power(s) are the feministic, workers' and environmental movements.⁹⁷ These three movements can in Sweden be said to have affected the legislation as there is now quite substantial legislation with feministic and environmental outlooks as well as a well established thinking of labor rights both through law and through contracts between trade fair unions and companies on the market. There is thus no doubt that social movements can lead to legal change affecting the rules on the market.

12.4 The Digital Music Consumer Movement

Today, several smaller organizations has attempted and partly succeeded to change rules within the field of the digital music market. These have not yet been defined as parts of a bigger, digital music consumer movement. However, in this thesis these different parts shall be suggested to form such parts of a bigger movement as they have in common to question the digital music industry from a consumer's perspective.

It shall be noted that a movement cannot be exactly defined as the organizations that are parts of it. The movement can instead be considered to be the space in between the parts of the bigger purpose which can be said to have somewhat of a joined identity and purpose.⁹⁸ With reference to this, it is important to keep in mind that the two smaller movements that are investigated here are just two examples of what is going on in this bigger movement which the consumers of digital music to varying extent are suggested to adhere to.

12.4.1 The Anti-DRM Movement

The use of digital rights management on digital music has been widely criticized by consumers of digital music. The fact that consumers to some extent are unable to play the music on all devices when DRM is used arose much complaint among consumers. The biggest burden of complaints this far was targeted towards iTunes digital rights management strategies that hindered the music on iTunes to be played on other music playing devices than Apple's own iPod. Before the threat of ending up in the market court of Norway⁹⁹ as well as facing a union of three other Scandinavian countries as well as other European states such as France and Germany threatening to take legal

⁹⁵ See IFPI "Digital Music Report 2009..."

⁹⁶ Jamison, A., Wettergren, Å. "Sociala Rörelser" p.5

⁹⁷ Jamison, A., Wettergren, Å. "Sociala Rörelser" p.5

⁹⁸ Wettergren, Å., Jamison, A. "Sociala Rörelser" p.10

⁹⁹ Of course it is not certain that this threat was exactly what made Apple change its iTunes DRM-policy but it can be assessed that it was one of the biggest reasons due to the fact that a company of Apple's size does not want to end up in market court as it can destroy much brand value.

actions against Apple¹⁰⁰, Apple has now added an iTunes Plus service which is DRM-free and thus possible to play in other mp3-devices than the iPod. Furthermore, Apple is taking away DRM on all their tracks in a few months.¹⁰¹

After that Apple had taken this decision, the Norwegian Ombudsman decided to drop the charges on the 4th of February 2009.¹⁰² As this example shows, the consumers can have very strong impact on the actors in digital music, not unlikely due to the constant threat that the consumers otherwise will use illegal means to get access to the music they wish. Furthermore this is an example of the tool which the digital music consumers may use to have their voice heard towards the business actors. These tools which e.g. bear the form of Ombudsman-functions will be further presented below.

12.4.2 The Piracy Movement

Piracy of digital music can be said to have started for real when Napster was launched in the year of 1999 and millions of people started to download music-illegally as it would later turn out.¹⁰³

However, in Sweden piracy was not really a movement until somewhere in 2003 when a person representing the, by loose means, formed group, the piracy bureau, acted in the Swedish debate program "Debatt" on the question of illegal downloading music from the internet.¹⁰⁴

Today, the movement in Sweden is assessed to circulate mainly around the founders/representing parties of the website, www.piratebay.org which has recently been held responsible for copyright infringement as well as the piracy party, Piratpartiet, which can be voted for in democratic elections in Sweden since 2006. The movement is estimated to be quite strong, e.g. judging from the complaints to the recent judgment. Furthermore, in connection to this sentence, there has also been a strong reaction to the suggested and now passed legislation concerning civil rights sanctions in the field of intellectual property rights¹⁰⁵. The reason for these reactions can mainly be assessed to form around the perception of consumers that their potential to download music illegally without being detected is being restricted as they perceive that the copyright holders will be able to collect personal information from the internet distributors.

The general ideology of the movement taking a standpoint in the piracy party includes a balanced copyright, the abolishment of the patent construction as well as an increased integrity protection for internet users.¹⁰⁶ A personal assessment is however that it is the questions related to downloading copyrighted material that are mostly highlighted when discussing this piracy movement.¹⁰⁷

Organizations such as Ifpi believes that a large part of what today is an illegal market would be a legal market if laws functioned as they were supposed to. This could then imply that consumers of illegal

¹⁰⁰ <http://news.softpedia.com/news/Norwegian-consumer-group-doesn-039-t-buy-Apple-039-s-excuses-46749.shtml>

¹⁰¹ <http://www.cnet.com.au/mp3players/musicsoftware/0,239029154,339294524,00.htm> and <http://www.podcastingnews.com/2007/05/30/apple-itunes-plus/> both retrieved the 13th of February 2009

¹⁰² http://www.google.com/hostednews/afp/article/ALeqM5jwu0c48_I9q9lzGmcRjwpsi747mg retrieved the 13th of February 2009.

¹⁰³ Rydell, A., Sundberg, S. "Piraterna..." p. 41-50

¹⁰⁴ Rydell, A., Sundberg, S. "Piraterna..." p. 77-85

¹⁰⁵ See the rules on Civil Rights Sanctions in the Intellectual Property Field (Civilrättsliga sanktioner på immaterialrättens områden Ds 2007:19)

¹⁰⁶ www.piratpartiet.se accessed the 27th of April 2009.

¹⁰⁷ See also Rydell, A., Sundberg, S. "Piraterna..." which describes the Swedish piracy movement and where the focus is entirely on copyright issues.

music would be the future consumers of legal music. In general, if something that was previously was free will now have to be paid for it is not far to assume that consumers will place higher demands on it. Adding to this the outlook of the existing piracy movement this could imply much higher demands on business actors when it comes to all parts of the transaction. This is why it is likely to assume that the business critical holding which the piracy movement portrays would be transferred also to a general digital music consumer movement towards legal alternatives.

12.5 The Legal Tools of the Digital Music Consumer Movement

In order to grow in power and reach change in what can be perceived as unfair stipulations from a consumer perspective, a movement needs tools. When it comes to legal tools, which is the focus of this thesis, the main tools are centered on the consumer agency cluster implying the Consumer Guide, the Consumer Ombudsman and the main Consumer Agency and the legal tools they have to help consumers with these kinds of matters which all have been discussed above. These actors have the power to support a consumer movement with their aim of controlling the market and dismantling unfair consumer contracts. For further information about the roles of the separate actors, please refer to the previous chapter.

12.6 Conclusions and Reflections

As has been stated above, it can first be concluded that there is a high risk that discontent consumers leave the distributing actors if they provide defaulted services/products and refuse to take responsibility to this.

Furthermore, from investigating the potential to consumer action within the field of digital music it can be concluded that the potential for consumers to take actions this way instead of through ordinary legal complaints in court, is quite substantial. This is supported by the fact that at least two movements within what can be considered to be the overall movement- the Anti-DRM Movement as well as the Piracy Movement have already had large influence in the music industry. Furthermore, in Sweden there are agencies that work with these kinds of questions that even have legal tools to investigate the companies' use of specific legal stipulations which has also been done in the digital music context.¹⁰⁸

As the market grows bigger and consumers discover what implications contract stipulations may have on what they can claim towards the quality of the services/goods bought, a potential consumer movement may be stronger than a brand. With the lack of legislation within this field, this risk is assessed to be the biggest one to consider when deciding what kind of clauses a business actor dares to target the consumers with

What can be discovered from the two examples of parts of the entire digital music consumer movement above is that music consumers have a changed power today. They are not dependent on what the business actors decide as they can always revert to illegal alternatives instead. At least this has been the case so far. Currently new legislation, commonly known as the IPRED Act but formally known as Civil Right Sanctions in the Field of Intellectual Property Law¹⁰⁹ is being implemented in Sweden. This legislation is perceived by the consumer group to largely threaten their internet

¹⁰⁸ See Chapter 11 The Potential for Consumer Agency Interaction.

¹⁰⁹ See Ds 2007:19 "Civilrättsliga sanktioner på immaterialrättens område - genomförande av direktiv 2004/48/EG".

freedom which mostly seems to imply that they are losing their rights to download illegally anonymously.¹¹⁰ The act will not be further analyzed as this is out of the scope of the main theme of this thesis, however, from studying the preparatory works of this act, it can be stated that it does not mainly target small/normal scale consumers of illegal digital music. Therefore, the consumer collective will most likely stand strong in its “piracy activism” towards different business actors.

The consumers can hardly be considered as being only consumers any more when it comes to digital music. The entire value chain has been shifted where consumers are now more looked upon as a part of a creating network.¹¹¹ Both actors such as Spotify and Last.fm actively encourage such behavior through tagging (Last.fm) and the possibility to share playlists easily (Spotify). From a movement perspective this means that consumers are given power to become more active. Businesses are of course making money by having consumers feel that they are actively partaking and shaping what they are investing in, but this also has a down-side. From a power perspective consumers are assessed to feel that they deserve more power as they are getting more equal to the business actors and closer to the business idea.

From active participation, naturally comes a larger extent of engagement why a continuously strong digital music movement can be awaited. Also consumers do not stay if defaulted products/services are being offered without any chance for correction. From a company perspective, an alternative to change in legal agreements and -constructs which could be a high potential of complaint (as has been seen above in the case of DRM), could naturally be to create high brand value among the consumer group in order to mitigate complaints. In the next section the three actors will therefore be assessed in relation to their brands towards consumers and what this implies in relation to keeping legal claims out.

¹¹⁰ The fear likely comes from articles like this <http://www.aftonbladet.se/nyheter/ipred/article4778359.ab> accessed the 30th of April 2009.

¹¹¹ IFPI “*Digital Music Report 2009...*”

13 Consumer Branding as a Means for Mitigating Complaints

13.1 Introduction

By understanding the consumer group and the potential risk of watching them create market defining movements, the business actors can choose to mitigate the potential outcome which this could lead to. The focus in this chapter will be on using the branding towards consumers as a means to hinder such risks. Business actors thus have the power to stop these kinds of problems where they begin if creating their brand proposition with awareness of these risks.

13.2 Consumers and Spotify

13.2.1 Spotify's Brand among Consumers

Spotify is currently still assessed to be perceived as young and fresh by the consumers. The fact that Spotify has made streaming of music easy and accessible as well as free among those who has managed to get an invite to this function has provided Spotify with good connotations. Spotify is assessed to be perceived as a cheap alternative compared to downloading services such as iTunes. Such connection shall be highly valued as the large group of illegal consumers state they chose illegal alternatives as they are cheaper (free) compared to the legal alternatives.¹¹²

This perception may however be changing as Spotify has addressed that it is also releasing a downloading function potentially comparable to the one Last.fm is offering. According to information in the news this service will first be kept separated from the Spotify platform at first but then gradually implemented.¹¹³ Whether this will affect Spotify's brand value positively or negatively is too early to say. However, as stated above, if the price level will be substantially higher compared to the streaming service, this may have a negative effect.

13.2.2 Communication with Consumers

One reason why Spotify may have such positive connotations among users may also be that Spotify seems to take time to interact with consumers through the new blog media. Spotify has been blogging news about their service all from the beginning. This gives Spotify a chance to steer the opinions as well as receive input from their users in a quite efficient and innovative way. As the blog format is only gaining more and more popularity within the group of young people which could be seen as Spotify's main consumer group¹¹⁴ the potential in having a well updated blog is assessed to highly strengthen Spotify's brand image when it comes to consumer influence. This kind of value may differentiate Spotify from other actors when it comes to receiving complaints from consumers which may lead to large consumer protests of the kind in the DRM example above. To illustrate this, a recent example of when Spotify is assessed to have gotten away quite easily will be described.

¹¹² See IFPI "Digital Music Report 2009..."

¹¹³ http://www.svd.se/kulturnoje/nyheter/artikel_2672537.svd accessed the 7th of April 2009

¹¹⁴ This is based on the fact that this is the general consumer group of digital media according to IFPI "Digital Music Report 2009" and the report conducted by University of Hertfordshire <http://digital-lifestyles.info/2005/11/30/legal-digital-music-downloaders-not-kids-shocker/> accessed the 6th of April 2009

13.2.3 The Withdrawal of Artists

As has been briefly mentioned above, the news was recently released that Spotify will have to cut down on the artists and music available for streaming due to access problems with copyright. They are forced to do so since some artists that had been made available through their record companies now want to opt out from the system, which Spotify respects. This default may, as stated above, be difficult to assert from a legal perspective, however the question is how this can be said to affect Spotify's brand value and thus its business potential.

As can be detected from discussions in blogs, it can be ascertained that a lot of consumers reacted negatively to these news. It seems as if the consumers perceive it as they are buying the service as it is when they enter it and have a hard time accepting changes made to the playlists in their library which is one effect of artists being deducted from Spotify.¹¹⁵

Spotify handled this problem with actively communicating through its blog what had happened¹¹⁶ and also took the opportunity to release several new artists¹¹⁷ in a short time which is assessed to be the reason why the critique was quite quickly silenced. Considering the fact that the mistake made by Spotify was quite severe from an intellectual property perspective¹¹⁸, this effect must be deemed as quite remarkable.

The fact that Spotify managed to get away with this without too much complaints could of course also reside in the fact that consumers have general low understanding of what rights they have in relation to the product. Furthermore, it could also be so that consumers in general have higher acceptance for new things on the market. However, the fact that Spotify were able to actively communicate with their consumers is assessed to have played a large part in this case as it made the consumers feel more included. The potential default which Spotify could be responsible for towards the consumer group was however in any case steered away from.

13.3 Consumers and iTunes Store

13.3.1 iTunes Brand among Consumers

Firstly, being an Apple product, iTunes of course benefits from the strong brand recognition of Apple's. Apple has consistently focused highly on building a brand which conveys to the consumers that they are buying a lifestyle when opting for Apple products.¹¹⁹ As iTunes for a long time was connected solely to Apple's portable music device, the iPod, the connection to Apple has been strong. The fact that iTunes is named accordingly to the Apple branding strategy with putting "i" before products also gives strong connection to Apple as several products have this prefix which

¹¹⁵See e.g. comments in this blog post <http://baksidorna.blogspot.com/2009/01/sam-sundberg-om-spotify-och-lite-annat.html> accessed the 30th of April 2009.

¹¹⁶<http://www.spotify.com/blog/archives/2009/01/28/some-important-changes-to-the-spotify-music-catalogue/> accessed the 30th of April 2009.

¹¹⁷<http://www.spotify.com/blog/archives/2009/02/02/more-new-music-now-available-on-spotify/> and <http://www.spotify.com/blog/archives/2009/02/09/new-music-update-feb-9th-2009/> was released within ten days after the news on withdrawal of artists was released. Links accessed the 30th of April 2009.

¹¹⁸Transacting music based on legal rights which they did not possess

¹¹⁹<http://www.wired.com/gadgets/mac/commentary/cultofmac/2002/12/56677> accessed the 7th of April 2009 and <http://www.reuters.com/article/technologyNews/idUSL2850164020080331> accessed the 7th of April 2009

connects iTunes Store to Apple even though it now also targets other music consumers than those using iPod.

Thus, the brand values of Apple are to a large extent also applicable to the iTunes application. These values mainly circles around the fact that Apple should be the more individualistic and human alternative. This is shown through putting i as in I before their products as well as the diverse coloring of the products which enables a perfect color fit for all types of consumers. The consumers are through this assumed to feel more personal with the brand. However, as has been discussed above¹²⁰, there has been some turmoil around the DRM used at the iTunes why the effects to the brand because of this shall be assessed further in the next section.

As has been further discussed above, iTunes Store has been subject to several complaints from the consumer ombudsman from Norway as well as other European countries. These complaints have forced Apple to change several stipulations in their end-user agreement to make it more balanced towards consumers.¹²¹ Apple has avoided court proceedings and “voluntarily” has changed their offering towards consumers which is assessed as a smart move considering the risk of direct consumer complaints if Apple were not to agree to the opinions of the ombudsmen. If this had not been done, it is assessed that the iTunes brand could have been quite damaged due to the fact that the discussions among consumers based on what we know about this collective most likely would have been that iTunes is a big business actor which should not hurt small consumers.

13.3.2 Consumer Interaction

iTunes is generally a fairly statistic service compared to Last.fm and Spotify as the consumers are buying music in a way very similar to the old kinds of music stores. Most likely however, the consumers of iTunes, as consumers of an Apple product however most likely feels like they have a more personal and thus interactive relation to the music concept. Speaking as the legal contract as a part of the brand, iTunes has furthermore shown that they work actively with taking on quality responsibility in the way that consumers may contact them if they have any complaints towards the product.¹²²

13.4 Consumers and Last.fm

13.4.1 Last.fm’s Brand among Consumers

Last.fm’s brand is highly targeted towards consumer interaction which will be discussed below. As this concept has been very successful considering Last.fm’s growth, it can be assessed that Last.fm among consumers is perceived to be an open platform for consumer creation.¹²³ A personal reflection is further that Last.fm’s popularity in Sweden mostly derives from listeners of alternative music. This may be due to the fact that Last.fm is a lot about discovering new music through e.g. tags and the personal radio which usually is more interesting for people who are really interested in music. These people are then assessed to usually be more drawn to the alternative sphere.

¹²⁰ See section 11.4 Previous Cases

¹²¹ See e.g. http://news.cnet.com/8301-13579_3-10157000-37.html on the letting go of DRM protection. Accessed the 27th of April 2009.

¹²² See the support page for iTunes Store: <http://www.apple.com/se/support/itunes/store/> accessed the 2nd of June 2009.

¹²³ <http://www.rmmlondon.com/archive/lastfm-platform-of-brand-utility/> accessed the 8th of April 2009

13.4.2 Consumer Interaction

Last.fm has had as an initial branding strategy to have consumers interact with the shaping of the business and transacted objects. Users are implicitly contributing through the scrobbling function which adds a database of relationships. Within the entire database of users participating in this, Last.fm is then able to make recommendations based on what kind of music the user is listening to.

Explicitly, the users are further contributing through the fact that they are tagging tracks, contributing content to the artist wiki of Last.fm as well as adding journals, uploading photos, communicating through the shoutboxes on their user pages etc. This of course makes the entire website and service grow which leads to the attraction of even more users. Through adding the Last.fm scrobber on weblogs, the users spread Last.fm even further.

Last.fm actively supports even more interaction from the users which includes e.g. a developer's site providing resources, tools and a forum for sharing information on developing applications using Last.fm's web services.¹²⁴

The fact that Last.fm has had as a strategy from the beginning to put consumer interaction in focus may be the case for why there are not any specifically known consumer complaints like in the cases of Spotify and iTunes. As Last.fm now also sells downloads as a side business to the original Last.fm services it may however be more exposed to complaints in the future. According to the thesis put forward here implying that consumer oriented brands will have fewer problems with consumer complaints, Last.fm seems to be well prepared for this.

¹²⁴ <http://www.rmmlondon.com/archive/lastfm-platform-of-brand-utility/> accessed the 8th of April.

14 Conclusions and Suggested Solutions

14.1 Conclusions of the Legal Arena

The Consumer Sale of Goods Act which is supposed to give consumers some basic rights in the transactions they partake in their everyday lives was created in a time where the transactions subject to this thesis did not exist. This of course implies that there will always be uncertainties on how to treat the issues on what kind of defaults a consumer may hold a business actor responsible to in relation to their affair. However, as the digital music objects which are being traded upon today should be considered to be physical goods as they can be deconstructed in visible software code and transacted upon as separated objects. This implies that the Consumer Sale of Goods Act is applicable. The rules which grant consumers rights to claim a certain quality of the objects they buy shall therefore be concerned to be applicable to the offers given by the three actors Spotify, Last.fm and iTunes which have been specifically investigated in this thesis.

As can be concluded for the investigation of default responsibility on the legal arena when it comes to contractual aspects, there has not been so many grave defaults arising from these kinds of products/services as far as can be concluded here. This implies that there is little chance to claim the contractual stipulations posed by business actors on the consumers as being unreasonable. The contracts used are in general fairly balanced why this does not strengthen the potential of having the disclaimers invalidated through legal means.

Important aspects to be considered on the legal arena is furthermore that it can be concluded that the administrative arena within this field is strong which implies that the market may be regulated as a whole through actors such as the Consumer Ombudsman. Furthermore, this administrative arena is supported by a potentially strong digital music consumer movement which may not accept all kinds of lack of rights which they are subject to in many of the business deals within this field today. Therefore, even if a consumer actor can have difficulties to claim quality responsibility for goods that he/she has purchased through the common civil rights acts, he/she could still get his/her right through by means of the administrative arena or participation in the consumer movement described in this thesis.

14.2 Conclusions of the Tech-Business Arena

Two out of three investigated business actors uses “as-is” warranty disclaimers. iTunes Store however has a more refined way of dealing with the consumers problems. Even if two out of three actors here use these kinds of disclaimers which may deprive consumers of their legal rights to a certain quality of the goods they buy, the fact that such a large actor as iTunes does not take part in this, may change the business setting in the future. Companies within this field may therefore soon take the same amount of responsibility as distributing actors of more tangible music products. The fact that the consumers within the digital music sphere has proven that they can form movements to protest subjects of digital music transactions which they are not happy with why such development seems both believable and plausible. All of the three actors also include some extent of consumer participation as a part of the business models. This may imply that increased consumer concern also in relation to the value propositions formalized in the end-user agreements may not be far away.

14.3 Management/Business Solutions

From a business perspective, the lack of legislation may seem as an opportunity to disclaim responsibility. But by default disclaiming such may also create branding risks. Because of the general lack of insight in how all intellectual tools such as end-user contracts and brand connects both being part of the intellectual capital management of the firms, the companies may risk losing consumers. From a company perspective, the conclusion therefore is to take a more active part in understanding the concept of intellectual capital management in order to understand what it can imply to stretch legal boundaries as far as possible.

This thus implies that even if the companies today seem to be allowed to have quite far-stretching quality disclaimers towards consumers this might still not be the best way to act from a business perspective. Considering the fact that iTunes Store already seems to utilize a more generous strategy when meeting complaints from their consumers, this might be taken as an inspiration and advice on how to manage this question also for other companies within this field.

14.4 Legal Solutions

A potential legal solution to the uncertainties that has been discovered here is of course to alter the legislation to better suit the online (music) products. As these kinds of transaction are a large part of modern consumers' daily lives such solution seems feasible. In relation to the potential of legal changes, one must however also keep in mind that this area of business moves rapidly while the legislative context necessarily is surrounded by inertia to some extent. Thus, the laws may potentially not be altered as quickly as needed to solve these problems.

If the law however would be subject to change, such legislation needs to be balanced in relation to the consumer, business and general market economical interests suggested above. As suggested above, the solution needs to take specifically into consideration that some technologies are inherently subject to external influence why they cannot take responsibility for these kinds of defaults. However, this applies also for businesses dealing with physical goods why they are only responsible for defaults within their control sphere according to general purchase law.

Another and most likely more feasible legal solution is to try to regulate the use of contracts through public agency or consumer interactions. As seen above, both of these actor segments seem to have very strong potential to reach change in this field.

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Appendix

Appendix 1. Spotify End-User Agreement

Spotify® Beta Terms and Conditions of Use

Effective as from 8 May 2009

This document (the “Agreement”) is a legally binding agreement between you and Spotify Ltd (“Spotify”) that governs your use of Spotify’s software application (the “Spotify Software Application”) and online streaming Spotify Service (as defined below), both available at the [Spotify website](#). The Spotify Service can be accessed as an ad-supported free-to-the-user version (the “Ad-Supported Service”), a 24 hour advertisement free version of the Ad-Supported Service for which you pay an access fee (the “Day Pass”), or as a monthly or yearly subscription to an advertisement free version of the Ad-Supported Service with additional features for which you pay an access fee (the “Premium Service”). The Day Pass and the Premium Service are collectively referred to as the “Spotify Paid for Service”. The Ad-Supported Service, the Day Pass and the Premium Service are collectively referred to as the “Spotify Service”. Please note that you must read and agree to the terms and conditions of this Agreement before you use the Spotify Software Application or the Spotify Service. If you do not agree to the terms and conditions of the Agreement, you may NOT use the Spotify Software Application or the Spotify Service.

1. Contract formation

By ticking the “I agree” box when creating a Spotify account or by using the Spotify Software Application (including but not limited to the downloading of said application) or the Spotify Service, you confirm that you are 18 years of age or more, or that you have received your parent’s or guardian’s consent to enter into this Agreement, that you have your residence in one of the countries in which Spotify provides the Spotify Service, that any registration information that you submit to Spotify is true, accurate and complete, that you will update such information in order to keep it current, and that you agree to the terms and conditions of this Agreement and the [Spotify Privacy Policy](#).

2. Changes to the Agreement

Spotify reserves a right to make changes to this Agreement at its sole discretion. Any material changes will be posted on the [Spotify website](#) and it is your responsibility to check the website for such postings from time to time. The continued use of the Spotify Software Application or the Spotify Service after the posting of changes to this Agreement will constitute an acceptance of such changes.

3. Grant of license

Spotify grants you a limited, non-exclusive, revocable license to make personal non-commercial use of the Spotify Software Application (including a right to download said application) and the Spotify Service and to receive by stream the media content made available through the Spotify Service in your home country. You do not have a right to transfer or sublicense your rights under this Agreement.

4. Purchase of Day Pass and Premium Service

By ticking the “I agree” box you agree to pay the fee for access to the applicable Spotify Paid for Service. Such fee will be charged to the credit card you have designated as the credit card to be billed for your purchase. By designating a credit card to be billed, you confirm that you are authorised to make such purchase and that you

are the holder of such credit card (i.e. that the credit card is issued in your name). All prices stated on the Spotify website are inclusive of VAT and other applicable taxes and fees.

5. Payment methods

Spotify accepts VISA and MasterCard as forms of payment.

6. Prices

Spotify reserves the right to change the price for the Spotify Paid for Service at any time. Such changed price will take effect after the expiry of the then-current paid for period (i.e. the term that you have already paid for). Any new prices will be posted on the [Spotify website](#) and it is your responsibility to check the website for such postings from time to time. If you do not wish to be bound by such changed price relating to your Premium Service you may terminate your subscription of your Premium Service in accordance with what is stated in Section 12 (Term and termination). The continued use of the Spotify Paid for Service after the posting of a new price constitutes an acceptance of such new price.

7. Automatic subscription renewal

Your subscription to the Premium Service will automatically renew at the end of each subscription term unless you terminate your subscription prior to the end of such subscription term in accordance with what is stated in Section 12 (Term and termination). The renewed subscription will have the same duration as the subscription being renewed (one month, one year etc.). At the time of renewal the credit card you have designated to be billed for the purchase of the Premium Service will automatically be billed with the applicable amount.

8. Cooling-off period

When you log in to the Spotify Paid for Service after having purchased such service you have started to use the Spotify Paid for Service. You agree and understand that once you have started using the Spotify Paid for Service you will not have a right to cancel or withdraw from your purchase of such service.

9. Restrictions of use

For the avoidance of doubt, you agree that you may not (without limitation):

copy, reproduce, “rip”, record, make available to the public or otherwise use any part of the Spotify Software Application or the Spotify Service or its content (including but not limited to tracks, images and text) in a manner not expressly permitted under this Agreement;

provide your password to any other person or use any other person's user name and password;

reverse-engineer, decompile, disassemble, modify or create derivative works based on the Spotify Software Application or the Spotify Service or any part thereof;

circumvent any technology used by Spotify or its licensors to protect content accessible through the Spotify Software Application and Spotify Service;

rent or lease any part of the Spotify Software Application or the Spotify Service;

use the Spotify Software Application or the Spotify Service in a way that violates the terms of this Agreement; and

circumvent any territorial restrictions applied by Spotify.

In addition to the above, you agree to take all reasonable care to prevent unauthorized use of the Spotify Software Application and the Spotify Service and its content.

10. Advertising and use of computational resources

As consideration for your rights under this Agreement, you agree that (i) Spotify and its business partners have a right to provide advertising and other information to you in relation to the Spotify Software Application and the Spotify Service, and that (ii) Spotify has a right to allow the Spotify Software Application and the Spotify Service to utilize the processor, bandwidth and storage hardware on your computer or other relevant device for the limited purpose of facilitating the communication and transmission of content and other data or features to you and other users of the Spotify Software Application and the Spotify Service, and to facilitate the operation of the network on which the Spotify Software Application and the Spotify Service runs.

11. Customer support

If you have any questions concerning the Spotify Software Application, the Spotify Service or this Agreement, please contact Spotify customer service by visiting the [help section](#).

12. Term and termination

This Agreement will become effective in relation to you when you have ticked the “I agree” box when creating a Spotify account or when you start using the Spotify Software Application or the Spotify Service and will remain effective until terminated by you or Spotify. You may cancel your subscription of the Premium Service at any time by visiting [your subscription page](#) which termination shall have effect at the expiry of the then-current subscription period that you have already paid for (e.g. one month, one quarter or a year). This means that Spotify will not refund any remaining portion of subscription fees you have already paid for. Spotify reserves the right to terminate this Agreement or suspend your Spotify account at any time in case of unauthorized, or suspected unauthorized, use of the Spotify Software Application or the Spotify Service. If Spotify terminates this Agreement, or suspends your Spotify account, for any of the reasons set forth in this section, Spotify shall have no liability or responsibility to you, and Spotify will not refund any amounts that you have previously paid.

13. No warranty

The use of the Spotify Software Application and the Spotify Service (including but not limited to its content) is at your own risk. The Spotify Software Application and the Spotify Service is provided on an “as is” and “as available” basis. There is no warranty, expressed or implied, as to the quality, content and availability or fitness for a specific purpose of the Spotify Software Application or the Spotify Service. In addition, Spotify does not warrant, endorse, guarantee or assume responsibility for any product or service advertised or offered by a third party on or through the Spotify Service or any hyperlinked website, or featured in any banner or other advertising. Consequently Spotify will in no way be responsible for any transaction between you and third-party providers of products or services advertised on or through the Spotify Service. As with any purchase of a product or service through any medium or in any environment, you should use your judgment and exercise caution where appropriate. No advice or information whether oral or in writing obtained by you from Spotify shall create any warranty on behalf of Spotify in this regard.

14. Limitation of liability

In no event shall Spotify, its affiliates, officers, directors and employees be liable for any indirect, incidental, special or consequential damages (including but not limited to any loss of data, service interruption, computer failure or pecuniary loss) arising out of the use of or inability to use the Spotify Software Application or the Spotify Service (including but not limited to its content), including any damages resulting therefrom.

Your only right with respect to any problems or dissatisfaction with the Spotify Software Application and the Spotify Service is to uninstall the Spotify Software Application and to stop using the Spotify Service.

15. Indemnity

You agree to indemnify and hold Spotify and its officers, directors, employees and licensors harmless from any claim or demand (including but not limited to reasonable attorney fees) made by a third party due to or arising out of or related to your violation of the terms and conditions of this Agreement or your violation of any laws, regulations or third party rights.

16. Intellectual property

Spotify respects intellectual property rights, and expects you to do the same. Please note therefore that the Spotify Software Application, the Spotify Service and the content provided through the Spotify Service is the property of Spotify or Spotify's licensors and protected by intellectual property rights (including but not limited to copyright) and that you do not have a right to use the Spotify Software Application or the Spotify Service (including but not limited to its content) in any manner not covered by the Agreement.

Further, you may not remove or alter any copyright, trade mark or other intellectual property notices contained on or provided through the Spotify Software Application or the Spotify Service.

17. Technology limitations and modifications

Spotify will make reasonable efforts to keep the Spotify Software Application and the Spotify Service operational. However, certain technical difficulties or maintenance may, from time to time, result in temporary interruptions. Spotify reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, functions and features of the Spotify Software Application and the Spotify Service with or without notice.

18. Privacy

You agree that Spotify has a right to collect and process your personal information in accordance with the [Spotify Privacy Policy](#).

19. Assignment by Spotify

Spotify has a right to assign this Agreement or any part thereof without restrictions.

20. Entire agreement

This Agreement together with the [Spotify Privacy Policy](#) constitutes all the terms and conditions agreed upon between you and Spotify and supersedes any prior agreements, whether written or oral. Any additional or different terms or conditions in any written or oral communication from you to Spotify are void. You agree and accept that you have not accepted the terms and conditions of this Agreement in reliance of or to any oral or written representations made by Spotify not contained in this Agreement.

21. Severability

Should for any reason or to any extent any provision of this Agreement be held invalid or unenforceable, such invalidity or enforceability shall not in any manner affect or render invalid or unenforceable the remaining provisions of this Agreement and the application of that provision shall be enforced to the extent permitted by law.

22. Governing law and disputes

This Agreement shall be governed and construed in accordance with the substantive laws of Sweden. Any dispute, controversy or claim arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Sweden, Stockholm District Court being the court of first instance.

23. English version prevails

In the event that this Agreement is translated into other languages and there is a discrepancy between the two language versions, the English language version shall prevail to the extent that such discrepancy is the result of an error in translation.

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Appendix 2. iTunes End-User Agreement

ITUNES STORE

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[VILLKOR FÖR TJÄNSTEN](#)

[KÖPEVILLKOR](#)

[Presentkort, iTunes Card, Innehållskoder och Månatliga Gåvobevis](#)

[App Store VILLKOR FÖR TJÄNSTEN](#)

[LICENSED APPLICATION END USER LICENSE AGREEMENT](#)

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iTunes Store

VILLKOR FÖR TJÄNSTEN

Detta är ett juridiskt bindande avtal mellan dig och iTunes S.à.r.l. ("iTunes") som anger villkoren och förutsättningarna för din användning av iTunes Store-tjänsten. Detta avtal – tillsammans med uppdateringar, kompletterande villkor samt alla iTunes/Apple-regler och policier till vilka det hänvisas i detta avtal – utgör sammantaget "Avtalet" mellan dig och iTunes. För att acceptera dessa villkor klickar du på "Agree". Om du inte accepterar dessa villkor skall du inte klicka på "Agree" och då får du inte heller använda tjänsten. Du måste acceptera och rätta dig efter dessa villkor som de nu presenteras för dig; inga ändringar, tillägg eller strykningar accepteras. iTunes kan vägra dig tillträde till iTunes Store om någon del av detta avtal inte efterlevs.

Detta avtal inskränker inte eventuella mjukvarulicenser som du kan ha ingått, såsom för användning av iTunes-applikationen.

1. Definition av Tjänsten. iTunes tillhandahåller iTunes Store ("Tjänsten"), som tillåter Dig att köpa en licens till digitalt material, inkluderande ljudinspelningar, videos, spel och mjukvara, via nedladdning under de villkor och

förutsättningar stadgade i detta Avtal. Det är inte iTunes som levererar iTunes-applikationen eller iPod eller iPhone.

2. Användning av Tjänsten.

a. Ålderskrav. Tjänsten är tillgänglig för alla som fyllt 13 år. Om Du fyllt 13 år men inte 18 år ännu, skall Du tillsammans med Din målsman granska detta Avtal så att både Du och Din målsman förstår innebörden av dessa villkor och förutsättningar.

b. VIKTIG SÄKERHETSINFORMATION. (1) För att undvika muskel-, led- eller ögon-ansträngningar när du spelar videospel bör du ofta ta pauser från att spela samt avsluta spelandet och ta längre vilopauser om dina ögon, händer, handleder eller armar blir trötta eller ömma eller om du känner något annat obehag. (2) En väldigt liten procent personer kan uppleva anfall eller blackouts när de exponeras för blinkande ljus eller mönster, inklusive under tiden de spelar videospel eller tittar på videor. Symptomen kan bestå av yrsel, illamående, ofrivilliga muskelsammandragningar, medvetandeförlust, ändrad syn, stickande känsla, domningar eller andra obehag. Konsultera en läkare innan du spelar videospel om du tidigare drabbats av dessa symptom eller liknande symptom som är kopplade till anfall och/eller epilepsi, samt avbryt omedelbart att spela videospel och kontakta läkare om dessa eller liknande symptom förekommer när du spelar videospel. Föräldrar bör övervaka deras barns videospelande i syfte att identifiera tecken som indikerar symptom.

3. Anstötligt Material. Du är medveten om att Du genom att använda Tjänsten kan komma i kontakt med material som kan upplevas som kränkande, oanständigt eller stötande, samt material som innehåller grovt och stötande språk. Likväl accepterar Du att Tjänsten används på egen risk och att iTunes aldrig kan hållas ansvarigt för material som Du anser vara kränkande, oanständigt eller stötande. Innehållsklasser (inkluderande genre, undergenre och Podcastkategorier och underkategorier och liknande) och beskrivningar lämnas för din bekvämlighet och du bekräftar och medger att iTunes inte garanterar att dessa är korrekta.

4. Systemkrav. Nyttjande av Tjänsten kräver en kompatibel dator, en Internetanslutning (separat avgift kan tillkomma), särskilda programvaror (separata avgifter kan tillkomma), samt att det kan vara nödvändigt att med jämna mellanrum hämta uppgraderingar och uppdateringar. Dessa faktorer, d.v.s. hårdvaran, programvaran och Internetanslutningen, kan påverka Din förmåga att använda Tjänsten. Högastighetsanslutning till Internet rekommenderas. Du bekräftar och accepterar att Du själv ansvarar för att uppfylla sådana systemkrav och att systemkraven kan ändras med jämna mellanrum. Tjänsten ingår inte som en del i någon annan produkt eller annat erbjudande och inget köp eller annat införskaffande av en annan produkt utgör en garanti eller kan tas till intäkt för att du får tillgång till Tjänsten.

5. Tillämpliga regler. Detta avtal är tillämpligt på all användning av Tjänsten. Tillkommande regler gäller för köp som görs genom Tjänsten ("Köpevillkor") och kan hittas på: <http://www.apple.com/legal/itunes/se/terms.html#SALES>. Andra tillkommande regler och förutsättningar är tillämpliga på iTunes-kort, Inne-hålls-koder och Månatliga gåvor och kan hittas på <http://www.apple.com/legal/itunes/se/terms.html#GIFTS> eller studeras på Tjänsten. Om du inte redan har läst dessa tillkommande regler och förutsättningar måste du göra detta. Dina inköp av mjukvaruprodukter genom Tjänsten är villkorade av eventuella slutanvändarlicenser eller andra villkor och förutsättningar som krävs för sådana produkter, och alla dessa görs härmed till en del av detta avtal.

6. Personuppgiftsbehandling

a. Apples Policy för Skydd av Personuppgifter. Om inte annat anges i detta Avtal, är Tjänsten underkastad Apples policy om skydd av personuppgifter, se: <http://www.apple.com/se/legal/privacy/>, som härmed utgör en del av detta Avtal. Om Du inte redan läst Apples policy om skydd av personuppgifter uppmanas Du att göra det nu.

b. Genius. När du väljer Genius-funktionen kommer Apple, från tid till annan, att automatiskt samla in information som kan användas för att identifiera media i ditt iTunes-bibliotek på denna dator, som till exempel din spelhistorik samt dina spellistor. Detta inkluderar media som inhandlats genom iTunes samt media som erhållits från annan plats. Denna information kommer att lagras anonymt samt utan anknytning till ditt namn eller iTunes-konto. När du använder dig av Genius-funktionen kommer Apple att använda denna information samt innehållet i ditt iTunes-bibliotek samt annan information för att tillhandahålla dig med personligt anpassade rekommendationer.

Apple äger endast rätt att använda denna information samt kombinera den med samlad information inhämtad från iTunes-bibliotek från andra användare som också väljer att använda sig av denna tjänst, information rörande dina inköp från iTunes Store, samlad inköpsinformation från andra iTunes Store-användare samt annan information insamlad från utomstående part i syfte att:

- Skapa personligt anpassade spellistor till ditt iTunes-bibliotek.
- Tillhandahålla dig med rekommendationer angående media och andra produkter och tjänster som du kan tänkas köpa.
- Tillhandahålla rekommendationer angående produkter och tjänster till andra användare.

Under hela tiden din information behandlas kommer detta att ske i enlighet med Apples policy för integritetsskydd, vilken finns tillgänglig på: www.apple.com/se/legal/privacy/.

När du valt att använda dig av Genius-funktionen kommer du kunna skapa Genius-spellistor på produkter där Genius-funktionen kan användas. Efter det du på iTunes valt Genius-funktionen måste du synkronisera med ditt iTunes-bibliotek för att kunna använda Genius-funktionen på en produkt.

Om du inte önskar att vi samlar in och använder informationen från ditt iTunes-bibliotek på ovan angivet sätt skall du inte välja eller använda dig av Genius-funktionen. Du kan när som helst återkalla ditt samtycke genom att stänga av Genius-funktionen på Store-menyn. När du väljer att stänga av Genius-funktionen kommer information inte längre att sändas från iTunes angående ditt iTunes-bibliotek till Apple. Om du har valt att använda ditt bibliotek på flera datorer måste du stänga av Genius-funktionen från samtliga datorer.

Genom att välja Genius-funktionen samtycker du till användning av information på ovan angivet sätt samt på det sätt som anges i Apples policy för integritetsskydd.

7. Dina Uppgifter. Du skall förse iTunes med uppdaterade, korrekta och fullständiga uppgifter när Du registrerar Dig för Tjänsten och vid andra tillfällen när detta är nödvändigt för att använda Tjänsten ("Registreringsuppgifter"). Du skall vidare se till att denna information underhålls och uppdateras så att den vid alla tidpunkter är komplett och korrekt. iTunes har rätt att säga upp Din rätt att utnyttja Tjänsten om det visar sig att Du lämnat falska, felaktiga eller ofullständiga uppgifter. Du ger härmed iTunes rätten att lagra och använda Dina Registreringsuppgifter (inklusive information hänförlig till betalkort) i samband med underhåll av Dina användarkonton samt vid debiteringar på Ditt betalkort.

8. Säkerhet för Användarkonton.

a. Användarkonto och Lösenord. Som registrerad användare av Tjänsten kan Du erhålla eller skapa ett användarkonto ("Konto"). Du är själv ansvarig för bevarandet av sekretessen och säkerheten av Ditt Konto. Du skall inte avslöja uppgifter om Ditt Konto för någon annan och inte heller använda annan persons Konto. Du är ensamt ansvarig för allt som företas med Ditt Konto, och Du lovar att omedelbart meddela iTunes om Ditt Konto används utan Ditt tillstånd samt vid andra säkerhetsöverträdelser. iTunes kan inte hållas ansvarigt för förluster orsakade till följd av otillåten användning av Ditt Konto, under förutsättning att iTunes inte gjort sig skyldig till försummelse.

b. Säkerhet. Du får inte använda Tjänsten på annat sätt än med hjälp av mjukvara som tillhandahålls av Apple Inc eller dess närstående bolag ("Apple") för att ge tillgång till Tjänsten. Du skall inte gå in på, eller försöka gå in på, ett konto som du inte har behörighet till. Du åtar dig att inte på något sätt eller i någon form modifiera mjukvaran som tillhandahålls av Apple för att ge tillgång till Tjänsten på något sätt eller att använda ändrade versioner av mjukvaran i något syfte, inklusive att obehörigen skaffa dig tillgång till Tjänsten. Brott mot system- eller nätverkssäkerhet kan resultera i civila eller straffrättsliga sanktioner.

9. Köp av iTunes Material

a. Produktkrav. Du är medveten om att vissa nyttjanden av innehåll som har köpts från Tjänsten kan kräva att Du använder särskild hård- eller mjukvara (t.ex. krävs en CD-brännare för att bränna en sång till en CD och en bärbar digital musikspelare för att lyssna på eller titta på innehåll som har inköpts från Tjänsten när du rör dig) och att Du själv ansvarar för sådan hård- eller mjukvara. Så snart innehåll har inköpts och levererats till Dig ansvarar Du själv för förlust, skada eller förstörelse av detta innehåll och iTunes är inte ansvarigt för det fall ditt innehåll förloras, skadas eller förstörs, under förutsättning att iTunes inte varit vårdslöst.

b. Produktanvändning. Du samtycker till att Produkterna tillhandahålls dig endast genom licens. Du är medveten om att Tjänsten, och produkter som köps genom Tjänsten, såsom ljudinspelningar, videos, spel, mjukvara och tillhörande grafiskt material ("Produkterna"), innehåller en säkerhetsstruktur som använder en teknologi som skyddar digital information ("Säkerhets-teknologin"). iTunes Plus-produkter innehåller ingen Säkerhetsteknologi. Ditt nyttjande av Produkterna, oavsett om dessa skyddas av Säkerhetsteknologi eller inte, begränsas av särskilda användarvillkor som iTunes och dess licensgivare ställer upp ("Användarregler"). Du bekräftar härmed att ditt användande av Produkterna är begränsat av Användarreglerna. Du åtar dig att nyttja Produkterna i enlighet med tillämpliga Användningsregler.

Användningsregler.

(i) Du får inte nyttja Produkterna om Du inte först accepterar villkoren i detta Avtal.

(ii) Din licens till Produkterna i enlighet med detta Avtal ger dig rätt att använda Produkterna för personligt och icke-kommersiellt bruk i den utsträckning det är tillåtet enligt lag, och inte distribuera, överlåta, upplåta eller licensiera Produkterna vidare.

För vidare information om Dina rättigheter och skyldigheter vid nyttjande av Produkterna, se:

- <http://www.stim.se/> eller

- <http://www.ifpi.se/> eller

- <http://www.copyswede.se>.

(iii) Du har rätt att använda Produkterna på maximalt fem godkända apparater (såsom t ex en dator) ljudbärare med iTunes-applikationen installerad vid varje enskilt tillfälle.

(iv) Du skall kunna spara Produkterna på upp till fem olika Konton på särskilda ljudbärare, t ex en iPod, iPhone eller Apple TV, samtidigt.

(v) Du har rätt att bränna en playlist med ljud maximalt sju gånger.

(vi) Du har inte rätt att bränna videoprodukter.

(vii) Du har enbart rätt att exportera bränna (om tillämpligt) eller kopiera Produkterna för personligt och icke-kommersiellt bruk.

(viii) Du har inte rätt att använda Produkterna som ringsignaler för telefoner.

(ix) Möjligheten att bränna (om tillämpligt) och exportera Produkterna är endast en service åt Dig och utgör inte en överlåtelse, ett avstående eller annan begränsning av någon rättighet som tillkommer innehavarna av upphovsrätten till ljud- eller videomaterial, ljudinspelningar, bakomliggande komposition, artwork eller annat material inkluderat i Produkterna. Du får använda den CD till vilken du har brännt sånger på samma sätt som du får använda en CD som du köper i en fysisk skivbutik och i enlighet med svensk upphovsrättslig lagstiftning.

(x) Du försäkrar att Du inte skall försöka, uppmuntra eller assistera någon annan, att kringgå eller modifiera någon säkerhetsteknologi eller någon av de programvaror som utgör en del av Tjänsten eller som används för att administrera dessa Användningsregler.

(xi) Leveransen av Produkterna till Dig innebär ingen rätt för Dig att använda produkterna kommersiellt eller i reklamsyfte.

(xii) iTunes Plus Produkterna innehåller ingen säkerhetsteknologi som begränsar Ditt nyttjande av sådana Produkter, och innehållet i dessa Användningsregler (iii)-(vi) gäller inte för iTunes Plus Produkterna. Du har rätt att kopiera, förvara och bränna iTunes Plus Produkterna i en omfattning som kan vara rimlig för personligt, icke-kommersiellt bruk.

(xiii) Användarreglerna för mjukvaruprodukter styrs av innehållet i eventuella slutanvändarvillkor och andra villkor och förutsättningar som krävs för sådana produkter.

c. Innehållssäkerhet. Du åtar dig att inte inkräkta på eller försöka inkräkta på någon del av Säkerhetsteknologin. Du åtar dig att inte av något skäl försöka, eller uppmana eller assistera någon annan att, kringgå, modifiera, reverse-engineer, dekompilera, ta isär eller på annat sätt vidta åtgärder med någon del av Säkerhetsteknologin, eller annan teknologi eller mjukvara som är del av Tjänsten eller som används för att administrera Användarreglerna, eller att inkräkta på, ta bort eller ändra rättighetshanteringsinformation på Produkterna. Oavsett andra bestämmelser har du rätt att bränna ljudprodukter till CD, inom de begränsningar som anges i Användarvillkoren. Efterföljande av Användarvillkoren får granskas och övervakas av iTunes i kontrollsyfte och iTunes förbehåller sig rätten att genomdriva Användarreglerna med eller utan föregående notifiering till dig.

d. När Du köper en Produkt, accepterar du att nyttja denna enligt Användningsreglerna och är medveten om att allt annat nyttjande kan utgöra ett upphovsrättsintrång. Säkerhetsteknologin, i tillämpliga fall, utgör en integrerad och fast del av Produkterna. Utöver villkor som kan ha ingåtts mellan Dig och tredje part, regleras Dina rättigheter relaterade till Produkterna i Användningsreglerna. iTunes förbehåller sig rätten att ändra Användningsreglerna när som helst.

e. Du är medveten om att vissa aspekter av Tjänsten, Produkterna och administrationen av Användningsreglerna är förenade med den pågående utvecklingen av iTunes. iTunes kan ensidigt bestämma att lägga ner Tjänsten eller delar därav, och Du är medveten om att Du då inte längre kommer att kunna använda Produkterna i samma utsträckning. iTunes kan inte hållas ansvarigt om de väljer att utnyttja denna rättighet. Du kan framför allt vara förhindrad från att auktorisera nya datorer för att använda Produkter som är skyddade av Säkerhetsteknologin.

f. Tjänsten kan komma att erbjuda interaktiva funktioner som gör det möjligt för dig att bl.a. skicka in eller lägga upp information, material eller länkar till tredjepartsinnehåll på områden i Tjänsten som är öppna för andra användare av Tjänsten och för allmänheten. Du bekräftar och accepterar att allt medverkande i sådana funktioner och allt användande av sådana funktioner, inklusive all information material eller länkar som har skickats in eller lagts upp av dig, skall ske på endast ditt ansvar, skall inte kränka eller göra intrång i någon annans rättigheter, bidra eller uppmuntra till intrång eller på annat sätt olagligt beteende, eller på annat sätt vara obscen, och att du har inhämtat alla erforderliga rättigheter, licenser och klareringar. Du åtar

dig vidare att lämna korrekt och fullständig information i samband med att du skickar eller postar information eller material på Tjänsten. Du upplåter också härmed utan ersättning en global, icke-exklusiv användarlicens till iTunes för att använda det material Du bidrar med som en del av Tjänsten och i anslutning till Produkterna, utan några skyldigheter mot eller ersättningskrav från Dig.

iTunes förbehåller sig rätten att inte publicera eller lägga upp inskickat material. iTunes har även rätt att avlägsna och redigera sådant material när som helst och utan att hållas ansvarigt.

iTunes har rätt, men inte skyldighet, att granska all information och allt material som har skickats eller postats av dig eller som i övrigt är tillgängligt på Tjänsten, att undersöka eventuella rapporterade eller uppenbara brott mot detta Avtal, och att vidta alla slags åtgärder som iTunes, helt utifrån sin egen diskretion, bedömer vara erforderliga, inklusive men inte begränsat till, de som anges i punkt 14 nedan eller enligt Apple's Upphovsrättspolicy (<http://www.apple.com/legal/trademark/claimsofcopyright.html>).

10. Territorium. Tjänsten är tillgänglig endast för Dig i Sverige. Om Du inte befinner Dig i Sverige får Du inte använda eller försöka använda Tjänsten. iTunes kan komma att använda teknologi för att försäkra sig om att detta villkor efterlevs.

11. Överenskommelse om Betalning.

a. Betalning av Produkterna. Betalning skall erläggas för samtliga Produkter köpta genom Tjänsten. iTunes får debitera Ditt betalkort eller Klicka- & Köpkonto för köpta Produkter samt vissa tillkommande belopp som kan uppkomma i relation till Ditt Konto (inkl. skatter och tillämpliga dröjsmålsavgifter). Du är ansvarig för att alla betalningar sker i tid och att du, för betalningen av produkterna och tillkommande avgifter, försett iTunes med ett giltigt betalkort eller klicka- & köpkonto. Alla avgifter och belopp debiteras på det betalkort, eller Klicka- & Köpkonto Du angett vid registreringen. Om Du vill använda ett annat betalkort eller Klicka- & Köpkonto, måste Du ändra uppgifterna i avsnittet Account Info (Du kan tillfälligt komma att nekas tillgång till Tjänsten innan iTunes bekräftat giltigheten av den nya betalkorts- eller Klicka- & Köpkontoinformationen).

b. Rätt att Ändra Priser och Tillgången till Produkterna. iTunes äger när som helst och ensidigt ändra priserna och tillgången till Produkterna.

c. Elektroniska Signaturer och Kontrakt. Ditt nyttjande av Tjänsten inkluderar möjligheten att på elektronisk väg handla och/eller ingå avtal. Du bekräftar att elektroniskt gjorda ansökningar och andra inskick från dig utgör ett avtal och en vilja att vara bunden av och betala i enlighet med sådana avtal och köp. Avtalet och din vilja att vara bunden av elektroniska inskick är tillämpligt på all registrering hänförligt till ingångna transaktioner på denna site, inklusive men inte begränsat till meddelanden om uppsägning, principer, avtal och ansökningar.

d. För att få tillgång till och behålla Ditt elektroniska register, kan Du komma att behöva särskild hårdvara och mjukvara. Du ansvarar själv för sådan hårdvara och mjukvara.

12. Ångerrätt och Leverans av Produkterna.

a. Du har rätt att ångra ditt köp utan påföljd och utan att ange skäl fram till dess att leveransen av produkterna har startat.

b. Avbruten leverans till iPod eller iPhone. Om leverans av Produkter Du köpt med hjälp av trådlöst nätverk på en iPod eller iPhone avbryts, kommer Din transaktion att hamna i Din nedladdningskö. Du kan återuppta leveransen till Din Apple-auktoriserade ljudbärare genom att välja "Leta efter inköp" i Store-meny i iTunes applikationen.

13. Immateriella Rättigheter

a. Ägandebekräftelse. Du är medveten om att Tjänsten, inklusive men inte begränsat till Produkter, grafik, ljudklipp och redaktionellt material, innehåller information om äganderätt och material som ägs av iTunes och/eller dess licensgivare. Detta material skyddas av tillämpliga immateriella rättigheter och övrig lagstiftning, inklusive men inte begränsat till upphovsrätt. Du skall inte använda äganderättsinformationen eller det övriga materialet på ett sätt som strider mot villkoren i detta Avtal. Ingen del av Tjänsten får reproduceras i någon form eller med några medel, med undantag för vad som uttryckligen tillåts här under. Du åtager Dig att inte modifiera, låna, hyra ut, leasa, sälja, distribuera eller skapa något baserat Tjänsten i någon form. Du lovar även att inte exploatera Tjänsten på något otillåtet sätt, inklusive men inte begränsat till otillbörlig användning eller belastning av nätverkskapaciteten.

b. Avlägsnande av iTunes Material samt Övrigt Material. Utan hinder av andra bestämmelser i detta Avtal, förbehåller sig iTunes och dess licensgivare rätten att när som helst och utan varsel ändra, stoppa, avlägsna eller neka tillgång till Produkterna, innehållet, eller annat material som erbjuds genom Tjänsten. iTunes kan under detta Avtal aldrig hållas ansvarigt för avlägsnandet eller att tillgången till Produkterna nekas. iTunes får även, efter eget tycke, utan ansvar och utan varsel, begränsa nyttjandet och tillgången till vissa funktioner och till vissa delar av Tjänsten. Borttagande av material från Tjänsten kommer inte att påverka innehåll som du redan har köpt från Tjänsten.

c. Upphovsrätt. All upphovsrätt i och tillhörande Tjänsten, inklusive men inte begränsat till iTunes Store (inklusive men inte begränsat till sammansättning--en av innehåll, inlägg, länkar till andra tillgångar på Internet samt beskrivning--ar av dessa tillgångar), innehas av iTunes och dess licensgivare, som förbe--håll--er sig alla sina rättigheter enligt lag och tillämpliga rättsprinciper,. Användning av delar av tjänsten på ett sätt som strider mot dessa tjänstevillkor är strängt förbjudet och kan utgöra intrång i annans immateriella rättighet. sådant handlande kan leda till straff- och skadeståndsansvar för dig.

d. Varumärken. Apple, Apples logotyp, iTunes och övriga Apple varu- eller tjänstemärken, grafik och logotyper som används i samband med Tjänsten, är varumärken eller registrerade varumärken ägda av Apple Inc. i USA och/eller andra länder. Andra varu- eller tjänstemärken, grafik och logotyper använda i samband med Tjänsten kan vara varumärken ägda av respektive innehavare. Du erhåller ingen licens till eller rätt till nyttjande av dessa varumärken.

e. Albumkonvolut. Du som är en kontohavare till Tjänsten i god ställning kan av iTunes tillhandahållas begränsad tillgång till att ladda ned vissa albumkonvolut till musik lagrad i Ditt iTunes Library i iTunes applikationen, om sådana albumkonvolut är tillgängliga. Sådan tillgång tillhandahålls endast som en bekvämlighet och iTunes varken garanterar eller stödjer och tar inte på sig något ansvar och skall inte heller ansvara för sådana albumkonvolut eller Din användning därav. Du får endast tillgång till albumkonvolut (i den utsträckning det är tillgängligt) till musik till vilken Du äger ett lagligt exemplar. Albumkonvolut tillhandahålls endast för personligt och icke-kommersiellt bruk. Du bekräftar att Du inte kommer använda albumkonvolut på något sätt som innebär intrång i eller överträdelse av dessa Tjänstevillkor eller rättighet som innehas av tredje part och att iTunes inte på något sätt ansvarar för någon sådan användning.

14. Uppsägning

a. Uppsägning av iTunes. Om Du på ett väsentligt sätt bryter mot bestämmelserna i detta Avtal, eller om iTunes har stark grund att tro att så är fallet kan iTunes efter eget tycke och utan att i förväg meddela dig; (i) säga upp Avtalet och/eller Ditt Konto och Du kommer då fortfarande att hållas ansvarig för belopp hänförliga till Ditt Konto som förfallit t.o.m. uppsägningsdagen, och/eller (ii) säga upp Din programvarulicens, och/eller (iii) omöjliggöra tillgång till Tjänsten (eller någon del därav). Överträdelse mot bestämmelserna kan t.ex. vara sen eller utebliven betalning av förfallet belopp, att inte förse iTunes med korrekta och fullständiga Registreringsuppgifter, att inte skydda informationen om Ditt Konto samt överträdelse mot Användningsreglerna eller mot licensvillkoren till någon programvara.

b. Uppsägning av Tjänsten. iTunes förbehåller sig rätten att modifiera, stoppa eller lägga ned Tjänsten (eller del därav) när som helst och utan varsel. iTunes kan inte hållas ansvarigt av Dig eller tredje man om de väljer att utöva sådan rättighet. I den utsträckning det är möjligt kommer iTunes att förvarna dig sådana modifieringar, avbrytanden eller nedläggningar av Tjänsten. Avslutande av Tjänsten kommer inte att påverka de Produkter som du redan har köpt. Du kan dock vara förhindrad från att auktorisera ytterligare datorer för att använda Produkter som är skyddade av Säkerhetsteknologin.

15. Allmän Efterlevnad av Lagar och Regler. iTunes sköts och tillhandahålls från iTunes kontor i Luxemburg. Du åtager Dig att följa alla lokala och nationella lagar, förordningar och författningar som är tillämpliga på användandet av Tjänsten.

16. Upprätthållandet av Dessa Villkor. iTunes förbehåller sig rätten att vidta alla lämpliga och nödvändiga åtgärder för att upprätthålla och/eller bekräfta efterlevnaden av alla delar av detta Avtal (inklusive men inte begränsat till iTunes rätt att samarbeta inom ramen för varje juridisk process relaterad till Din användning av Tjänsten eller Produkterna, och/eller om tredje man hävdar att Ditt användande är olagligt och/eller gör intrång i rättighet tillhörande tredje man). iTunes har rätt att avslöja alla Registreringsuppgifter och/eller information om Ditt Konto till myndighet som upprätthåller lag och ordning, till statstjänstemän, och/eller till tredje man, om iTunes anser att det är lämpligt och nödvändigt för upprätthållandet och/eller bekräftandet av efterlevnaden av någon del i detta Avtal (inklusive men inte begränsat till iTunes rätt att samarbeta inom ramen för varje juridisk process relaterad till Din användning av Tjänsten eller Produkterna, och/eller om tredje man hävdar att Ditt användande är olagligt och/eller gör intrång i rättighet tillhörande tredje man). iTunes kan inte hållas ansvarigt om denna rätt utnyttjas.

17. Inget Ansvar för Material eller Hemsidor Ägd av Tredje Man. Visst innehåll, Produkter och tjänster tillgängliga via Tjänsten kan innehålla material från tredje man. iTunes kan även lägga upp länkar till hemsidor ägda av tredje man. iTunes är inte ansvarigt för att undersöka och utvärdera innehållet eller riktigheten i något sådant material eller på sådana hemsidor. iTunes varken garanterar eller står bakom sådant material och kan inte hållas ansvarigt för material, hemsidor, produkter eller tjänster ägda eller tillhandahållna av tredje man. Länkar till andra hemsidor tillhandahålls endast som en service till Dig. Du bekräftar att du inte kommer att inte använda tredje parts material på ett sätt som skulle göra intrång på eller strida mot någon annans rättigheter samt att iTunes inte på något sätt är ansvarigt för sådan användning från din sida.

18. Dina rättigheter vid förseningar eller fel. Ansvarsbegränsningar.

a. iTunes anstränger sig får att leverera Produkterna utan fel eller brister. Om en försening eller brist ändå skulle uppkomma har du rätt att kräva leverans-/omleverans eller prisavdrag. Om förseningen eller bristen är materiell har du rätt att häva din beställning. Du har också rätt att kräva ersättning för ekonomisk skada som du har förorsakats som ett direkt resultat av förseningen eller bristen. Ansvar enligt denna bestämmelse är dock begränsat på följande sätt:

(i) Du har inte rätt till ersättning om orsaken till förseningen eller bristen ligger utanför iTunes kontroll, och iTunes inte rimligen kunde förväntas räkna med detta vid den tidpunkt då avtalet ingicks eller att förhindra eller motverka det.

(ii) Om förseningen eller bristen har förorsakats av oberoende uppdragsstagare som iTunes har anlitat får att utföra dess skyldighet mot dig, skall iTunes ansvara enbart om en sådan oberoende uppdragstagare inte skulle ha varit ansvarsfri enligt punkt a ovan. Begreppet oberoende uppdragstagare innefattar leverantören av mjukvaran till iTunes musikspelare, i den utsträckning denna används i leveransen av Produkterna, och leverantörerna av lager- och leveranslösningar med vilka iTunes har avtal. Det innefattar inte (utan begränsning) iTunes eller din Internetleverantör, innehållsleverantörer eller leverantörer av betalningslösningar.

(iii) Undantaget från ansvar gäller så länge som orsaken till förseningen eller bristen kvarstår. Om orsaken till förseningen eller bristen upphör, kan ansvar uppkomma om iTunes är skyldigt att uppfylla avtalet och inte gör detta.

(iv) iTunes kan vidare inte garantera att Produkterna är fria från förlust, förvanskning, attacker, avbrott, hackande eller andra säkerhetsstörningar. Så länge iTunes gör vad som rimligen kan väntas för att undvika eller motverka effekterna av sådan förlust, förvanskning, attacker, avbrott, hackande eller andra säkerhetsstörningar, skall iTunes inte ansvara för förlust som kan uppkomma som en effekt. Du är ansvarig för att göra back-up på ditt eget system, och att upprätthålla viruskydd, brandväggar och andra skydds-åtgärder på detta.

(v) Då Produkter enbart kan köpas från iTunes för personliga, icke-kommersiella syften, är iTunes inte ansvarigt för några företagsrelaterade förluster, t ex inkomstbortfall. iTunes är inte heller ansvarigt för någon indirekt skada, innefattande, utan inskränkning:

1. förlust som en konsekvens av minskad eller avbruten produktion eller försäljning;
2. förlust som en konsekvens av att varorna inte kan användas som avsett;
3. förlust av vinst som en konsekvens av att ett kontrakt med tredje man blir ogenomförbart eller inte korrekt utfört, och
4. förlust av eller skada på annan egendom än själva Produkterna och egendom som har en nära och direkt koppling till Produkternas avsedda användning.

(vi) Oavsett vilket kan Du kräva ersättning om skadan beror på grovt vårdslösa eller uppsåtliga handlingar som har vidtagits av iTunes eller under iTunes kontroll eller styrning.

b. Eventuell ersättning som krävs från iTunes får täcka ekonomisk skada som har uppkommit som ett resultat av förseningen eller bristen. Du kan emellertid enbart kräva ersättning för förluster som är rimligen förutsägbara effekter av brott mot detta avtal.

iTunes ersättningsskyldighet för försening eller brist kan minskas om du inte har vidtagit skäligen åtgärder för att begränsa din skada. Skäligen åtgärder innefattar, utan begränsning, att bibehålla säkerheten på datorer och apparater som du använder, att förvara information om ditt konto (inklusive användar-namn, lösenord och kreditkortsinformation) säkert, att installera och använda uppdaterad antivirusmjukvara, att installera mjukvaruuppdateringar och att göra back-up-kopior av Produkterna och data som har en nära och direkt koppling till Produkternas avsedda användning. Ersättningen kan också minskas om den skulle bli orimligt hög jämfört med den skada som normalt uppkommer i liknande fall, och på grund av andra förhållanden.

iTunes är under inga förutsättningar ansvarigt för ett totalt belopp som överstiger SEK 12,000, om inte skadan beror på grov vårdslöshet eller uppsåtliga eller medvetna och uppsåtliga handlingar som har vidtagits av iTunes eller under iTunes kontroll eller styrning.

c. iTunes ansvar för förluster som är en konsekvens av förseningar eller brister i innehåll och tjänster som tillhandahålls utan kostnad skall vara begränsat till förseningar eller brister som beror på grov vårdslöst eller uppsåtligt agerande.

d. Inget i detta avtal begränsar iTunes ansvar för dödsfall eller personskada som orsakas av vårdslöshet enligt gällande lag.

e. iTunes skall vidta skäligen åtgärder för att skydda information som du lämnar i samband med Tjänsten, men du bekräftar och medger att ditt lämnande av sådan sker på din egen risk, och iTunes avsägar sig härmed allt ansvar mot dig för förlust eller ansvar som relaterar till sådan information. Information som ges till iTunes och

som omfattas av Databehandlingsdirektivet, skall behandlas och skyddas på det sätt som anges i punkt 6 och 7 ovan.

19. Försäkran och Skadeslöshet. Du försäkrar att hålla iTunes, dess ledning, befattningshavare, anställda, representanter, entreprenörer, filialer, eller licensgivare skadeslösa avseende krav som uppkommer på grund av dina överträdelse av detta avtal, och avseende alla åtgärder vidtagna av iTunes för att undersöka misstänkt brott mot detta avtal, eller som ett resultat av sådana efterforskningar eller iTunes konstaterande att brott mot detta avtal skett. Detta innebär att du inte kan stämma eller i övrigt återvinna några för-luster eller få ersättning för skador från iTunes, dess ledning, befattnings-havare, anställda, representanter, entreprenörer, filialer, eller licensgivare, på grund av deras beslut att avlägsna eller vägra behandling av information eller innehåll, beslut att varna, stänga av eller säga upp din tillgång till tjänsten, eller annan åtgärd vidtagen av iTunes vid undersökning av misstänkt över-trädelse, eller för iTunes beslut att överträdelse skett. denna bestämmelse är tillämplig på alla överträdelse som framgår av eller åsyftas i detta avtal.

20. Ändringar. iTunes förbehåller sig rätten att när som helst och med jämna mellanrum, uppdatera, revidera, göra tillägg, eller på annat sätt modifiera detta Avtal och att införa nya regler, principer, villkor eller förutsättningar för Ditt nyttjande av Tjänsten. Sådana uppdateringar, revideringar, tillägg eller modifieringar samt kompletterande regler, principer, villkor eller förutsättningar (dessa omnämns tillsammans som "Kompletterande Villkor") kommer att med-delas dig och har, om de accepteras, omedelbar giltighet och inkluderas i detta Avtal. Om du vägrar acceptera sådana Kompletterande Villkor har iTunes rätt att säga upp detta Avtal och att förhindra dig från att göra fler inköp från iTunes Store.

21. Meddelanden. iTunes kan sända meddelanden gällande Tjänsten via e-mail till den adress Du uppgivit i Ditt Konto, via brev till kontaktadressen i informationen om Ditt Konto, eller genom att lägga upp meddelandet på iTunes Store. Alla meddelanden har omedelbar giltighet.

22. Tillämplig Lag. Detta Avtal och nyttjandet av Tjänsten skall regleras enligt svensk lag.

23. Övrigt. Detta Avtal utgör den fullständiga överenskommelsen mellan Dig och iTunes och skall reglera Ditt nyttjande av Tjänsten. Avtalet ersätter alla tidigare överenskommelser mellan Dig och iTunes. Du är också skyldig att följa andra villkor och förutsättningar som kan gälla när Du använder närstående tjänster, tredje mans programvaror eller annat innehåll ägt av tredje man. Att iTunes i vissa fall inte må ha gjort vissa bestämmelser i detta Avtal rättsligt gällande mot dig, innebär inte ett avstående från dessa bestämmelser eller från någon annan bestämmelse i dessa Tjänstevillkor. Om en behörig domstol finner att någon bestämmelse i detta Avtal är ogiltig, skall övriga villkor fortfarande vara fullt tillämpliga. iTunes är inte ansvarigt för underlåtenhet att utföra dess skyldigheter när orsaken ligger utanför iTunes kontroll.

Om iTunes: Vårt organisationsnummer är RCS Luxembourg B 101 120 och vårt registrerade huvudkontor ligger på 8 rue Heinrich Heine, L-1720, Luxembourg.

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iTunes Store

KÖPEVILLKOR

Detta är ett juridiskt bindande avtal mellan dig och iTunes S.à.r.l. ("iTunes") som anger villkoren och förutsättningarna för alla inköp från iTunes Store. Dessa Köpevillkor gäller i tillägg till iTunes Store-tjänstens servicevillkor ("Servicevillkoren"). Genom att acceptera Tjänstevillkoren har du också accepterat dessa Köpevillkor.

FÖRSÄLJNING ENDAST INOM SVERIGE

Det är endast möjligt för dig att handla från iTunes Store i Sverige. Om Du inte befinner dig i Sverige får Du inte använda eller försöka använda Tjänsten. iTunes kan komma att använda sig av teknologi för att försäkra sig om att detta villkor efterlevs.

iTunes Store tillhandahålls av iTunes.

FÖRSÄLJNING ENDAST TILL SLUTKONSUMENTER

iTunes Store säljer Produkter endast till slutkonsumenter.

ÅNGERRÄTT

Alla köp av Produkter är slutgiltiga. iTunes-tjänsten startar omedelbart när du börjar nedladda Produkter från iTunes Store och du kommer inte att ha rätt att ångra ditt köp när tjänsten har startat. När Du laddar ner Produkter från iTunes Store startar iTunes Store tjänsten omedelbart och Du kommer inte ha någon rätt att ångra Dig när Tjänsten startat.

TECHNICAL STEPS - 1-Click®

1-Click är ett registrerat varumärke ägt av Amazon.com som används under licens av iTunes.

1-Click är en funktion som gör det möjligt att handla från iTunes Store med endast en knapptryckning. När Du går in på iTunes Store via Din dator kan handel via 1-Click aktiveras för alla Dina köp genom att Du kryssar i rutan "Visa inte det här meddelandet igen" i dialogrutan "Are you sure you want to buy and download...?" som visas när Du klickar på "Buy"-ikonen. (Du kan när som helst återställa detta val genom att klicka på ikonen "Reset Warnings" i avsnittet "Account Info".) När Du går in på iTunes Store via din iPod eller iPhone, aktiveras 1-Click för varje köp genom att trycka på knappen som visar produktens pris vilket gör att "Buy"-ikonen blir synlig. När 1-Click är aktiverat kommer ett klick på "Buy"-ikonen påbörja nedladdningen omedelbart och köpet kommer att fullbordas utan att några andra åtgärder behöver vidtas. Köp via 1-Click är föremål för dessa Köpevillkor, inklusive bestämmelserna om Ångerrätt som beskrivs häri. När Du går in på iTunes Store via Din dator kan Du stänga av 1-Click och istället handla med hjälp av "Shopping Cart"-funktionen genom att välja "Köp med kundvagn" under avsnittet "Affär" i menyn över Dina inställningar i iTunes applikationen. När Du använder "Shopping Cart"-funktionen kan Du granska och ändra valda Produkter innan köpet slutförs. "Shopping Cart"-funktionen är inte tillgänglig när Du går in på iTunes Store via Din iPod eller iPhone.

BETALNINGSMETODER

Vid betalning accepteras kredit- och betalkort, betalning via Ditt Click & Buy konto (Klicka- & Köpkonto), samt iTunes Stores egna presentkort, iTunes Card, Content Codes och månatliga gåvobevis. Om ett kredit- eller betalkort, eller Ditt Klicka- & Köpkonto används kommer iTunes innan köpet eventuellt att inhämta ett godkännande för ett belopp som täcker ordervärdet från kortets utfärdare eller från Click & Buy (som tillämpligt). Debitering sker vid köpetillfället eller kort därefter. Om värdet på ett presentkort, iTunes Card eller gåvobevis används kommer beloppet att dras vid köpetillfället. Om den totala köpeskillingen skulle överstiga det återstående värdet på ett presentkort, iTunes Card eller gåvobevis, kommer mellanskillnaden att debiteras på Ditt kredit-, betalkort eller Klicka- & Köpkonto.

iTunes Store accepterar följande kredit- och betalkort: Visa, MasterCard och American Express.

NOTERA ATT:

- Vi inte har möjlighet att acceptera kredit- eller betalkort som är utfärdade av banker utanför Sverige eller förbetalda presentkort som har utfärdats av kreditkortsföretag.

- Kredit- och betalkort kan ha dagliga gränser för debitering som kan förhindra bearbetningen av din beställning.
- Om ett köp nekas online på grund av Ditt kredit- eller betalkort, eller Klicka- & Köpkonto, vänligen kontrollera att all information är korrekt och försök sedan igen. Om köpet då inte accepteras online kommer Du inte att kunna använda det aktuella kortet eller Ditt Klicka- & köpkonto, och bör då använda ett annat kort vid betalning.

DEBITERING

Användandet av 1-Click eller Ditt Klicka- & Köpkonto innebär att köpen godkänns och debiteras i takt med att Du klickar på "Köpp"-ikonen. Beroende på storleken av Dina beställningar under ett och samma köpetillfälle, kan det på Ditt kontoutdrag se ut som flera beställningar och debiteringar under samma köpetillfälle.

Om Du använder "Shopping Cart"-funktionen kommer kontoutdraget att visa en beställning som godkänns och debiteras som en enda transaktion.

TRANSAKTIONER MED PRESENTKORT

Presentkort kan endast användas på iTunes Store och kan inte lösas in mot kontanter. Presentkortet kan inte användas i någon annan av Apples nätverksbutiker eller hos någon annan av Apples återförsäljare. Köp av presentkort kan endast göras till ett värde av hela kronor eller till särskilt avsedda belopp. Presentkort får inte användas till köp av andra presentkort, iTunes Card eller månatliga gåvobevis.

MÅNATLIGA GÅVOBEVIS

Månatliga gåvobevis kan endast användas på iTunes Store. Månatliga gåvobevis kan inte användas i någon annan av Apples nätverksbutiker eller hos någon annan av Apples återförsäljare. Månatliga gåvobevis återbetalas inte och kan inte användas för inköp av presentkort, iTunes Card eller andra månatliga gåvobevis.

ITUNES CARD

iTunes Card kan endast användas på iTunes Store. iTunes Card kan inte användas i någon annan av Apples nätbutiker eller hos någon annan av Apples återförsäljare. iTunes Card återbetalas inte och kan inte användas för inköp av presentkort, månatliga gåvobevis eller andra iTunes Card.

GÅVOR

Gåvor som köps i iTunes Store i Sverige kan bara köpas och lösas in av svenska medborgare. Gåvorna kan inte lämnas tillbaka. Gåvorna kan inte köpas med iTunes Card, presentkort eller tilldelningskonton. Gåvor får inte användas i App Store.

INAKTIVA PRESENTKORT, ITUNES Card OCH MÅNATLIGA GÅVOBEVIS

Presentkort, iTunes Card och månatliga gåvobevis, och oanvända delar därav, blir ogiltiga vid den tidpunkt som infaller två år efter utfärdandet eller två år efter det datum när det sist utnyttjades.

COMPLETE MY ALBUM ("CMA")

Om du har köpt utvalda låtar från iTunes Store, kan iTunes erbjuda dig möjligheten att fylla ut det aktuella albumet (om det finns något) genom att köpa resterande låtar till ett pris som är lägre än det fulla albumpriset. Vänligen notera att för vissa album (där det fulla album-priset motsvarar summan av det separata priset för varje enskild låt på albumet), gör inte en komplettering av albumet med hjälp av CMA att din kostnad för resterande låtar eller musikvideos blir lägre jämfört med om du skulle ha köpt låtarna separat. Det är inte

säkert att CMA finns tillgängligt för alla låtar som du har köpt från iTunes Store, och tillgängligheten av särskilda CMA-erbjudanden kan komma att ändras utan förhandsbesked. Album som inte längre finns tillgängliga för försäljning på iTunes Store, ofullständiga album och vissa andra album är inte kvalificerade för CMA. Låtar som har erhållits utan extra kostnad i kampanjer är inte kvalificerade för CMA, förutom vid vissa utvalda kampanjer av det slaget. FYMA är inte tillgängligt för annat innehåll som köps från iTunes Store än låtar. Förutom vid särskilda kampanjer som iTunes kan välja att genomföra efter eget val, har du i vissa fall högst 180 dagar på dig från tidpunkten när du köper din första CMA-kvalificerade låt från ett visst CMA-kvalificerat album för att acceptera det erbjudandet.

Ytterligare information om CMA finns tillgänglig på sidan med frågor och svar, på <http://docs.info.apple.com/article.html?artnum=305232-sv>.

ITUNES PLUS

Utvalda låtar kan vara tillgängliga i iTunes Store i iTunes Plus-formatet. iTunes Plus-innehåll innehåller inte säkerhetsteknologi som begränsar Din användning av sådant innehåll och är kodat på en högre audio bit rate än de DRM-skyddade låtarna som finns tillgängliga i iTunes Store. iTunes Plus-innehåll regleras dessutom av färre Användningsvillkor; vänligen se iTunes Stores Tjänstevillkor för mer information.

Du kan uppgradera alla låtar som Du tidigare köpt från iTunes Store som är möjliga att uppgradera. Låtar är möjliga att uppgradera bara om samma låt är tillgänglig för försäljning i iTunes Store och i iTunes Plus-formatet vid tiden för uppgraderingen. Möjligheten att uppgradera vissa låtar till iTunes Plus och Ditt totala uppgraderingserbjudande kan ändras när som helst. Innan Du uppgraderar kommer det totala priset för uppgraderingen att visas och Du kommer att få möjlighet att granska det innehåll som kommer att uppgraderas. Den uppgraderade iTunes Plus-versionen av Ditt innehåll kommer att ersätta de DRM-skyddade versionerna i Ditt iTunes bibliotek och de DRM-skyddade filerna kommer att flyttas till Din papperskorg eller återvinningsmapp. För mer information om hur priset för uppgraderingen beräknas och information om ersättningen av de DRM-skyddade versionerna, vänligen se [FAQ]nedan.

CMA kan finnas tillgängligt för iTunes Plus-innehåll, underkastat villkoren för CMA ovan. Uppgradering av tidigare inköp till iTunes Plus påverkar inte de tidsbegränsningar som är tillämpliga på tillgängligheten av CMA.

För mer information om iTunes Plus, vänligen läs FAQ på <http://itunes.apple.com/WebObjects/MZStore.woa/wa/iTunesPlusFAQPage>.

IPOD SPEL

iPod Spel som köpts från iTunes Store är endast kompatibla med iPod classic, tredje och fjärde generationen av iPod nano, och femte generationen (video) av iPods. Alla spel är inte kompatibla med samtliga dessa modeller. Spelen kommer inte att fungera på någon annan apparat, inklusive Din persondator. Uppdateringar till befintliga kompatibla inbyggda program i Din iPod kan resultera i att den version av ett Spel Du köpt blir inkompatibelt med den iPoden. Spel som köps från iTunes Store kanske inte är kompatibla med kommande generationer av iPods och iTunes ger inga garantier avseende sådan framtida kompatibilitet.

MJUKVARA

Mjukvaruprodukter som köps från iTunes Store är villkorade av köparens föregående acceptans av innehållet i eventuella slutanvändarlicenser eller andra villkor som krävs för sådana produkter.

UPPGRADERINGAR

Den senaste versionen av iTunes programvaran rekommenderas för att få tillgång till iTunes Store. Från tid till annan kan det krävas att iTunes programvaran uppgraderas till den senaste versionen för att handla från

iTunes Store, ladda ner Produkter som tidigare köpts från iTunes Store (t.ex. Produkter i din nedladdningskö) eller för att dra nytta av nya funktioner i iTunes Store. Du kan gratis ladda ner den senaste versionen av iTunes programvara, samt granska minimikraven för Ditt datorsystem som behövs för att kunna köra iTunes programvara, på <http://www.apple.com/se/itunes/download/>. Användningen av iTunes programvara är underkastat Ditt godkännande av de programvarulicensavtal som presenteras vid installationstillfället. Vänligen kontakta iTunes Stores Kundtjänst (se nedan) om Du har ytterligare frågor angående erforderliga uppgraderingar. iTunes förbehåller sig rätten att förbättra Produkter som köpts från iTunes Store, inklusive Produkter som redan köpts men inte ännu laddats ned. Sådana förbättringar kan bl.a. resultera i större filstorlekar (som t.ex. kräver längre nedladdningstid och ytterligare diskutrymme för lagring).

PRISER

iTunes Store strävar efter att erbjuda Dig konkurrenskraftiga priser på aktuellt material.

iTunes Store strävar efter att erbjuda Dig konkurrenskraftiga priser på aktuellt material. Den totala köpeskillingen inkluderar priset för Produkten samt vid nedladdningstillfället gällande mervärdesskatt. iTunes förbehåller sig rätten att ändra priset för Produkterna när som helst och Du har inte rätt till återbetalning vid prissänkningar eller kampanjerbjudanden.

INNEHÅLLSUTBUD

iTunes Store anstränger sig för att erbjuda Dig ett brett innehåll och förbehåller sig därför rätten att göra ändringar i innehållet när som helst utan varsel.

HJÄLP VID BESTÄLLNINGAR - iTUNES STORES KUNDTJÄNST

För hjälp i fakturafrågor eller i andra frågor om beställningar, vänligen vänd Dig till vår online support på: <http://www.apple.com/se/support/itunes/store/>. Om Du inte hittar det Du söker i omfattande stora kunskapsbank kan du maila Dina frågor genom att fylla i formuläret på: <http://www.apple.com/se/support/itunes/store/email>. Inskickade frågor besvaras så snart det är möjligt.

ANVÄNDNINGSGREGLER - MATERIAL

Du får inte nyttja några produkter Du köpt i iTunes Store om Du inte först accepterar villkoren i detta tjänstavtal, inklusive utan begränsning till användningsreglerna häri.

ÖVRIGA VILLKOR OCH FÖRUTSÄTTNINGAR

iTunes är inte ansvarigt för typografiska fel.

iTunes förbehåller sig rätten att när som helst ändra i iTunes Stores Köpevillkor. Du kommer att bli informerad om alla nya eller ändrade versioner av dessa Köpevillkor. Om du väljer att inte acceptera de ändrade Köpevillko-ren kommer du inte att kunna köpa Produkter från iTunes Store och iTunes kom-mer att ha rätt att suspendera eller säga upp Avtalet med dig och förhindra dig från att göra fler inköp från iTunes Store.

All försäljning på iTunes Store regleras enligt svensk lag.

Om någon bestämmelse i dessa köpevillkor bedöms vara ogiltig eller inte kan göras rättsligt gällande enligt lag, skall övriga bestämmelser inte påverkas.

Om oss: Vårt organisationsnummer är RCS Luxembourg B 101 120 och vårt registrerade huvudkontor är 8 rue Heinrich Heine, L-1720 Luxembourg.

Se iTunes Stores villkor och förutsättningar för Presentkort, iTunes Card, Innehållskoder och Månatliga Gåvobevis, som utgör en del av dessa Köpevillkor. på:

<http://www.apple.com/legal/itunes/se/terms.html#GIFTS>.

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iTunes Store

Presentkort, iTunes Card, Innehållskoder och Månatliga Gåvobevis

ALLMÄNNA VILLKOR

1. Dessa Allmänna villkor är ett tillägg till iTunes Stores Köpevillkor och skall tillämpas endast på presentkort, iTunes Card, Innehållskoder och månatliga gåvobevis.
 2. Presentkort, iTunes Card, Innehållskoder och månatliga gåvobevis, samt outnyttjade delar därav, blir ogiltiga vid den tidpunkt som först infaller två år efter utfärdande eller två år efter det datum det senast användes. Innehållskoder blir ogiltiga vid det datum som anges på det instrument som innehåller Innehållskoden.
 3. Presentkort, iTunes Card, Innehållskoder och månatliga gåvobevis, samt outnyttjade delar därav, kan inte lösas in eller återlämnas mot kontanter, bytas mot, återköpas eller användas vid köp av presentkort, iTunes Card eller för månatliga gåvobevis
 4. Presentkort, iTunes Card, Innehållskoder och månatliga gåvobevis inskaffade i Sverige kan endast användas på den svenska iTunes Store, som är öppen för alla över 13 års ålder. Vissa produkter kanske inte är tillgängliga. Innehåll och prissättning är beroende av tillgänglighet vid tidpunkten för den faktiska nedladdningen. För användande krävs en Internetanslutning (avgifter kan tillkomma), samt kompatibla hård- och mjukvaror.
 5. För att få tillgång till, köpa från och kunna använda iTunes Store, samt tillgång till och inlösen av presentkort, iTunes Card, Innehållskoder och månatliga gåvobevis, krävs det att Du accepterar Köpevillkoren i den version som presenteras vid inlösen eller köpetillfället. Villkoren finner Du på:
<http://www.apple.com/legal/itunes/se/terms.html#SALE>
 6. Den senaste versionen av iTunes programvara rekommenderas för att få tillgång till iTunes Store. Du kan gratis ladda ner den senaste versionen av iTunes programvara, samt titta på vilka som är de minsta systemkraven som behövs för att kunna köra iTunes programvara, på
<http://www.apple.com/se/itunes/download/>
- Du får inte använda iTunes programvara om Du inte först accepterar villkoren i licensavtalet som visas när programmet installeras.
7. Allt outnyttjat värde kommer att placeras på mottagarens presentkort, iTunes Card, Innehållskod eller månatliga gåvobevis och kan inte överföras eller överlåtas.
 8. Om en beställning överstiger det återstående värdet på ditt presentkort, iTunes Card, månatliga gåvobevis eller Innehållskod, måste Du skapa ett användarkonto på iTunes Store och betala mellanskillnaden med ett kredit- eller betalkort i enlighet med Köpevillkoren.
 9. Om inte annat anges, är insamlandet och användandet av personuppgifter underkastat Apples policy om skydd av personuppgifter, som Du hittar på: <http://www.apple.com/se/legal/privacy/>

10. iTunes kan inte hållas ansvarigt för förlust eller skada som orsakas på grund av borttappade eller stulna presentkort, iTunes Card, Innehållskoder och månatliga gåvobevis, eller när dessa används utan din vetskap eller tillåtelse. Besök gärna iTunes Stores Kundtjänst om Du har några frågor. Kundtjänsten hittar du på: <http://www.apple.com/se/support/itunes/store/>.

11. iTunes förbehåller sig rätten att stänga användarkonton och att kräva en annan betalningsmetod om ett presentkort, iTunes Card, Innehållskoder eller månatliga gåvobevis, bedrägligen införskaffats eller om det används på iTunes Store på ett bedrägligt sätt.

12. Om ett presentkort, iTunes Card, Innehållskod eller månatliga gåvobevis är obrukbart ersätter iTunes detta med ett nytt exemplar. Dina rättigheter påverkas inte.

13. iTunes Card utfärdas av iTunes. Apple Sales International agerar som en agent för och å iTunes vägnar för distribution av iTunes Card. iTunes Card kan bara användas till tjänster från den specifika iTunes Store som står angiven på detta iTunes Card.

14. iTunes förbehåller sig rätten att ändra dessa Allmänna villkor då och så, genom att publicera en reviderad version på iTunes Store. Du kommer att bli informerad om alla nya eller ändrade versioner av dessa Allmänna villkor. Om du väljer att inte acceptera de ändrade Allmänna villkoren kommer du inte att kunna köpa Produkter från iTunes Store och iTunes kommer att ha rätt att suspendera eller säga upp Avtalet med dig och förhindra dig från att göra fler inköp från iTunes Store.

15. Om någon bestämmelse i dessa Allmänna Villkor bedöms vara ogiltig eller inte kan göras rättsligt gällande, skall övriga bestämmelser inte påverkas.

16. Äganderätten och risken övergår till köparen när presentkortet, Innehållskoden eller månatligt gåvobeviset överförs elektroniskt till mottagaren. Äganderätten och risken för kontantkort övergår till köparen vid överlåtelsen.

17. Stjäl inte musik. Musik och annat material köpt från iTunes Store är endast till för lagligt, personligt och icke-kommersiellt bruk och får inte distribueras, överlåtas, upplåtas eller licensieras vidare. Beskrivning av de lagliga nyttjandena finns tillgänglig på iTunes Stores hemsida och i Köpevillkoren.

Senast uppdaterad 6 januari 2009

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App Store

VILLKOR FÖR TJÄNSTEN

Detta är ett juridiskt bindande avtal mellan Dig och iTunes S.à.r.l. ("iTunes") som anger villkoren och förutsättningarna för Din användning av App Store-tjänsten. Detta avtal – tillsammans med uppdateringar, kompletterande villkor, programvarulicenser samt alla iTunes/Apple Inc. ("Apple")-regler och policier till vilka det hänvisas i detta avtal – utgör sammantaget "Avtalet" mellan Dig och iTunes. För att acceptera dessa villkor klickar Du på "Agree". Om Du inte accepterar dessa villkor skall Du inte klicka på "Agree" och använd inte tjänsten. Du måste acceptera och rätta Dig efter dessa villkor som de nu presenteras för Dig; inga ändringar, tillägg eller strykningar accepteras. iTunes kan vägra Dig tillträde till App Store om någon del av Avtalet inte efterlevs.

1. DEFINITION AV APP STORE-TJÄNSTEN. iTunes tillhandahåller App Store ("Tjänsten"), som tillåter Dig att licensiera programvaruprodukter, såsom spel och applikationer under villkor och förutsättningar stadgade i detta Avtal. Det är inte iTunes som levererar iTunes-applikationen eller iPod eller iPhone.

2. ÅLDERSKRAV FÖR ANVÄNDNING AV TJÄNSTEN. Tjänsten är tillgänglig för alla som fyllt 13 år. Om Du fyllt 13 år men inte 18 år ännu, skall Du tillsammans med Din målsman granska dessa villkor så att både Du och Din målsman förstår innebörden av dessa villkor och förutsättningar.

3. ANVÄNDNING ENDAST I SVERIGE. Tjänsten är endast tillgänglig i Sverige. Om Du inte befinner Dig i Sverige får Du inte använda eller försöka använda Tjänsten. iTunes kan komma att använda sig av teknologi för att försäkra sig om att detta villkor efterlevs.

4. LICENS TILL PRODUKTER. De programvaruprodukter som tillhandahålls genom Tjänsten ("Produkterna") licensieras, och säljs inte, till Dig. Din licens till varje Produkt Du erhåller genom Tjänsten är villkorad av att Du accepterar Licensavtalet för slutanvändare för Licensierade Applikationer nedan och att Du accepterar att villkoren i detta Licensavtal för slutanvändare för Licensierade Applikationer omfattar samtliga Produkter som Du licensierar från Tjänsten, såvida inte Produkten omfattas av ett giltigt licensavtal för slutanvändare mellan Dig och leverantören av Produkten ("Applikationsleverantören"). Licensgivaren förbehåller sig rätten till alla rättigheter som inte uttryckligen medgivits Dig.

Du bekräftar att Din licens till en Produkt genom Tjänsten utgör ett juridiskt bindande avtal endast mellan Dig och Applikationsleverantören, och att Applikationsleverantören är ensamt ansvarig för Produkten, dess innehåll, alla garantier, såvida friskrivning inte har gjorts från sådana garantier, och alla anspråk från Dig eller från tredje part avseende Produkten eller Din användning av Produkten. Du bekräftar att iTunes endast agerar som kommissionär för Applikationsleverantören genom att leverera Produkten till Dig; inte är part till sådan licens, och inte är ansvarig för Produkten, dess innehåll, eller några garantier eller anspråk från Dig eller från tredje part avseende Produkten eller Din användning av Produkten

Du bekräftar och accepterar att iTunes, Apple, och Apples dotterbolag, är berättigade tredje parter till Licensavtalet för slutanvändare för Licensierade Applikationer eller alla andra licensavtal för slutanvändare för någon licensierad Produkt, och att iTunes genom Ditt accepterande av villkoren och förutsättningarna för en sådan licens kommer att ha rätt (och kommer att anses ha accepterat rätten) att genomdriva en sådan licens gentemot Dig i egenskap av berättigad tredje part till denna.

Tjänsten licensierar endast Produkter till kunder som är slutanvändare.

5. SYSTEMKRAV. Din användning av Tjänsten och transaktioner som genomförs genom denna är villkorad av alla slutanvändaravtal eller andra villkor och förutsättningar som krävs för användning av den programvara som krävs för användning av Tjänsten, som samtliga härmed utgör en del av detta Avtal.

Nyttjande av Tjänsten kräver en kompatibel enhet, såsom en dator med iTunes-applikationen installerad, eller en iPod touch eller iPhone, Internetanslutning (separata avgifter kan tillkomma), särskilda programvaror (separata avgifter kan tillkomma), samt att det kan vara nödvändigt att med jämna mellanrum hämta uppgraderingar och uppdateringar. Dessa faktorer, d.v.s. hårdvaran, programvaran och Internetanslutningen, kan påverka Din förmåga att använda Tjänsten. Högstighetsanslutning till Internet rekommenderas starkt. Du bekräftar och accepterar att Du själv ansvarar för att uppfylla sådana systemkrav och att systemkraven kan ändras med jämna mellanrum. Tjänsten ingår inte som en del i någon annan produkt eller annat erbjudande och inget köp eller annat införskaffande av en annan produkt utgör en garanti eller kan tas till intäkt för att Du får tillgång till Tjänsten.

6. PERSONUPPGIFTSBEHANDLING

a. APPLES POLICY FÖR SKYDD AV PERSONUPPGIFTER. Om inte annat anges i detta Avtal, är Tjänsten underkastad Apples policy om skydd av personuppgifter, se: <http://www.apple.com/se/legal/privacy/>, som härmed utgör en del av detta Avtal. Om Du inte redan läst Apples policy om skydd av personuppgifter uppmanas Du att göra det nu.

b. GENIUS. När du väljer Genius-funktionen kommer Apple, från tid till annan, att automatiskt samla in information som kan användas för att identifiera media i ditt iTunes-bibliotek på denna dator, som till exempel din spelhistorik samt dina spellistor. Detta inkluderar media som inhandlats genom iTunes samt media som erhållits från annan plats. Denna information kommer att lagras anonymt samt utan anknytning till ditt namn eller iTunes-konto. När du använder dig av Genius-funktionen kommer Apple att använda denna information samt innehållet i ditt iTunes-bibliotek samt annan information för att tillhandahålla dig med personligt anpassade rekommendationer.

Apple äger endast rätt att använda denna information samt kombinera den med samlad information inhämtad från iTunes-bibliotek från andra användare som också väljer att använda sig av denna tjänst, information rörande dina inköp från iTunes Store, samlad inköpsinformation från andra iTunes Store-användare samt annan information insamlad från utomstående part i syfte att:

- Skapa personligt anpassade spellistor till ditt iTunes-bibliotek.
- Tillhandahålla dig med rekommendationer angående media och andra produkter och tjänster som du kan tänkas köpa.
- Tillhandahålla rekommendationer angående produkter och tjänster till andra användare.

Under hela tiden din information behandlas kommer detta att ske i enlighet med Apples policy för integritetsskydd, vilken finns tillgänglig på: www.apple.com/se/legal/privacy/.

När du valt att använda dig av Genius-funktionen kommer du kunna skapa Genius-spellistor på produkter där Genius-funktionen kan användas. Efter det du på iTunes valt Genius-funktionen måste du synkronisera med ditt iTunes-bibliotek för att kunna använda Genius-funktionen på en produkt.

Om du inte önskar att vi samlar in och använder informationen från ditt iTunes-bibliotek på ovan angivet sätt skall du inte välja eller använda dig av Genius-funktionen. Du kan när som helst återkalla ditt samtycke genom att stänga av Genius-funktionen på Store-menyn. När du väljer att stänga av Genius-funktionen kommer information inte längre att sändas från iTunes angående ditt iTunes-bibliotek till Apple. Om du har valt att använda ditt bibliotek på flera datorer måste du stänga av Genius-funktionen från samtliga datorer.

Genom att välja Genius-funktionen samtycker du till användning av information på ovan angivet sätt samt på det sätt som anges i Apples policy för integritetsskydd.

7. DINA UPPGIFTER. Du skall förse iTunes med korrekta, aktuella och kompletta uppgifter när Du registrerar Dig för Tjänsten och vid andra tillfällen när detta är nödvändigt för att använda Tjänsten ("Registreringsuppgifter"). Du skall vidare se till att Dina Registreringsuppgifter underhålls och uppdateras så att de vid alla tidpunkter är korrekta, aktuella och kompletta. iTunes har rätt att säga upp Din rätt att utnyttja hela eller delar av Tjänsten om det visar sig att Du lämnat falska, felaktiga eller inkompletta uppgifter. Du ger härmed iTunes rätten att lagra och använda Dina Registreringsuppgifter (inklusive information hänförlig till betalkort) i samband med underhåll av Dina användarkonton samt vid debiteringar av Ditt betalkort.

8. SÄKERHET FÖR ANVÄNDARKONTON.

a. Användarkonto och Lösenord. Som registrerad användare av Tjänsten kan Du erhålla eller skapa ett användarkonto ("Konto"). Du är själv ansvarig för bevarandet av sekretessen och säkerheten för Ditt Konto. Du

skall inte avslöja uppgifter om Ditt Konto för någon annan och inte heller använda annan persons Konto. Du är ensam ansvarig för allt som företas med Ditt Konto, och Du åtar Dig att omedelbart meddela iTunes om Ditt Konto används utan Ditt tillstånd samt vid andra säkerhetsöverträdelser. iTunes kan inte hållas ansvarigt för förluster orsakade till följd av otillåten användning av Ditt Konto, under förutsättning att iTunes inte gjort sig skyldig till försummelse.

b. Säkerhet. Du får inte använda Tjänsten på annat sätt än med hjälp av programvara som tillhandahålls av Apple eller dess närstående bolag för att ge tillgång till Tjänsten. Du skall inte gå in på, eller försöka gå in på, ett Konto som Du inte har behörighet till. Du åtar Dig att inte på något sätt eller i någon form modifiera programvaran som tillhandahålls av Apple för att ge tillgång till Tjänsten på något sätt eller att använda ändrade versioner av programvaran i något syfte, inklusive att obehörigen skaffa Dig tillgång till Tjänsten. Brott mot system- eller nätverkssäkerhet kan resultera i civila eller straffrättsliga sanktioner.

9. NYTTJANDE AV PRODUKTERNA OCH TJÄNSTEN

a. Produktkrav. Du är medveten om att nyttjande av Produkter som licensieras från Tjänsten kan kräva att Du använder särskild hård- eller mjukvara (t.ex. möjligheten att kopiera Produkterna till ett fysiskt medium och spela Produkterna på auktoriserade enheter) och att Du själv ansvarar för sådan hård- eller mjukvara. Produkter får bara nedladdas en gång per transaktion; så snart en Produkt licensierats och levererats till Dig ansvarar Du själv för förlust eller förstörelse av eller skada på Produkten och iTunes är inte ansvarigt för det fall Ditt innehåll förloras, förstörs eller skadas under förutsättning att iTunes inte varit vårdslöst.

b. Produktanvändning. Du är medveten om att Tjänsten, och Produkter som licensieras genom Tjänsten, innehåller en säkerhetsstruktur som använder en teknologi som skyddar digital information ("Säkerhetsteknologin"). Ditt nyttjande av Produkterna begränsas av särskilda användningsregler som iTunes och dess huvudmän ställer upp ("Användningsregler"). Du bekräftar härmed att Ditt användande av Produkterna är begränsat av följande Användningsregler. Du åtar Dig att nyttja Produkterna i enlighet med sådana Användningsregler.

Användningsregler

(i) Du får inte nyttja Produkterna om Du inte först accepterar villkoren i detta Avtal och tillämpligt licensavtal för slutanvändare.

(ii) Du har rätt att spara Produkterna från maximalt fem olika Konton på vissa enheter, inklusive en iPod touch eller iPhone, åt gången.

(iii) Du har rätt att spara Produkterna på fem enheter (t.ex. en dator) med iTunes-applikationen installerad vid varje enskilt tillfälle.

(iv) Du försäkrar att Du inte skall försöka, eller uppmuntra eller assistera någon annan, att kringgå eller modifiera någon säkerhetsteknologi eller någon av de programvaror som utgör en del av Tjänsten eller som används för att administrera dessa Användningsregler.

(v) Leveransen av Produkterna till Dig innebär ingen rätt för Dig att använda produkterna kommersiellt eller i reklam syfte.

(vi) Du har rätt att manuellt synkronisera Produkter från minst en iTunes-auktoriserad enhet till enheter som har inställningar för manuell synkronisering, förutsatt att Produkten är kopplad till ett Konto på den primärt iTunes-auktoriserade enheten och den primärt iTunes-auktoriserade enheten är den som först synkroniserades med enheten, eller den som Du därefter anger som primär när Du använder iTunes applikationen.

c. Produktsäkerhet. Du åtar Dig att inte inkräkta på eller försöka inkräkta på någon del av Säkerhetsteknologin. Du åtar Dig att inte av något skäl försöka, eller uppmana eller assistera någon annan att, kringgå, modifiera, reverse-engineer, dekompilera, ta isär eller på annat sätt vidta åtgärder med någon del av Säkerhetsteknologin, eller annan teknologi eller programvara som är del av Tjänsten eller som används för att administrera Användningsreglerna, eller att inkräkta på, ta bort eller ändra rättighetshanteringsinformation på Produkterna. Efterföljande av Användningsreglerna får granskas och övervakas av iTunes i kontrollsyfte och iTunes förbehåller sig rätten att genomdriva Användningsreglerna med eller utan föregående meddelande till Dig.

d. När Du licensierar en Produkt, accepterar Du att nyttja Produkten endast enligt Användningsreglerna och är medveten om att allt annat nyttjande kan utgöra ett upphovsrättsintrång. Säkerhetsteknologin, i tillämpliga fall, utgör en integrerad och fast del av Produkterna. Utöver villkor som kan ha ingåtts mellan Dig och tredje part, regleras Dina rättigheter relaterade till Produkterna i Användningsreglerna.

e. Du är medveten om att vissa aspekter av Tjänsten, Produkterna och administrationen av Användningsreglerna är förenade med Apples pågående inblandning.

f. Tjänsten kan komma att erbjuda interaktiva funktioner som gör det möjligt för Dig att bl.a. skicka in eller lägga upp information, material eller länkar till tredjepartsinnehåll på områden i Tjänsten som är öppna för andra användare av Tjänsten och för allmänheten. Du bekräftar och accepterar att allt medverkande i sådana funktioner och allt användande av sådana funktioner, inklusive all information material eller länkar som har skickats in eller lagts upp av Dig, skall ske på endast Ditt ansvar, inte skall kränka eller göra intrång i någon annans rättigheter eller bryta mot någon lag, bidra eller uppmuntra till intrång eller på annat sätt olagligt beteende, eller på annat sätt vara obscen, och att Du har inhämtat alla erforderliga rättigheter, licenser och klareringar. Du åtar Dig vidare att lämna korrekt och komplett information i samband med att Du skickar in eller lägger upp information eller material på Tjänsten. Du upplåter också härmed utan ersättning en global, royaltymfri, icke-exklusiv licens till iTunes att använda det material Du bidrar med som en del av Tjänsten och i anslutning till Produkterna, utan några skyldigheter mot eller ersättningskrav från Dig.

iTunes förbehåller sig rätten att inte publicera eller lägga upp inskickat material. iTunes har även rätt att avlägsna och redigera sådant material när som helst och utan att hållas ansvarigt.

iTunes har rätt, men inte skyldighet, att granska all information och allt material som har skickats eller lagts upp av Dig eller som i övrigt är tillgängligt på Tjänsten, att undersöka eventuella rapporterade eller uppenbara brott mot detta Avtal, och att vidta alla slags åtgärder som iTunes, helt utifrån sin egen diskretion, bedömer vara erforderliga, inklusive men inte begränsat till, de som anges i punkt 23 nedan eller enligt Apples Upphovsrättspolicy (<http://www.apple.com/legal/trademark/claimsofcopyright.html>).

10. BETALNINGSMETODER. Tjänsten accepterar kredit- och betalkort, betalning via Ditt Click & Buy konto (Klicka- & Köpkonto), samt iTunes Stores egna presentkort, iTunes Card och månatliga gåvobevis som betalningsmedel. Om ett kredit- eller betalkort, eller Ditt Klicka- & Köpkonto används kommer iTunes innan transaktionen eventuellt att inhämta ett godkännande för ett belopp som täcker ordervärdet från kortets utfärdare eller från Klicka- & Köp (som tillämpligt). Debitering av Ditt kredit- eller betalkort eller av Ditt Klicka- & Köpkonto sker vid köpetillfället eller kort därefter. Om värdet på ett iTunes Card, iTunes Store presentkort eller gåvobevis används för en App Store transaktion, kommer beloppet att dras från Ditt Konto eller iTunes Card (som tillämpligt) vid köpetillfället. Om det totala beloppet för transaktionen skulle överstiga det återstående värdet på Ditt iTunes Card, presentkort eller gåvobevis kommer mellanskillnaden att debiteras Ditt kredit- eller betalkort eller Klicka- & Köpkonto.

Tjänsten accepterar följande kredit- och betalkort: Visa, MasterCard och American Express.

NOTERA ATT

* Vi inte har möjlighet att acceptera kredit- eller betalkort som är utfärdade av banker utanför Sverige eller förbetalda presentkort som har utfärdats av kreditkortsföretag.

* Kredit- och betalkort kan ha dagliga gränser för debitering som kan förhindra bearbetningen av Din beställning.

* Om en transaktion nekas online på grund av Ditt kredit- eller betalkort, eller Klicka- & Köpkonto, vänligen kontrollera att all information är korrekt och försök sedan igen. Om transaktionen då inte accepteras online kommer Du inte att kunna använda det aktuella kortet eller Ditt Klicka- & Köpkonto (såsom tillämpligt) för transaktionen och bör då använda ett annat kort vid betalning.

11. ÖVERENSKOMMELSE OM BETALNING

a. **Betalning av Produkterna.** Du accepterar att betala för samtliga Produkter som Du licensierar genom Tjänsten, och att iTunes får debitera Ditt betalkort eller Klicka- & Köpkonto för licensierade Produkter samt vissa tillkommande belopp som kan uppkomma i relation till Ditt Konto (inkl. skatter och tillämpliga dröjsmålsavgifter). Du är ansvarig för att alla betalningar sker i tid och att Du, för betalningen av alla avgifter försett iTunes med uppgifter om giltigt betalkort eller Klicka- & köpkonto. Alla avgifter och belopp debiteras på det betalkort, eller Klicka- & Köpkonto Du angett vid registreringen. Om Du vill använda ett annat betalkort eller om det sker en förändring i Ditt betalkort eller Klicka- & Köpkonto måste Du ändra uppgifterna online i Tjänstens avdelning Account Info (Du kan tillfälligt komma att nekas tillgång till Tjänsten innan iTunes bekräftat giltigheten av den nya betalkorts- eller Klicka- & Köpkontoinformationen).

b. **Rätt att Ändra Priser och Tillgång till Produkterna.** iTunes äger när som helst och ensidigt ändra priserna och tillgången till Produkterna.

c. **Elektroniska Signaturer och Kontrakt.** Ditt nyttjande av Tjänsten inkluderar möjligheten att på elektronisk väg ingå avtal och/eller göra transaktioner. Du bekräftar att elektroniskt gjorda inskick från Dig utgör ett avtal och en vilja att vara bunden av och betala i enlighet med sådana avtal och transaktioner. Avtalet och Din vilja att vara bunden av elektroniska inskick är tillämpligt på alla transaktioner Du ingår på denna site, inklusive meddelanden om uppsägning, principer, avtal och ansökningar.

d. För att få tillgång till och behålla Ditt elektroniska register, kan Du komma att behöva särskild hårdvara och mjukvara. Du ansvarar själv för sådan hårdvara och mjukvara.

12. ÅNGERRÄTT OCH LEVERANS AV PRODUKTER; ÅTERBETALNINGAR.

a. Du har rätt att ångra Din transaktion utan påföljd och utan att ange skäl fram till dess att leveransen av Produkterna har startat. Du har inte rätt att ångra en transaktion efter att leveransen av Produkterna har startat. App Store tjänsten startar omedelbart när Du laddar ned Produkter från App Store och Du har inte rätt att avbryta Ditt kontrakt när tjänsten har startat. Alla transaktioner är slutgiltiga.

b. **Avbruten leverans till iPod eller iPhone.** Om leverans av en Produkt Du licensierat med hjälp av en iPod eller iPhone avbryts, kommer Din transaktion att hamna i Din nedladdningskö. Du kan återuppta leveransen till Din iTunes-auktoriserade ljudbärare genom att välja "Check for Purchases" i Store-menyen i iTunes eller App Store applikationen.

c. **Återbetalningspolicy.** Ibland kan tekniska problem försena eller förhindra leverans av Din Produkt. Din exklusiva och enda rätt till ersättning avseende Produkt som inte levereras inom rimlig tid är antingen ersättning av Produkten, eller återbetalning av det belopp som betalats för Produkten, efter Apples gottfinnande.

13. 1-CLICK®. 1-Click är ett registrerat varumärke ägt av Amazon.com som används under licens. Vid samtliga App Store-transaktioner används 1-Click, en bekväm funktion som gör det möjligt för Dig att licensiera Produkter genom Tjänsten med endast en knapptryckning. När Du går in på Tjänsten via Din iPod eller iPhone aktiveras 1-Click för varje transaktion genom att trycka på knappen som visar produktens pris vilket gör att "Installera"-ikonen blir synlig. När Tjänsten aktiveras på din dator kommer ett klick på "Köp nu"-ikonen att påbörja nedladdningen omedelbart och transaktionen kommer att fullbordas utan att några andra åtgärder behöver vidtas. Transaktioner via 1-Click är föremål för dessa Villkor, inklusive bestämmelserna om Ångerrätt som beskrivs häri.

14. DEBITERING. Användandet av 1-Click eller Ditt Klicka- & Köpkonto innebär att Din beställning godkänns och debiteras i takt med att Du klickar på "Buy"-ikonen. Beroende på storleken av Dina beställningar under ett och samma transaktionstillfälle, kan det på Ditt kontoutdrag se ut som flera beställningar och debiteringar under samma köpetillfälle.

Om Du använder "Shopping Cart"-funktionen kommer kontoutdraget att visa en beställning som godkänns och debiteras som ett enda köp.

15. iTUNES CARDS. iTunes Card kan endast användas för transaktioner på iTunes Store och App Store. iTunes Card kan inte användas för andra transaktioner i Apple Online Store eller hos någon annan av Apples återförsäljare. iTunes Card återbetalas inte och kan inte användas för inköp av presentkort, månatliga gåvobevis eller andra iTunes Card.

16. INAKTIVA PRESENTKORT, MÅNATLIGA GÅVOBEVIS OCH iTUNES CARD. Presentkort, månatliga gåvobevis och iTunes Card och oanvända delar därav, blir ogiltiga vid den tidpunkt som infaller två år efter utfärdandet eller två år efter det datum när det sist utnyttjades om det avser ett Konto.

17. UPPGRADERINGAR. Den senaste versionen av iTunes programvaran rekommenderas för att få tillgång till Tjänsten. Från tid till annan kan det krävas att iTunes programvaran uppgraderas till den senaste versionen för att göra transaktioner genom Tjänsten, ladda ner Produkter som tidigare licensierats från Tjänsten (t.ex. Produkter i Din nedladdningskö) eller för att dra nytta av nya funktioner i Tjänsten. Du kan gratis ladda ner den senaste versionen av iTunes programvara, samt granska minimikraven för Ditt datorsystem som behövs för att kunna köra iTunes programvara, på <http://www.apple.com/se/itunes/download/>. Användningen av iTunes programvara är underkastat Ditt godkännande av de programvarulicensavtal som presenteras vid installationstillfället. Vänligen kontakta iTunes Stores Kundtjänst (se nedan) om Du har ytterligare frågor angående erforderliga uppgraderingar.

18. PRODUKTILLGÅNG. Ibland kan en licensierad Produkt bli otillgänglig efter en transaktion men innan nedladdning skett. Din enda rätt till ersättning i sådana fall är återbetalning av det belopp som betalats för den otillgängliga licensierade Produkten. Vänligen kontakta iTunes Store Kundtjänst för att få hjälp i sådana fall (se nedan).

19. HJÄLP VID BESTÄLLNINGAR - iTUNES STORES KUNDTJÄNST. För hjälp i fakturafrågor eller i andra frågor om beställningar, vänligen vänd Dig till vår online support genom att klicka här: <http://www.apple.com/se/support/itunes/store/>. Om Du inte hittar det Du söker i vår omfattande kunskapsbank kan du maila Dina frågor genom att fylla i formuläret på: <http://www.apple.com/se/support/itunes/store/email>. Inskickade frågor besvaras så snart det är möjligt.

20. VIKTIG SÄKERHETSINFORMATION: (1) För att undvika muskel-, led- eller ögonansträngning vid videospel bör Du alltid ta frekventa pauser från spelandet och sluta spela och ta en längre paus om Dina ögon, händer, handleder eller armar känns trötta eller ömma eller om Du upplever annat obehag. (2) En mycket liten andel av människor kan få krampanfall eller blackout när de utsätts för blinkande ljus eller mönster, inklusive när de spelar videospel eller ser på video. Symptom kan inkludera yrsel, illamående, spasmer, medvetandeförlust,

syner, kittlingar, stelhet eller andra obehag. Uppsök en läkare innan Du spelar videospel om Du någon gång har upplevt dessa symptom eller andra symptom som har samband med krampanfall och/eller epilepsi, och sluta omedelbart spela och uppsök en läkare om dessa eller liknande symptom inträffar under spelande. Föräldrar bör övervaka sina barns videospelande för att kunna upptäcka tecken på symptom.

21. ANSTÖTLIGT MATERIAL. Du är medveten om att Du genom att använda Tjänsten kan komma i kontakt med material som kan upplevas som kränkande, oanständigt eller stötande, samt material som innehåller grovt och stötande språk. Likväl accepterar Du att Tjänsten används på egen risk och att iTunes aldrig kan hållas ansvarigt för material som Du anser vara kränkande, oanständigt eller stötande. Innehållsklasser och beskrivningar lämnas för Din bekvämlighet och Du bekräftar och accepterar att iTunes inte garanterar att dessa är korrekta.

22. IMMATERIELLA RÄTTIGHETER.

a. Ägandebekräftelse. Du är medveten om att Tjänsten, inklusive men inte begränsat till Produkter, grafik, ljudklipp och redaktionellt material, innehåller information om äganderätt och material som ägs av iTunes och/eller dess huvudmän. Detta material skyddas av tillämpliga immateriella rättigheter och övrig lagstiftning, inklusive men inte begränsat till upphovsrätt. Du skall inte använda äganderättsinformationen eller det övriga materialet på något annat sätt än för användning av Tjänsten enligt villkoren i detta Avtal. Ingen del av Tjänsten får reproduceras i någon form eller med några medel, med undantag för vad som uttryckligen tillåts här under. Du åtar Dig att inte modifiera, låna, hyra ut, leasa, sälja, distribuera eller skapa något baserat på Tjänsten i någon form. Du accepterar även att inte exploatera Tjänsten på något otillåtet sätt, inklusive men inte begränsat till otillbörlig användning eller belastning av nätverkskapaciteten.

b. Avlägsnande av iTunes Material samt Övrigt Material. Utan hinder av andra bestämmelser i detta Avtal, förbehåller sig iTunes och dess huvudmän rätten att när som helst och utan varsel ändra, stoppa, avlägsna eller neka tillgång till Produkterna, innehållet, eller annat material som utgör en del av Tjänsten. iTunes kan under detta Avtal aldrig hållas ansvarigt för avlägsnandet eller att tillgången till Produkterna, innehållet, eller annat material nekas. iTunes får även, efter eget tycke, utan ansvar och utan varsel, begränsa nyttjandet och tillgången till vissa funktioner eller till vissa delar av Tjänsten. Borttagande av Produkter från Tjänsten kommer inte att påverka Produkter som Du redan har licensierat från Tjänsten.

c. Upphovsrätt. All upphovsrätt i och tillhörande Tjänsten, inklusive men inte begränsat till iTunes Store, App Store (inklusive men inte begränsat till sammansättningen av innehåll, inlägg, länkar till andra tillgångar på Internet samt beskrivningar av dessa tillgångar) samt programvara, innehas av iTunes och/eller dess huvudmän, som förbehåller sig alla sina rättigheter enligt lag och tillämpliga rättsprinciper. Användning av delar av Tjänsten på ett sätt som strider mot dessa Villkor är strängt förbjudet och utgör intrång i annans immateriella rättigheter. Sådant handlande kan leda till straff- och skadeståndsansvar för Dig, inklusive eventuellt ekonomiskt skadestånd för upphovsrättsintrång.

d. Varumärken. Apple, Apples logotyp, iTunes och övriga Apple varu- eller tjänstemärken, grafik och logotyper som används i samband med Tjänsten, är varumärken eller registrerade varumärken ägda av Apple Inc. i USA och/eller andra länder. Andra varu- eller tjänstemärken, grafik och logotyper använda i samband med Tjänsten kan vara varumärken ägda av respektive innehavare. Du erhåller ingen licens till eller rätt till nyttjande av dessa varumärken.

23. UPPSÄGNING.

a. Uppsägning av iTunes. Om Du på ett väsentligt sätt bryter mot bestämmelserna i detta Avtal, eller om iTunes har stark grund att tro att så är fallet kan iTunes efter eget tycke och utan att i förväg meddela Dig: (i) säga upp Avtalet och/eller Ditt Konto och Du kommer då fortfarande att hållas ansvarig för belopp hänförliga till Ditt Konto som förfallit t.o.m. uppsägningsdagen, och/eller (ii) säga upp Din programvarulicens, och/eller (iii) omöjliggöra tillgång till Tjänsten (eller någon del därav). Överträdelse mot bestämmelserna kan t.ex. vara sen

eller utebliven betalning av förfallet belopp, att inte förse iTunes med ett giltigt betalkort eller korrekta och kompletta Registreringsuppgifter, att inte skydda informationen om Ditt Konto samt överträdelse mot Användningsreglerna eller mot licensvillkoren för programvaran, eller annan överträdelse av tredje parts rättigheter.

b. UPPSÄGNING AV TJÄNSTEN. iTunes förbehåller sig rätten att modifiera, avbryta eller lägga ned Tjänsten (eller del därav) när som helst, utan att Apple kan hållas ansvarigt. I den utsträckning det är möjligt kommer iTunes att förvarna Dig om sådana modifieringar, avbrytanden eller nedläggningar av Tjänsten. Avslutande av Tjänsten kommer inte att påverka de Produkter som Du redan har licensierat. Du kan dock vara förhindrad från att auktorisera ytterligare datorer att använda Produkter som är skyddade av Säkerhetsteknologin.

24. ALLMÄN EFTERLEVNAD AV LAGAR. Tjänsten sköts och tillhandahålls av iTunes från dess kontor i Luxemburg. Du åtar Dig att följa alla lokala och nationella lagar, författningar och förordningar som är tillämpliga på Din användning av Tjänsten.

25. UPPRÄTTHÅLLANDET AV DESSA VILLKOR. iTunes förbehåller sig rätten att vidta alla åtgärder som iTunes anser är lämpliga eller nödvändiga för att upprätthålla och/eller bekräfta efterlevnaden av alla delar av detta Avtal (inklusive men inte begränsat till iTunes rätt att samarbeta inom ramen för varje juridisk process relaterad till Din användning av Tjänsten och/eller Produkterna, och/eller om tredje man hävdar att Din användning av Tjänsten och/eller Produkterna är olagligt och/eller gör intrång i rättighet tillhörande tredje man). Du accepterar att iTunes har rätt att avslöja alla Registreringsuppgifter och/eller information om Ditt Konto för myndighet som upprätthåller lag och ordning, till statstjänstemän, och/eller till tredje man, om iTunes anser att det är lämpligt eller nödvändigt för upprätthållandet och/eller bekräftandet av efterlevnaden av någon del i detta Avtal (inklusive men inte begränsat till iTunes rätt att samarbeta inom ramen för varje juridisk process relaterad till Din användning av Tjänsten och/eller Produkterna, och/eller om tredje man hävdar att Ditt användande av Tjänsten eller Produkterna är olagligt och/eller gör intrång i rättighet tillhörande tredje man).

26. INGET ANSVAR FÖR MATERIAL ELLER HEMSIDOR ÄGDA AV TREDJE MAN. Visst innehåll, Produkter och tjänster tillgängliga via Tjänsten kan innehålla material från tredje man. iTunes kan även lägga upp länkar till hemsidor ägda av tredje man. Du bekräftar och accepterar att iTunes inte är ansvarigt för att undersöka eller utvärdera innehållet eller riktigheten i något sådant tredje mans material eller hemsidor. iTunes varken garanterar eller står bakom sådant material och kan inte hållas ansvarigt för något sådant tredje mans material eller hemsidor, eller för annat material eller andra produkter eller tjänster ägda eller tillhandahållna av tredje man. Länkar till andra hemsidor tillhandahålls endast som en service till Dig. Du bekräftar att du inte kommer att inte använda tredje parts material på ett sätt som skulle göra intrång i eller strida mot någon annans rättigheter samt att iTunes inte på något sätt är ansvarigt för sådan användning från Din sida.

27. UNDERHÅLL OCH SUPPORT. Leverantören av respektive Produkt är ensamt ansvarigt för att tillhandahålla underhålls- och supporttjänster för dess licensierade Produkt, enligt villkoren i tillämpligt licensavtal för slutanvändare, eller på det sätt som krävs enligt tillämplig lag. Du bekräftar att iTunes inte har någon skyldighet att tillhandahålla några som helst underhålls- eller supporttjänster för Produkter som licensieras från tredje part.

28. DINA RÄTTIGHETER VID FÖRSENINGAR ELLER FEL; ANSVARSBEGRÄNSNING.

a. iTunes anstränger sig för att leverera Produkterna utan fel eller brister. Om en försening eller brist ändå skulle uppkomma har Du rätt att kräva leverans/omleverans eller prisavdrag. Om förseningen eller bristen är väsentlig har Du rätt att häva Din beställning. Du har också rätt att kräva ersättning för ekonomisk skada som Du har förorsakats som ett direkt resultat av förseningen eller bristen. Ansvar enligt denna bestämmelse är dock begränsat på följande sätt:

(i) Du har inte rätt till ersättning om orsaken till förseningen eller bristen beror på ett hinder utanför iTunes kontroll, och iTunes inte rimligen kunde förväntas räkna med detta hinder vid den tidpunkt då avtalet ingicks eller förhindra eller övervinna det.

(ii) Om förseningen eller bristen har förorsakats av oberoende uppdragstagare som iTunes har anlitat för att utföra dess skyldighet mot Dig, skall iTunes ansvara enbart om en sådan oberoende uppdragstagare inte skulle ha varit ansvarsfri enligt punkt 28 a(i) ovan. Begreppet oberoende uppdragstagare innefattar leverantören av iTunes programvara, i den utsträckning denna används i leveransen av Produkterna, och de leverantörer av lager- och leveranslösningar med vilka iTunes har avtal. Det innefattar inte (utan begränsning) iTunes eller din Internetleverantör, eller leverantörer av betalningslösningar.

(iii) Undantaget från ansvar gäller så länge som orsaken till förseningen eller bristen kvarstår. Om orsaken till förseningen eller bristen upphör, kan ansvar uppkomma om iTunes är skyldigt att uppfylla avtalet och inte gör detta.

(iv) iTunes kan vidare inte garantera att Produkterna är fria från förlust, förvanskning, attacker, avbrott, hackande eller andra säkerhetsstörningar. Så länge iTunes gör vad som rimligen kan förväntas för att undvika eller övervinna effekterna av sådan förlust, förvanskning, attacker, avbrott, hackande eller andra säkerhetsstörningar, skall iTunes inte ansvara för förlust som kan uppkomma som en effekt. Du är ansvarig för att göra back-up på Ditt eget system, och för att upprätthålla viruskydd, brandväggar och andra skyddsåtgärder på detta.

(v) iTunes är inte ansvarigt för någon indirekt skada, innefattande, utan inskränkning:

1. förlust som en konsekvens av minskad eller avbruten produktion eller försäljning;
2. förlust som en konsekvens av att varorna inte kan användas som avsett;
3. förlust av vinst som en konsekvens av att ett kontrakt med tredje man blir ogenomförbart eller inte korrekt utfört, eller
4. förlust av eller skada på annan egendom än själva Produkterna och egendom som har en nära och direkt koppling till Produkternas avsedda användning.

(vi) Oavsett vilket kan Du kräva ersättning om skadan beror på grovt vårdslösa eller uppsåtliga handlingar som har vidtagits av iTunes eller under iTunes kontroll eller styrning.

b. Eventuell ersättning som krävs från iTunes får täcka ekonomisk skada som har uppkommit som ett resultat av förseningen eller bristen. Du kan emellertid enbart kräva ersättning för förluster som är rimligen förutsägbara effekter av brott mot detta Avtal.

iTunes ersättningskyldighet för försening eller brist kan minskas om Du inte har vidtagit skäligen åtgärder för att begränsa Din skada. Skäligen åtgärder innefattar, utan begränsning, att bibehålla säkerheten på datorer och enheter som Du använder, att förvara information om Ditt Konto (inklusive användarnamn, lösenord och betalkortsinformation) säkert, att installera och använda uppdaterad antivirusprogramvara, att installera programvaruuppdateringar och att göra back-up-kopior av Produkterna och data som har en nära och direkt koppling till Produkternas avsedda användning. Ersättningen kan också minskas om den skulle bli orimligt hög jämfört med den skada som normalt uppkommer i liknande fall, och på grund av andra förhållanden.

iTunes är under inga förutsättningar ansvarigt för ett totalt belopp som överstiger SEK 12,000, om inte skadan beror på grov vårdslöshet eller uppsåtliga eller medvetna handlingar som har vidtagits av iTunes eller under iTunes kontroll eller styrning.

c. iTunes ansvar för förluster som är en konsekvens av förseningar eller brister i innehåll och tjänster som tillhandahålls utan kostnad skall vara begränsat till förseningar eller brister som beror på grovt vårdslöst eller uppsåtligt agerande.

d. Inget i detta Avtal begränsar iTunes ansvar för dödsfall eller personskada som orsakas av vårdslöshet enligt tillämplig lag.

e. iTunes skall vidta skäliga åtgärder för att skydda information som Du lämnar i samband med Tjänsten, men Du bekräftar och accepterar att Ditt lämnande av sådan information sker på Din egen risk, och iTunes avsäger sig härmed allt ansvar gentemot Dig för förlust eller ansvar som relaterar till sådan information. Information som ges till iTunes och som omfattas av Dataskyddsdirektivet, skall behandlas och skyddas på det sätt som anges i punkt 6 och 7 ovan.

29. FÖRSÄKRAN OCH SKADESLÖSHET. Genom att använda Tjänsten accepterar Du att hålla iTunes, dess ledning, befattningshavare, anställda, anknutna personer, agenter, entreprenörer, huvudmän eller licensgivare skadeslösa avseende krav som uppkommer på grund av Din överträdelse av detta Avtal, eller avseende alla åtgärder vidtagna av iTunes för att undersöka en misstänkt överträdelse av detta Avtal, eller iTunes upptäckt eller till följd av deras beslut att en överträdelse av detta Avtal skett. Detta innebär att Du inte kan stämma eller i övrigt återvinna några förluster eller få ersättning för skador från iTunes, dess ledning, befattningshavare, anställda, anknutna personer, agenter, entreprenörer, huvudmän eller licensgivare, på grund av deras beslut att avlägsna eller vägra behandling av information eller innehåll, beslut att varna, stänga av eller säga upp Din tillgång till Tjänsten, eller annan åtgärd vidtagen under undersökning av en misstänkt överträdelse till följd av iTunes beslut att en överträdelse av detta Avtal har skett. Denna bestämmelse om försäkran och skadeslöshet är tillämplig på alla överträdelser som framgår av eller åsyftas i detta Avtal.

30. ÄNDRINGAR. iTunes förbehåller sig rätten att när som helst och med jämna mellanrum, uppdatera, revidera, göra tillägg, eller på annat sätt modifiera detta Avtal och att införa nya regler, principer, villkor eller förutsättningar för Ditt nyttjande av Tjänsten. Sådana uppdateringar, revideringar, tillägg eller modifieringar samt kompletterande regler, principer, villkor eller förutsättningar (dessa omnämns tillsammans i detta Avtal "Kompletterande Villkor") kommer att meddelas Dig och har, om de accepteras, omedelbar giltighet och inkluderas i detta Avtal. Om Du vägrar acceptera sådana Kompletterande Villkor har iTunes rätt att säga upp detta Avtal och att förhindra Dig från att göra fler transaktioner i iTunes Store och/eller App Store.

31. MEDDELANDEN. iTunes kan sända meddelanden gällande Tjänsten via e-mail till den adress Du uppgivit i Ditt Konto, via brev till kontaktadressen i informationen om Ditt Konto, eller genom att lägga upp meddelandet på Tjänsten. Alla meddelanden har omedelbar giltighet.

32. TILLÄMPLIG LAG. Detta Avtal och nyttjandet av Tjänsten skall regleras enligt svensk lag.

33. ÖVRIGT. Dessa Villkor utgör den fullständiga överenskommelsen mellan Dig och iTunes och skall reglera Ditt nyttjande av Tjänsten. Avtalet ersätter alla tidigare överenskommelser mellan Dig och iTunes. Du är också skyldig att följa andra villkor och förutsättningar som kan gälla när Du använder närstående tjänster, tredje mans programvaror eller annat innehåll ägt av tredje man. Att iTunes i vissa fall inte må ha gjort vissa bestämmelser i detta Avtal rättsligt gällande mot Dig, innebär inte ett avstående från dessa bestämmelser eller från någon annan bestämmelse i dessa Villkor. Om en behörig domstol finner att någon bestämmelse i detta Avtal är ogiltig, skall övriga villkor fortfarande vara fullt tillämpliga. iTunes är inte ansvarigt för underlåtenhet att utföra dess skyldigheter när orsaken ligger utanför iTunes kontroll.

34. ÖVRIGA VILLKOR OCH FÖRUTSÄTTNINGAR

iTunes är inte ansvarigt för typografiska fel.

Ingen anställd hos eller agent för iTunes eller Apple har behörighet att förändra någon princip för Tjänsten eller villkoren eller förutsättningarna för någon försäljning.

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LICENSAVTAL FÖR SLUTANVÄNDARE FÖR LICENSIERADE APPLIKATIONER

De Produkter som tillhandahålls genom Tjänsten licensieras, och säljs inte, till Dig. Din licens till varje Produkt Du erhåller genom Tjänsten är villkorad av att Du först accepterar detta Licensavtal för slutanvändare för Licensierade Applikationer och att Du accepterar att villkoren i detta Licensavtal för slutanvändare för Licensierade Applikationer omfattar samtliga Produkter som Du licensierar från Tjänsten, såvida inte Produkten omfattas av ett giltigt licensavtal för slutanvändare mellan Dig och leverantören av Produkten ("Applikationsleverantören"), då detta separata licensavtal gäller och Din licens är villkorad av att Du först accepterar detta separata licensavtal. Licensgivaren ("Applikationsleverantören") förbehåller sig alla rättigheter som inte uttryckligen medgivits Dig. Den Produkt som denna licens avser benämns i denna licens den "Licensierade Applikationen".

a. Licensens omfattning: Denna licens som medges Dig för den Licensierade Applikationen av Applikationsleverantören är begränsad till en icke-överlåtbar licens att använda den Licensierade Applikationen på en iPhone eller iPod touch som Du äger eller kontrollerar på ett sätt som är tillåtet enligt Användningsreglerna i punkt 9.b. i Villkoren för App Store ("Användningsreglerna"). Denna licens ger Dig inte rätt att använda den Licensierade Applikationen på en iPod touch eller iPhone som Du inte äger eller kontrollerar, och Du får inte distribuera eller göra den Licensierade Applikationen tillgänglig på ett nätverk där den skulle kunna användas av flera enheter samtidigt. Du får inte hyra ut, låna ut, sälja, vidare distribuera eller licensiera vidare den Licensierade Applikationen. Du får inte kopiera (med undantag för vad som uttryckligen tillåts enligt denna licens och Användningsreglerna), dekompile, reverse engineer, ta isär, försöka utröna källkoden till, modifiera eller skapa något baserat på den Licensierade Applikationen, uppdateringar av denna, eller någon del av denna (med undantag för det fall och endast i den utsträckning en sådan restriktion är förbjuden enligt tillämplig lag eller i den utsträckning som tillåts enligt de licensvillkor för användning av komponenter till öppen källkod som den Licensierade Applikationen innehåller). Varje försök att göra det utgör en överträdelse av Applikationsleverantörens och dess licensgivares rättigheter. Ditt brott mot denna restriktion kan leda till åtal och skadestånd.

Licensvillkoren gäller för samtliga uppgraderingar som Applikationsleverantören tillhandahåller som ersättning och/eller tillägg till original Produkten, såvida inte en sådan uppgradering åtföljs av en separat licens, då villkoren för den licensen istället skall gälla.

b. Samtycke till användning av uppgifter: Du accepterar att Applikationsleverantören får samla in och använda tekniska uppgifter och relaterad information, inklusive men inte begränsat till teknisk information om Din enhet, Ditt system, Din applikationsprogramvara och kringutrustning. Sådan information samlas regelbundet in för att underlätta tillhandahållande av uppdateringar av programvara, produktsupport och eventuella andra tjänster till Dig relaterade till den Licensierade Applikationen. Applikationsleverantören får använda denna information, förutsatt att den är i en form som inte personligen identifierar Dig, för att förbättra sina produkter eller för att tillhandahålla Dig tjänster eller teknologier.

c. Uppsägning. Licensen gäller tills den sägs upp av Dig eller Applikationsleverantören. Dina rättigheter under denna licens kommer automatiskt att upphöra utan föregående meddelande från Applikationsleverantören om Du bryter mot något av villkoren i denna licens. Vid uppsägning av licensen skall Du upphöra med all användning av den Licensierade Applikationen och förstöra samtliga fullständiga eller partiella kopior av den Licensierade Applikationen.

d. Tjänster; Material som tillhör tredje part. Den Licensierade Applikationen kan ge tillgång till Applikationsleverantörens och tredje parts tjänster och hemsidor (tillsammans och var och en benämnda "Tjänster"). Användning av Tjänsterna kan kräva Internetanslutning och att Du accepterar tillkommande tjänstevillkor.

Du är medveten om att Du genom att använda Tjänsterna kan komma i kontakt med innehåll som kan upplevas som kränkande, oanständigt eller stötande, samt innehåll som innehåller grovt och stötande språk. Resultaten av en sökning eller angivande av en viss URL kan automatiskt och oavsiktligt generera länkar eller referenser till anstötligt material. Likväl accepterar Du att Tjänsterna används på egen risk och att Applikationsleverantören aldrig kan hållas ansvarigt för innehåll som Du anser vara kränkande, oanständigt eller stötande.

Vissa Tjänster kan visa, innehålla eller ge tillgång till innehåll, uppgifter, information, applikationer eller material från tredje parter ("Tredjepartsmaterial") eller tillhandahålla länkar till hemsidor ägda av tredje man. Genom att använda Tjänsterna bekräftar och accepterar Du att Applikationsleverantören inte är ansvarig för att undersöka och utvärdera innehållet, riktigheten, fullständigheten, lämpligheten, giltigheten, efterlevnaden av upphovsrätt, laglighet, anständigheten, kvaliteten eller någon annan aspekt av sådant Tredjepartsmaterial eller på sådana hemsidor. Applikationsleverantören varken garanterar eller står bakom sådant material och kan inte hållas ansvarigt gentemot Dig eller någon annan för tredje parts Tjänster, Tredjepartsmaterial eller hemsidor, eller för annat material eller andra produkter eller tjänster som ägs av tredje part.

Tredjepartsmaterial och länkar till andra hemsidor tillhandahålls endast som en service till Dig. Finansiell information som visas genom någon av Tjänsterna visas endast i allmänt informations syfte och är inte avsett att kunna förlitas på som investeringsrådgivning. Innan Du genomför någon värdepapperstransaktion baserad på information som Du erhållit genom Tjänsterna bör Du rådgöra med en finansiell fackman.

Lokaliseringsuppgifter som tillhandahålls genom någon av Tjänsterna tillhandahålls endast i grundläggande navigeringssyften och är inte avsedda att kunna förlitas på i situationer där exakta lokaliseringssuppgifter är nödvändiga, eller där felaktiga, oriktiga eller inkompleta lokaliseringssuppgifter kan leda till dödsfall, personskada, skada på egendom eller miljökada. Varken Applikationsleverantören eller någon av dess innehållsleverantörer garanterar att aktieinformation eller lokaliseringssuppgifter som visas genom någon av Tjänsterna är tillgänglig, riktig, komplett, eller lämplig.

Du accepterar att många av Tjänsterna innehåller äganderättsligt innehåll, information eller material som skyddas av tillämpliga immateriella rättigheter och övrig lagstiftning, inklusive men inte begränsat till upphovsrätt. Du skall inte använda sådant äganderättsligt innehåll, information eller material på något annat sätt än för tillåten användning av Tjänsterna. Ingen del av Tjänsterna får reproduceras i någon form eller med några medel, med undantag för vad som uttryckligen tillåts av Applikationsleverantören eller tillämplig tredje part, lag eller förordning. Du åtar Dig att inte modifiera, låna, hyra ut, leasa, sälja, distribuera eller skapa något baserat på Tjänsterna i någon form, med undantag för vad som uttryckligen tillåts av Applikationsleverantören eller tillämplig tredje part, lag eller förordning. Du åtar Dig även att inte exploatera Tjänsterna på något otillåtet sätt, inklusive men inte begränsat till otillbörlig användning eller belastning av nätverkskapaciteten. Du åtar Dig också att inte använda Tjänsterna för att trakassera, missbruka, följa efter, hota, förtala eller på annat sätt kränka tredje parts rättigheter. Applikationsleverantören är inte på något sätt ansvarig för sådan användning från Din sida, eller för några trakasserier, hot eller meddelanden av förtalskaraktär, kränkande eller olagliga meddelanden genom överföringar som Du kan komma att motta till följd av att Du använder någon av Tjänsterna.

Vidare är tredje parts Tjänster och Tredjepartsmaterial som Du kan få tillgång till från, som visas på, eller som länkas till från iPhone eller iPod touch inte tillgängliga på samtliga språk eller i samtliga länder.

Applikationsleverantören garanterar inte att sådana Tjänster och Material är lämpliga eller tillgängliga för användning på någon särskild plats. I den utsträckning Du väljer att få tillgång till sådana Tjänster eller sådant Material gör Du det på eget initiativ och är ansvarig för att tillämpliga lagar, inklusive men inte begränsat till tillämpliga lokala lagar, efterlevs. Applikationsleverantören och dess licensgivare förbehåller sig rätten att när

som helst och utan varsel ändra, stoppa, avlägsna eller neka tillgång till någon av Tjänsterna.

Applikationsleverantören kan aldrig hållas ansvarig för avlägsnandet eller att tillgången till någon av Tjänsterna nekas. Applikationsleverantören får även, efter eget tycke, utan ansvar och utan varsel, begränsa nyttjandet av eller tillgången till vissa av Tjänsterna.

e. INGA GARANTIER: Applikationsleverantören kan inte garantera att Licensierade Applikationer eller Tjänsterna är fria från förlust, förvanskning, attacker, avbrott, hackande eller andra säkerhetsstörningar. Så länge Applikationsleverantören gör vad som rimligen kan förväntas för att undvika eller övervinna effekterna av sådan förlust, förvanskning, attacker, avbrott, hackande eller andra säkerhets störningar, skall Applikationsleverantören inte ansvara för förlust som kan uppkomma som en effekt. Du är ansvarig för att göra back-up på Ditt eget system, och att för upprätthålla viruskydd, brandväggar och andra skyddsåtgärder på detta.

f. ANSVARSBEGRÄNSNING:

(i) Applikationsleverantören anstränger sig för att leverera de Licensierade Applikationerna utan fel eller brister. Om en försening eller brist ändå skulle uppkomma har Du rätt att kräva leverans/omleverans eller prisavdrag. Om förseningen eller bristen är väsentlig har Du rätt att häva Din beställning. Du har också rätt att kräva ersättning för ekonomisk skada som Du har förorsakats som ett direkt resultat av förseningen eller bristen. Ansvar enligt denna bestämmelse är dock begränsat på följande sätt:

(1) Du har inte rätt till ersättning om orsaken till förseningen eller bristen beror på ett hinder utanför Applikationsleverantörens kontroll, och Applikationsleverantören inte rimligen kunde förväntas räkna med detta hinder vid den tidpunkt då avtalet ingicks eller förhindra eller övervinna det.

(2) Om förseningen eller bristen har förorsakats av oberoende uppdragstagare som Applikationsleverantören har anlitat för att utföra dess skyldighet mot Dig, skall Applikationsleverantören ansvara enbart om en sådan oberoende uppdragstagare inte skulle ha varit ansvarsfri enligt punkt 1 ovan.

(3) Undantaget från ansvar gäller så länge som orsaken till förseningen eller bristen kvarstår. Om orsaken till förseningen eller bristen upphör, kan ansvar uppkomma om Applikationsleverantören är skyldig att uppfylla avtalet och inte gör detta.

(4) Applikationsleverantören är inte ansvarig för någon indirekt skada, innefattande, utan inskränkning:

(A) förlust som en konsekvens av minskad eller avbruten produktion eller försäljning;

(B) förlust som en konsekvens av att den Licensierade Applikationen inte kan användas som avsett;

(C) förlust av vinst som en konsekvens av att ett kontrakt med tredje man blir ogenomförbart eller inte korrekt utfört, eller

(D) Förlust av eller skada på annan egendom än själva den Licensierade Applikationen och egendom som har en nära och direkt koppling till den Licensierade Applikationens avsedda användning.

(5) Oavsett vilket kan Du kräva ersättning om skadan beror på grovt vårdslösa eller uppsåtliga handlingar som har vidtagits av Applikationsleverantören eller under Applikationsleverantörens kontroll eller styrning.

(ii) Eventuell ersättning som krävs från Applikationsleverantören får täcka ekonomisk skada som har uppkommit som ett resultat av förseningen eller bristen. Du kan emellertid enbart kräva ersättning för förluster som är rimligen förutsägbara effekter av brott mot detta avtal.

Applikationsleverantörens ersättningsskyldighet för försening eller brist kan minskas om Du inte har vidtagit skäliga åtgärder för att begränsa Din skada. Skäliga åtgärder innefattar, utan begränsning, att bibehålla

säkerheten på datorer och enheter som Du använder, att förvara information om Ditt Konto (inklusive användarnamn, lösenord och betalkortsinformation) säkert, att installera och använda uppdaterad antivirusprogramvara, att installera programvaruuppdateringar och att göra back-up-kopior av den Licensierade Applikationen och data som har en nära och direkt koppling till den Licensierade Applikationens avsedda användning. Ersättningen kan också minskas om den skulle bli orimligt hög jämfört med den skada som normalt uppkommer i liknande fall, och på grund av andra förhållanden.

Applikationsleverantören är under inga förutsättningar ansvarig för ett totalt belopp som överstiger SEK 12,000, om inte skadan beror på grov vårdslöshet eller uppsåtliga eller medvetna och uppsåtliga handlingar som har vidtagits av Applikationsleverantören eller under Applikationsleverantörens kontroll eller styrning.

(iii) Applikationsleverantörens ansvar för förluster som är en konsekvens av förseningar eller brister i Licensierade Applikationer eller Tjänster som tillhandahålls utan kostnad skall vara begränsat till förseningar eller brister som beror på grov vårdslöst eller uppsåtligt agerande.

(iv) Inget i detta avtal begränsar Applikationsleverantörens ansvar för dödsfall eller personskada som orsakas av vårdslöshet enligt gällande lag.

g. Du får inte använda eller på annat sätt exportera eller reexportera den Licensierade Applikationen förutom såsom är tillåtet enligt och lagarna i USA och i den jurisdiktion där den Licensierade Applikationen införskaffades. I synnerhet, men dock inte begränsat till, får den Licensierade Applikationen inte exporteras eller reexporteras a) till ett land som USA har embargo mot eller (b) till någon som är upptagen på det amerikanska Treasury Departments lista över Specially Designated Nationals eller det amerikanska Department of Commerce Denied Person's List eller Entity List. Genom att använda den Licensierade Applikationen intygar och garanterar Du att Du inte befinner Dig i ett sådant land eller är upptagen på en sådan lista. Du accepterar även att Du inte får använda dessa produkter i något syfte som är förbjudet enligt amerikansk lag, inklusive, utan begränsning, utveckling, design, tillverkning, eller produktion av kärnvapen, missiler, kemiska eller biologiska vapen.

h. Den Licensierade Applikationen och därtill relaterad dokumentation är "Commercial Items", såsom detta begrepp definieras i 48 C.F.R. §2.101, bestående av "Commercial Computer Software" och "Commercial Computer Software Documentation", såsom dessa begrepp används i 48 C.F.R. §12.212 eller 48 C.F.R. §227.7202, som tillämpligt. I enlighet med 48 C.F.R. §12.212 eller 48 C.F.R. §227.7202-1 t.o.m. 227.7202-4, som tillämpligt, licensieras "Commercial Computer Software" och "Commercial Computer Software Documentation" till slutanvändare inom den amerikanska regeringen (a) enbart som "Commercial Items" och (b) enbart med de rättigheter som medges alla andra slutanvändare enligt villkoren häri. Opublicerade rättigheter förbehålls enligt upphovsrättslagarna i USA.

i. Svensk lag, exklusive dess lagvalsregler, reglerar denna licens och Din användning av den Licensierade Applikationen. Din användning av den Licensierade Applikationen kan också regleras av andra lokala, statliga, nationella eller internationella lagar.

Senast uppdaterad 9 septemeber 2008

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Appendix 3. Last.fm End-User Agreement

Last.fm Terms of Use

Updated on: November 21, 2008

IMPORTANT

PLEASE CAREFULLY READ THESE TERMS OF USE ("Terms of Use") BEFORE USING THE WEBSITE OR ANY OF THE OTHER PROPERTIES (AS DEFINED BELOW), AS THEY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

Last.fm Limited ("Last.fm" or "we" "our" or "us") owns or controls, and provides access to the Last.fm website, at the url www.last.fm and related properties (the "Website"), the Last.fm client software, the Last.fm widget, the Last.fm API and all proprietary services, software, data and materials accessed via the Website (the "Services"). The Website and the Services are referred to together in these Terms of Use as the "Properties".

THESE TERMS OF USE GOVERN YOUR USE OF THE PROPERTIES.

These Terms of Use apply to the Properties and not to any other website or any offline activities of Last.fm (unless specifically stated). By accessing or using the Properties, registering for or receiving Services offered on the Website, or by accepting, uploading, submitting or downloading any information or content from or to the Website, you agree to be bound by these Terms of Use.

IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THESE TERMS OF USE, DO NOT USE THE PROPERTIES.

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1. Changes to the Properties and the Terms of Use

We reserve the right to add, delete, change or modify parts of these Terms of Use at our sole discretion and at any time without notice to you. If we do this, we will post the changes to the Terms of Use on this page and will indicate the effective date of the Terms of Use at the top of the page. It is important for you to refer to these Terms of Use from time to time to make sure that you are aware of any additions, revisions, or modifications that we may have made to these Terms of Use. Your continued use of the Website constitutes your acceptance of the new Terms of Use.

2. Description of Website and the Services

Access to the Website currently provides users with access to the Services and a rich collection of online resources, including online forums, personalised content, interactive advertising messages, proprietary software (including updates, patches and new versions), audio, videos and other community and entertainment products. Unless explicitly stated otherwise, any new features which may be added to the Website or the Services, including without limitation, the release of new Last.fm services and software, are subject to these Terms of Use.

In some instances, these Terms of Use and a separate end user licence or similar agreement may apply to a service or product offered by Last.fm via the Properties. We may add, change, remove, suspend or discontinue any aspect of the Website and/or the Services at any time without notice. We may also impose limits on certain features and/or restrict access to parts of or all of the Properties without notice or liability to you or any third party.

In order to use the Website, you must obtain access to the Internet, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, you must provide all equipment necessary to make such connection to the Internet, including a computer and modem or other access device.

You acknowledge that the Services include certain elements which allow Last.fm proprietary software to be downloaded to your computer which interacts with other computer programs (including iTunes), the Last.fm computer servers and your iPod or other permitted devices.

3. Intellectual Property Ownership; Licence

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submit or upload music, video and other content to the Website strictly as permitted in accordance with these Terms of Use and any other terms posted on the Website;

embed the Last.fm widget on your personal website or profile pages for non-commercial and private use only; and

communicate with other members of the Last.fm community;

Provided that you:

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do not, and do not allow or aid or abet any third party (whether or not for your benefit) to, copy or adapt the object code of the Website or Services (including, without limitation, software, HTML, JavaScript, or other code); to reverse engineer, decompile, reverse assemble, modify or attempt to discover any source or object code, circumvent or attempt to circumvent or copy any copy protection mechanism or access any rights management information;

do not insert any code, product or material to manipulate the Content in any way that affects any user's experience;

copy or seek to copy or "rip" any audio and/or audiovisual content from the Website or any part of the Service (including, without limitation, the Last.fm widget);

do not embed or otherwise exploit the Last.fm widget for commercial gain (which includes, for example and without limitation, selling advertising on your site or otherwise monetising any element of your site which contains the Last.fm widget); and

do not adapt, copy, republish, communicate to the public, display, transfer, share, distribute or otherwise exploit the Content, except as under these Terms of Use.

Last.fm alone shall be responsible for determining, in its discretion, whether any use of the Last.fm widget constitutes commercial use in each case.

4. Links to Other Websites

The Website may contain hyperlinks to other websites ("Other Sites"). If you use the hyperlinks to access these Other Sites, you will leave the Website and your browser will be re-directed to the Other Sites. The Other Sites may have their own terms of use and privacy policy and those Other Sites may have different practices and requirements than the Website. Last.fm may not have knowledge of, and is not responsible for, the content, information, services, products or advertisements presented by any Other Site which you use at your own risk. Last.fm does not warrant or make any representation regarding the legality, accuracy, quality or authenticity of content, information, services or products presented by Other Sites. The hyperlinks to Other Sites do not constitute an endorsement by Last.fm of any Other Site(s) or resources, or their content, information, services or products. The Website is only providing these links to you as a convenience. The terms of use and privacy policy of any Other Sites shall apply to your access and use of them. Last.fm accepts no responsibility for the content or conduct of Other Sites.

5. Our Linking and Widget Policy

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We provide the Last.fm widget to enable our users to share Last.fm with their friends. It is not provided for commercial use, distribution or exploitation. If you are the operator of a commercial website and would like to include the Last.fm widget in your website, or if you would like to use the widget for commercial purposes, please contact us by emailing partners@last.fm.

Last.fm reserves the right to remove links or block the Last.fm widget at any time and for any reason in its absolute discretion.

6. Acceptable Use

You will not use the Properties to:

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utilities), trademark, patent, trade secret, rights of privacy or publicity, confidential information or any other proprietary right;

material of any kind that contains a virus, Trojan horse, time bombs, worms, spyware, adware, malware, bots, any automated use of the system, such as scripts, or other harmful component or restricts or inhibits any other user's uninhibited use and enjoyment of the Properties, interferes with, overburdens, impairs or disrupts the Properties or servers or networks connected to the Properties, or disobeys any requirements, procedures, policies or regulations of networks connected to the Properties;

information or material of any kind that is false or misleading or that constitutes or contains false or misleading indications of origin or statements of fact, including, without limitation, by forging any TCP/IP packet header, any part of the header information in any transmission to the Website, or otherwise manipulating identifiers in order to disguise the origin of any content transmitted to or from the Website; or

any unsolicited or unauthorised advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, requests for money, petitions for signature, or any other form of solicitation.

Encourage, promote, solicit or commit conduct that would constitute a criminal offence, give rise to civil liability or otherwise violate any local, state, national or international law or otherwise make available any material that exploits or harms any individual, corporation or other entity.

Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;

Disrupt the normal flow of dialogue, cause a screen to scroll faster than other users of the Website are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges on the Website;

Stalk, abuse, sexually exploit, violently exploit, groom, act violently toward, threaten or otherwise harass another user;

Use or attempt to use another's information, account, password, service or system except as expressly permitted;

Solicit or collect personal data including telephone numbers, addresses, last names, email addresses, or any other kind of information about users, including without limitation, through such means as spidering, "screen scraping," "database scraping," harvesting of e-mail addresses, wireless addresses or other contact or personal information, or any other automatic means of accessing, logging-in or registering on the Website or for any services or features offered on or through the Website; and

Undertake any commercial purpose or activity without the prior written consent of Last.fm, including, for example and without limitation, inserting your own or a third party's advertising, branding or promotional content into any of the Website's or Properties' content, materials or services (for example, without limitation, in an RSS feed or a podcast received from Last.fm or otherwise available through the Properties).

You represent, warrant and agree that you will comply with the above acceptable use requirements. Last.fm reserves the right, in its sole discretion, to terminate any user's account or take such other action as Last.fm sees fit in relation to any user who breaches Last.fm's acceptable use policy or any of the other terms set forth herein. In extreme cases or as required by law or regulation, Last.fm reserves the right to take court action and/or report users to the relevant authorities. Last.fm believes in building a caring community based around sharing music and will not tolerate antisocial or unlawful behaviour on the Website or in connection with any of the other Properties.

7. User Accounts, Additional Terms, End User License Agreements & Subscriptions

Registration may be required for the use of certain Services and portions of the Website (e.g., e-mail, newsletters, competitions, forums, content downloads, promotions etc.). In some instances, these Terms of Use and separate end user licence agreements or terms of use that set forth additional conditions may apply to Services or products offered via the Website. To the extent there is a conflict between these Terms of Use and the terms of any applicable end user licence or similar agreement, the end user licence or similar agreement will prevail, unless the additional conditions expressly state that these Terms of Use will prevail. In cases where there are no additional terms or conditions stated for any such registrations, services or products, these Terms of Use will prevail.

If you choose to provide information to the Website, you agree to provide only true, accurate, current and complete information. If you create a user account, you agree to accept responsibility for all activities that occur under your account or password, if any, and agree you will not sell, transfer or assign your user account. You are responsible for maintaining the confidentiality of your password, if any, and for restricting access to your computer so that others may not access any password-protected portion of the Website or other Properties using your name, user name or password in whole or in part.

You may be able to purchase a subscription for certain additional features of the Website and Services. You may only order subscriptions if you are considered capable of entering into an enforceable contract in the applicable jurisdiction. You agree to pay in full the prices for any purchases you make either by credit/debit card concurrent with your online order or by other payment means acceptable to Last.fm. You agree to pay all applicable taxes. If payment is not received by us from your credit or debit card issuer or its agents, you agree to pay all amounts due upon demand by us.

8. Competitions

Last.fm may decide to run competitions, promotions, prize draws and other opportunities on the Website and these will be governed by a separate set of terms and conditions. A link to these terms and conditions will be found on the Website, alongside details of the specific competition, promotion, prize draw and other opportunities. It is your responsibility to read those terms and conditions for details about the terms that shall apply and any eligibility requirements.

9. Software

Any software that we make available for download or use from the Website and/or our servers (the "Software") is the intellectual property of Last.fm or its licensors or suppliers. Any such "Software" shall be considered a "Service" or one of the "Properties" as such terms are defined and used herein. Your use of the Software may be governed by the terms of an end user licence agreement that may accompany or that may be included with the Software (the "Licence Agreement"). Please carefully read any Licence Agreement and Paragraph 7 above to determine the full extent of the terms and conditions governing the use of such Software.

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a statement that you have identified material on the Website which infringes your copyright (or infringes the copyright of a third party on whose behalf you are entitled to act, if applicable);

identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single Notice, a representative list of such works at that site;

identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit Last.fm to locate the material (including, for example, a URL and/or screen shot);

your full name, email address, postal address and telephone number on which you can be contacted;

a statement by you that you have a good-faith belief that use of the material in the manner complained of is not authorised by the copyright owner, its agent, or the law;

a statement by you that the information in the Notice is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; and

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For: Copyright Agent, Legal Department
Last.fm Limited
Karen House
1-11 Baches Street
London, N1 6DL

Attention of: Wayne Hutchinson
51 West 52nd Street
New York, New York 10019
Tel: +1 212 975 4321
Fax: +1 212 975 0117

By email:

infringementcomplaint@last.fm

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Please note that any video content made available on or through the Website which contains or displays the YouTube logo or which is provided via the YouTube player is provided to you by YouTube and from YouTube's servers, and Last.fm thus does not have the ability to permanently remove all or any such content from YouTube's servers. Therefore, if you have a complaint concerning any video content made available on the

Website that is provided by YouTube, you should contact YouTube directly in accordance with copyright policies at: <http://www.youtube.com/t/terms>. If you believe that your work is available on the Website via the YouTube player in a way that constitutes copyright infringement, please: (i) contact YouTube directly in accordance with copyright policies at: <http://www.youtube.com/t/terms> and (ii) contact Last.fm by sending us a notice in accordance with the provisions of this Section 10.

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Descriptions of, or references to, products, services or publications within the Website do not imply endorsement of that product, service or publication.

12. Information You Submit

From time to time, the Properties may contain functionality through which you can upload or submit information, data, software, messages, photographs, audio, video, text and other materials to, through or on the Website ("Your Upload Information"). For example, the Website may offer forums, bulletin boards, wikis, chat rooms, blogs or other interactive areas ("User Forums"). Last.fm, its parent, subsidiaries or affiliates or the directors, officers, employees, or other representatives of each of them do not endorse the content posted in User Forums. Last.fm reserves the right, but is not obligated, to delete, move or edit Your Upload Information, in whole or in part, submitted by you to a User Forum for any reason in their sole discretion. Last.fm reserves the right to suspend or terminate your access to the Website and pursue all legal remedies if we believe your Upload Information infringes another's rights or otherwise violates any law, rule or regulation. You acknowledge and agree that you are prohibited from accepting payment for Your Upload Information from any third party, including, without limitation, accepting payment for the inclusion of a logo, brand advertising or other commercial content, in Your Upload Information.

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