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THE NATION

Paying a Price

Sony BMG reaches a \$10-million settlement of allegations it bribed stations to get its songs on the air

By Charles Duhigg and Walter Hamilton, Times Staff Writers

When executives at Sony BMG needed to drum up support in 2002 for Jennifer Lopez's album "This Is Me ... Then," they called the program director of a San Diego radio station and offered her a 32-inch plasma TV in exchange for adding the artist's songs to her play list.

Sony BMG Music Entertainment knew such payola, or "pay-for-play," was improper. Nonetheless, the company asked the programmer to provide a fictitious contest winner's name and Social Security number to cover up her involvement.

ADVERTISEMENT The station executive got her TV, and J-Lo got her spins.

The alleged exchange was disclosed in a treasure trove of e-mails, BlackBerry messages and other documents made public Monday by New York Atty. Gen. Eliot Spitzer. That electronic paper trail led the second-largest music company to a \$10-million settlement.

Spitzer said Sony BMG executives offered "outright bribes" to radio programmers to make sure the company's artists got heard. Among the goodies Sony BMG gave employees of stations owned by Infinity Broadcasting Corp., Clear Channel Communications Inc. and others: airplane tickets, cash, vacation packages, PlayStation video game systems, DVD players and laptop computers.

In one e-mail that Spitzer released, a station manager who allegedly accepted gifts joked to Sony BMG executives: "I'm a whore this week. What can I say?"

Sony BMG, home to such artists as Tony Bennett and the Dixie Chicks, promised Monday not to pay radio stations in exchange for airplay. The company issued a formal statement acknowledging that "various employees pursued some radio promotion practices on behalf of the company that were wrong and improper." The company also fired an executive vice president of promotions at one of its labels.

Radio airplay is considered the most powerful promotional tool for record companies. Payola has plagued the music industry since the 1930s, with disc jockeys at times accepting cash, drugs or prostitutes in exchange for airplay.

At the news conference in his Lower Manhattan office, Spitzer said payola today was as widespread and "corrosive" as it was in the 1950s.

"It is omnipresent," Spitzer said. "It is driving the industry. And it is wrong. It reaches to the very top of the industry on the radio side and on the label side."

In 1960, Congress passed an anti-payola law banning broadcasters from taking cash or anything of value in exchange for playing specific songs unless they disclosed the transaction to listeners. Spitzer launched his investigation based on a similar law passed by the New York Legislature.

Spitzer's investigation continues at the other three major record companies — Universal Music Group, EMI Group and Warner Music Group — as well as at the country's largest radio corporations. Many industry insiders say the Sony BMG settlement could provide a template for agreements with other companies. Each company said it was cooperating with Spitzer but declined to comment further.

Documents released as part of the Sony BMG settlement depicted the seamier side of the music business, in which under-the-table payments and nudge-and-wink deals were so common that no one even tried to hide them.

"What do I have to do to get Audioslave on WKSS this week?!?!" a Sony BMG employee promoting the Audioslave song "Like a Stone" wrote to a Clear Channel programmer in 2003. "Whatever you can dream up, I can make it happen!!!"

PHOTOS



Another probe (Mary Altaffer / AP)

GRAPHICS



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E-mails in evidence (Acrobat file)



The lawsuit (Acrobat file)

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Documents show that through its labels, which include Epic Records, Columbia Records and Sony Urban, Sony BMG routinely financed on-air contests in which stations gave away vacation packages, concert tickets and other items. In exchange, the company — whose involvement was not revealed to listeners — demanded not just spins of particular songs but airplay during the hours when the most people were listening. If they didn't get it, executives didn't mince words.

"OK, here it is in black and white," one frustrated Epic promotion executive wrote to a colleague after giving Las Vegas "flyaways" — or airplane travel packages — to radio station employees in exchange for playing Celine Dion's "I Drove All Night." If the stations played the song only late at night, the employee wrote, "they are not getting the flyaway." The e-mail also warned that programmers risked forfeiting the opportunity to play blackjack with Dion, who is based in Las Vegas.

According to Spitzer's office, Sony BMG also expended "significant resources" to manipulate call-in request lines, paying interns and others to repeatedly phone stations posing as listeners. To make sure the callers sounded authentic, Sony BMG employees issued specific guidelines.

"You need to rotate your people," an Epic promotion employee wrote last year in an e-mail to a call-in campaign leader. "My guys on the inside say that it's the same couple of girls calling in every week and that they are not inspired enough to be put on the air. They've got to be excited. They need to be going out, or getting drunk, or going in the hot [tub], or going clubbing.... You get the idea."

Spitzer took his sharpest aim at radio stations, saying they "are the ones most fundamentally who are violating the public trust."

According to e-mails released by Spitzer's office, senior staff members at Sony BMG's Columbia Records worried in 2001 that radio giant Clear Channel would boycott Columbia's releases unless the label paid more for airplay.

The e-mails suggest that employees of both Clear Channel and Infinity Broadcasting, the second-largest radio company, may have taken payments from Sony BMG in return for airplay. Spitzer has subpoenaed documents from both radio companies.

An Infinity spokesman declined to comment on the investigation. A Clear Channel representative said the nation's largest radio group was cooperating fully and that "allegations made today will be fully investigated and any wrongdoing will be met by swift and appropriate disciplinary action."

Spitzer's inquiry may also prompt an investigation by the Federal Communications Commission, which is responsible for enforcing payola laws. In an interview, Commissioner Jonathan S. Adelstein said he was calling for his agency to launch an inquiry, which could lead to revocation of radio licenses if illegal payments were substantiated.

"If it turns out there is massive and widespread violation of the rules, I don't see how we can't take extreme actions against the guilty licensees," Adelstein said.

The agency has extended limited oversight into payola issues and has imposed only one fine, for \$8,000, in a payola case in the last decade.

Under the settlement, Sony BMG will work only with third-party promoters who promise to not offer inducements to radio employees. The company also agreed not to manipulate radio airplay charts by purchasing advertisements that include snippets of songs. That practice can drive up the "spin counts" used to measure a song's popularity.

The settlement won't ban all gifts. Sony BMG may pay for listener giveaways and give station employees concert tickets, modest personal gifts and meals costing as much as \$150 per person.

The settlement also permits the company's artists to perform at radio-sponsored events, a practice some critics describe as "play-ola," because radio stations can sponsor huge concerts without having to pay the performing bands.

It was unclear how much the settlement would affect the culture of Sony BMG, a partnership between Japanese electronics giant Sony Corp. and German media company Bertelsmann.

On Monday, the company fired Joel Klaiman, executive vice president of promotion at Epic Records, for activities related to Spitzer's investigation. Company insiders said other employees were disciplined but expected no further firings as a result of the probe.

"Paying for songs has been almost standard operating procedure for years and years," said a Sony BMG executive who requested anonymity because he feared antagonizing Spitzer's office. "From this day forward, heads will roll. But, in terms of corporate scandals, we're talking about TV sets and trips to Florida. It's not Wall Street scandals."

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Donnie Michaels of Miami's WHYI, one of the programmers identified in the e-mails, said he did nothing wrong.

According to the e-mails, Sony BMG employees knew Michaels so well that when making a hotel reservation one specified: "Make sure Donnie is not staying in a room too high, he has a fear of heights."

Said Michaels: "I was just doing what everyone else was doing."

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To see e-mail files Spitzer's office released, see the article at latimes.com.



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