

1 IRELL & MANELLA LLP
 Steven A. Marenberg (101033) (smarenberg@irell.com)
 2 Elliot Brown (150802) (ebrown@irell.com)
 Brian Ledahl (186579) (bledahl@irell.com)
 3 Benjamin Glatstein (242034) (bglatstein@irell.com)
 1800 Avenue of the Stars, Suite 900
 4 Los Angeles, California 90067-4276
 Telephone: (310) 277-1010
 5 Facsimile: (310) 203-7199

6 Attorneys for Plaintiffs

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 WESTERN DIVISION
 11

FILED
 2008 AUG 26 PM 3:48
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

12 UMG RECORDINGS, INC., a
 Delaware corporation; UNIVERSAL
 13 MUSIC CORP., a New York
 corporation; SONGS OF UNIVERSAL,
 14 INC., a California corporation;
 15 UNIVERSAL-POLYGRAM
 INTERNATIONAL PUBLISHING,
 16 INC., a Delaware corporation;
 17 RONDOR MUSIC INTERNATIONAL,
 INC., a California corporation;
 18 UNIVERSAL MUSIC – MGB NA
 LLC, a California Limited Liability
 19 company; UNIVERSAL MUSIC – Z
 TUNES LLC, a New York Limited
 20 Liability company; and UNIVERSAL
 21 MUSIC – MBG MUSIC PUBLISHING
 LTD., a UK company,

22 Plaintiffs,

23 v.

24 VEOH NETWORKS, INC., a California
 25 corporation; SHELTER CAPITAL
 26 PARTNERS, LLC, a Delaware limited
 liability company; SHELTER
 27 VENTURE FUND, L.P., a Delaware
 limited partnership; SPARK CAPITAL,
 28 LLC, a Delaware limited liability

Case No. 07-05744 AHM (AJWx)

**FIRST AMENDED COMPLAINT
 FOR DIRECT, CONTRIBUTORY,
 AND VICARIOUS COPYRIGHT
 INFRINGEMENT, AND FOR
 INDUCEMENT OF COPYRIGHT
 INFRINGEMENT**

DEMAND FOR JURY TRIAL

COPY

1 company; SPARK CAPITAL, L.P., a)
2 Delaware limited partnership; THE)
3 TORNANTE COMPANY, LLC, a)
4 Delaware limited liability company,)
5 Defendants.)
6
7

8 Plaintiffs UMG Recordings, Inc., Universal Music Corp., Songs of Universal,
9 Inc., Universal-PolyGram International Publishing, Inc., Rondor Music
10 International, Inc., Universal Music – MGB NA LLC, Universal Music – Z Tunes
11 LLC, and Universal Music – MBG Music Publishing, Ltd. (collectively “Plaintiffs”)
12 allege, on information and belief, as follows:

13 1. Plaintiffs are part of Universal Music Group (“UMG”), the world’s
14 largest music company. UMG has a long and distinguished heritage dating back
15 more than a century. Today, UMG stands as a leader and innovator in the
16 development, marketing, sales, promotion and distribution of music around the
17 world. UMG’s extensive and diverse collection record labels include such well-
18 known and legendary names as Decca, Motown, Deutsche Grammophon,
19 Interscope, Geffen, A&M, Island, Def Jam, Universal, Verve, MCA Nashville,
20 Mercury Nashville Records, and Lost Highway. UMG is also the world’s largest
21 music publisher; it owns or administers over 1.5 million copyrighted musical
22 compositions. UMG’s performing artists and songwriters include U2, Black Eyed
23 Peas, Prince, Paul Simon, Luciano Pavarotti, George Strait, BB King, Juanes, Justin
24 Timberlake, Eminem, Beach Boys, Bon Jovi, Sheryl Crow, Dr. Dre, Eminem, Jay-Z,
25 Diana Krall, Nelly, No Doubt, Gwen Stefani, Stevie Wonder, Sting, Mary J. Blige,
26 Elton John, The Killers, Shania Twain, 50 Cent, Ludacris, and Alanis Morissette, to
27 name but a few.

28

1 2. Defendant Veoh Networks, Inc. (“Veoh”) is a massive copyright
2 infringer that has built its business on the back of others’ intellectual property.
3 Veoh follows in the ignominious footsteps of other recent mass infringers such as
4 Napster, Aimster, KaZaA, and Morpheus, engaging in high tech theft in the name of
5 “sharing.” Veoh’s disregard for the copyright laws have earned it notoriety in the
6 press for, among other things, “sharing” infringing copies of hard core pornography,
7 “sharing” content Veoh “video-jacked” for videobloggers, and “sharing” full-length
8 infringing copies of audiovisual works, which Veoh permits users to view,
9 reproduce, and downloaded for free. Veoh Networks Founder and Chief Innovation
10 Officer Dmitry Shapiro “acknowledge[d] that only a week after the company’s
11 official debut, Veoh.com is host to a wide range of unauthorized and full-length
12 copies of popular programs.” Greg Sandoval, *A New Copyright Battlefield: Veoh*,
13 CNET News (2/21/2007). As one author describing Veoh put it in a headline that
14 tells all: “Forget about YouTube: Go To These Sites If You Want Hard Core
15 Copyright Infringement,” Michael Arrington, TechCrunch (4/4/2007) (singling out
16 Veoh as one of top destinations for “hard core copyright infringement”).

17 3. As part of its “hardcore copyright infringement,” Veoh has directly and
18 indirectly infringed *thousands* of Plaintiffs’ copyrighted sound recordings and
19 musical compositions, which Veoh has reproduced, adapted, displayed and
20 distributed. Veoh does this by making permanent copies on servers that it owns or
21 controls of audiovisual works containing Plaintiffs’ copyrighted music; converting
22 Plaintiffs audiovisual works into commonly used video formats to facilitate
23 infringement by Veoh’s users; virally exploiting Plaintiffs’ music and audiovisual
24 works without permission or a license; and providing free permanent downloads of
25 Plaintiff’s music and audiovisual works.

26 4. Veoh has not acted alone, however. Veoh has been actively supported –
27 financially and operationally – in its infringing activities by defendants Shelter
28 Capital Partners, LLC (“Shelter Capital”), Spark Capital, LLC (“Spark Capital”),

1 and The Tornante Company, LLC (“Tornante”). These entities supplied the funding
2 which Veoh has used to operate its business, including constructing and maintaining
3 its hardware and software systems, which not only accomplishes the direct
4 infringement of Plaintiff’s copyrighted works, but facilitates third parties who use
5 Veoh’s systems to infringe UMG’s copyrighted works. In addition, Shelter Capital,
6 Spark Capital, and Tornante comprise a majority of Veoh’s Board of Directors and,
7 through those directorships, control Veoh and make all important operational
8 decisions for Veoh.

9 5. Shelter Capital, Spark Capital, and Tornante are not – and never have
10 been – passive investors in Veoh. They sought and obtained control far in excess of
11 the degree of involvement and control that shareholders would typically obtain so
12 that they could direct the operations of Veoh, knowing full well that the site
13 displayed and distributed copyrighted works without appropriate licenses, and
14 knowing full well that Veoh’s users used Veoh to engage in massive copyright
15 infringement. Shelter Capital, Spark Capital, and Tornante did this solely to enrich
16 themselves, without any regard for the copyright holders, songwriters, and recording
17 artists they trampled in the process.

18 6. The rampant infringement of Plaintiffs’ copyrighted music will not stop
19 until Veoh, and those who own, control, and run it, are enjoined and held financially
20 accountable for their mass copyright infringement.

21 **JURISDICTION AND VENUE**

22 7. This is a civil action seeking damages and injunctive relief for copyright
23 infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* This Court has
24 subject matter jurisdiction over these federal questions pursuant to 17 U.S.C. § 501
25 and 28 U.S.C. §§ 1331 and 1338(a).

26 8. This Court has personal jurisdiction over defendants in that, among
27 other things, defendants do business in this judicial District, and Plaintiffs do
28 business and are suffering harm in this judicial District.

1 9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and
2 (c).

3 **THE PARTIES**

4 10. Plaintiff UMG Recordings, Inc. ("UMGR") is a corporation duly
5 organized and existing under the laws of the State of Delaware, with its principal
6 place of business in Los Angeles County, California, and is duly qualified to
7 transact business in the State of California. UMGR is engaged in the business of
8 producing sound recordings, and distributing, selling, and/or licensing the
9 distribution and sale of its sound recordings in phonorecords (as defined in 17
10 U.S.C. § 101) and in audiovisual works in the United States. UMGR is the leading
11 producer of such phonorecords in the United States, including on its various record
12 labels such as (by way of example) Interscope, Geffen, A&M, Island, Def Jam,
13 Universal, Motown, and Verve. UMGR invests substantial sums of money, as well
14 as time, effort, and creative talent, to discover and develop recording artists, and to
15 create, advertise, promote, sell, and license phonorecords embodying the
16 performances of its exclusive recording artists. UMGR owns copyrights in
17 thousands of sound recordings, including many of the most popular and well-known
18 sound recordings in the world (the "Copyrighted Sound Recordings") for which
19 UMGR has obtained or has applied for Certificates of Copyright Registration issued
20 by the Register of Copyrights. By way of representative example only, the
21 Copyrighted Sound Recordings include those listed on Exhibit A hereto.

22 11. UMGR has the exclusive rights, among other things, to reproduce the
23 Copyrighted Sound Recordings in copies or phonorecords; to prepare derivative
24 audiovisual works based upon the Copyrighted Sound Recordings; to distribute
25 copies or phonorecords of the Copyrighted Sound Recordings to the public; and to
26 perform the Copyrighted Sound Recordings publicly by means of a digital audio
27 transmission. 17 U.S.C. §§ 106(1), 106(2), 106(3), 106(6).

28

1 12. Plaintiff Universal Music Corp. (“UMC”) is a corporation duly
2 organized and existing under the laws of the State of New York with its principal
3 place of business in Los Angeles County, California, and is duly qualified to
4 transact business in the State of California. Plaintiff Songs of Universal, Inc.
5 (“SOU”) is a corporation duly organized and existing under the laws of the State of
6 California with its principal place of business in Los Angeles County, California,
7 and is duly qualified to transact business in the State of California. Plaintiff
8 Universal-Polygram International Publishing, Inc. (“UPIP”) is a corporation duly
9 organized and existing under the laws of the State of Delaware with its principal
10 place of business in Los Angeles County, California, and is duly qualified to
11 transact business in the State of California. Plaintiff Rondor Music International,
12 Inc. (“RMI”) is a corporation duly organized and existing under the laws of the State
13 of California, and is duly qualified to transact business in the State of California.
14 Rondor’s principal place of business is Los Angeles County, California. Plaintiff
15 Universal Music – MGB NA LLC (“MGB”) is a limited liability company duly
16 organized and existing under the laws of the State of California with its principal
17 place of business in Los Angeles County, California and is duly qualified to transact
18 business in the State of California. Plaintiff Universal Music – Z Tunes LLC (“Z-
19 Tunes”) is a limited liability company duly organized and existing under the laws of
20 the State of California with its principal place of business in Los Angeles County,
21 California and is duly qualified to transact business in the State of California.
22 Plaintiff Universal Music – MGB Music Publishing Ltd. (“MGB UK”) is a UK
23 company with its principal place of business in London, England. UMC, SOU,
24 UPIP, RMI, MGB, Z-Tunes, and MGB UK are engaged in the business of acquiring,
25 owning, publishing, administering, licensing, and otherwise exploiting copyrights in
26 musical compositions. UMC, SOU, UPIP, RMI, MGB, Z-Tunes, and MGB UK
27 invest substantial sums of money, as well as time, effort, and creative talent, to
28 acquire, administer, publish, license and otherwise exploit such copyrights, on their

1 own behalf and on behalf of songwriters. UMC, SOU, UPIP, RMI, and MGB, Z-
2 Tunes, and MGB UK own (in whole or in part) copyrights in thousands of musical
3 compositions, including many of the most popular and well-known compositions in
4 the world (the "Copyrighted Musical Compositions") for which they have obtained
5 or have applied for Certificates of Copyright Registration issued by the Register of
6 Copyrights. By way of representative example only, the Copyrighted Musical
7 Compositions include those listed on Exhibit A hereto.

8 13. UMC, SOU, UPIP, RMI, or MGB, Z-Tunes, and MGB UK have the
9 exclusive rights, among other things, to reproduce the Copyrighted Musical
10 Compositions in phonorecords; to prepare derivative audiovisual works based upon
11 the Copyrighted Musical Compositions; and to perform the Copyrighted Musical
12 Compositions publicly. 17 U.S.C. §§ 106(1), 106(2), 106(3), 106(4).

13 14. Defendant Veoh is a privately held California corporation, with its
14 principal places of business in Los Angeles and San Diego, California. Veoh has
15 taken mass infringement on the Internet to a new and dangerous level by supplying
16 the public with an integrated combination of services and tools that make
17 infringement free, easy, and profitable for Veoh. Among other things, Veoh
18 operates Veoh.com, a "video sharing" website where members of the public can
19 search for, view, upload and download and otherwise "share" thousands of videos,
20 many thousands of which are infringing copies of copyrighted works.

21 15. Veoh is well aware of the mass infringement it has facilitated. Veoh's
22 infringement is indeed sufficiently egregious to have provoked comment in the
23 mainstream media. The New York Times, for example, noted that "the major media
24 companies think the firm [Veoh], backed by Time Warner and Michael Eisner, takes
25 a cavalier attitude toward keeping copyrighted material off its service. They
26 complain that Veoh imposes no time limits on uploaded clips and will not embrace
27 digital fingerprinting technology to filter out copyrighted-material." "Veoh vs.
28 Copyright Holders: Is a War Brewing?" New York Times (8/9/2007). Veoh has

1 eschewed effective filtering for one very simple reason: those safeguards work.
2 When used properly, filters not only reduce infringement, but also the number of
3 visitors to a website in search of infringing content. Veoh consciously is seeking to
4 enjoy the benefits of exploiting copyrighted content, such as increased traffic on its
5 website, without having to pay copyright owners for using their content.

6 16. Veoh has been able to attract tens of millions of dollars of financial
7 support from various investors, all of whom support, facilitate, and benefit from
8 Veoh's infringing acts. Veoh's investors include, among others, defendants Shelter
9 Capital, Spark Capital, and Tornante. Shelter Capital, Spark Capital, and Tornante
10 have each made a substantial investment in Veoh and, through their investments,
11 secured a seat on Veoh's Board of Directors. Shelter Capital, Spark Capital, and
12 Tornante have used their investments and board seats to control and make all
13 important operational decisions at Veoh, including decisions relating to what
14 content should be permitted to be displayed on Veoh, and whether Veoh should
15 employ any technical measures to prevent or limit the presence of infringing content
16 on Veoh. Further, Shelter Capital, Spark Capital, and Tornante each has a direct
17 financial interest in Veoh's infringing conduct and benefits from the increased
18 revenues to Veoh resulting from the presence of Plaintiffs' Copyrighted Sound
19 Recordings and Copyrighted Musical Compositions on the site, and each will profit
20 from their investments through the sale of Veoh to a potential acquiring company or
21 through a public offering. The value of these investments in Veoh and the potential
22 financial benefit to Shelter Capital, Spark Capital, and Tornante will be significantly
23 driven by the internet user traffic drawn to Veoh, including traffic drawn as a result
24 of Veoh's copyright infringement.

25 17. The true names and capacities, whether individual, corporate, associate,
26 or otherwise, of defendants sued herein as Does 1 through 10, are unknown to
27 Plaintiffs, which sue said defendants by such fictitious names (the "Doe
28 Defendants"). If necessary, Plaintiffs will seek leave of Court to amend this

1 complaint to state their true names and capacities when the same have been
2 ascertained. Plaintiffs are informed and believe and on that basis aver that the Doe
3 Defendants are liable to Plaintiffs as a result of their participation in all or some of
4 the acts hereinafter set forth. Veoh and the Doe Defendants are referred to
5 collectively herein as "Defendants."

6 18. Plaintiffs are informed and believe and on that basis allege that at all
7 times mentioned in this complaint, each of the Defendants was the agent of each of
8 the other Defendants and, in doing the things alleged in this complaint, were acting
9 within the course and scope of such agency.

10 GENERAL AVERMENTS

11 19. Veoh has created a sophisticated suite of software and services designed
12 to encourage, induce, and enable members of the public to make, upload, download,
13 "share," sell, rent, and distribute permanent copies of videos without regard to the
14 rights of copyright owners. Following in the footsteps of infamous pioneers of mass
15 piracy on the Internet such as Napster, Veoh has created and maintains a proprietary
16 peer-to-peer ("p2p") network, which it has dubbed "Veohnet." Veoh uses the
17 Veohnet p2p service to facilitate the distribution of high quality copies of infringing
18 content over the Internet and to enable Veoh to exploit its members' computers to
19 engage in acts of copyright infringement.

20 20. Veoh has also created and distributes for free different versions of client
21 software (called "VeohTV" and "Veoh Player"). Veoh encourages the public to
22 become "members" of Veoh and to download and install Veoh's software on their
23 personal computers. Once a Veoh member has installed Veoh's software on his or
24 her computer, the member's computer becomes part of Veohnet p2p network, and it
25 can be use used to facilitate the reproduction, distribution and display of infringing
26 content over the Internet. Veoh's software provides Veoh members with the means
27 to download permanent copies of videos directly from Veoh.com to their computers
28 (or to handheld video players, such as iPods) with the click of a mouse. Veoh's

1 software also enables the “sharing” and “downloading” of copies of videos that are
2 stored on the computers of other Veoh members who are part of Veoh’s p2p
3 network. Veoh’s client software also enables and encourages Veoh’s members to
4 download for free to their computers permanent copies of videos that are displayed
5 on third party websites, including websites such as YouTube whose terms of service
6 expressly prohibit making permanent copies. Once a Veoh member has used
7 Veoh’s client software to download a permanent copy of video from a third party
8 website to his or her computer, the member can then use the Veoh client software to
9 upload the video to Veoh.com, where it can be viewed by the public over the
10 Internet.

11 21. Members who upload videos to Veoh’s server are rewarded with a
12 variety of free services that make it easy to further reproduce, display, distribute and
13 to profit from the video without regard to whether it is an infringing copy, and in
14 disregard of the rights of copyright owners. Among its other free services, Veoh
15 reformats or “transcodes” videos into a number of popular video formats, Veoh
16 enables “posting” of copies of videos to popular websites (which copies prominently
17 display Veoh’s logo thereby using UMG’s copyrighted content to advertise Veoh’s
18 service without UMG’s consent), and Veoh even gives members the option of
19 renting or selling downloads of videos through Veoh.com.

20 22. By offering thousands of infringing works for free viewing and
21 downloading, and by providing sophisticated tools that enable the reproduction and
22 dissemination of video over the Internet, the Veoh.com website has been able to
23 attract millions of unique visitors each month. Veoh directly profits from its mass
24 infringement by, among other things, selling targeted advertisements that reflect
25 what content (including infringing content) Veoh’s members are viewing, and by
26 sharing in revenues when members use Veoh’s services to rent or sell videos.

27
28

1 23. Veoh engages in direct infringement and indirect infringement of
2 Plaintiffs' copyrights. By way of example only, Veoh has engaged in the following
3 activities in furtherance of its direct and indirect infringement:

- 4 a) Reproduced (*i.e.*, made permanent copies of) audiovisual works
5 containing thousands of Plaintiffs' copyrighted works on servers that
6 Veoh owns or controls;
- 7 b) "Transcoded" each infringing audiovisual work uploaded to Veoh into
8 commonly used video formats to facilitate further reproduction,
9 display, and distribution and downloading;
- 10 c) Distributed and publicly performed infringing copies of audiovisual
11 works uploaded onto Veoh's servers to their users on demand;
- 12 d) Provided the public with one-click downloads of audiovisual works
13 that are displayed on Veoh.com, including free permanent downloads
14 of infringing works on Veoh.com;
- 15 e) Induced and enabled Veoh members to upload copies of videos without
16 the authorization of the copyright owner, including videos copied from
17 third party websites without authorization of the website or the
18 copyright owner (and often in violation of the third party website's
19 terms of use);
- 20 f) Created and maintained Veoh's p2p Veohnet network, which enables
21 Veoh to use its members computers to aid in the copying and
22 distribution of audiovisual works, including infringing works;
- 23 g) Created and distributed Veoh's client software, which Veoh knows is
24 being used to infringe copyrights;
- 25 h) Failed to use its right and ability to filter or screen for copyright
26 infringement;

27
28

- 1 i) Encouraged Veoh members to index each audiovisual work by category
2 and by user-generated “tags” or keywords to increase a work’s
3 searchability and exposure;
- 4 j) Enabled users to perform complex searches for audiovisual content by
5 specifying desired categories, time periods, keywords and/or tags, and
6 return search queries with both text and thumbnail pictures;
- 7 k) Allowed users to filter search results by “most popular,” “most recent,”
8 “top rated,” “most discussed,” “top favorite,” and “run length”;
- 9 l) Provided users with anonymity to upload, view, download, copy and/or
10 further distribute audiovisual works;
- 11 m) For each video that a viewer watches, generated a selection of “related”
12 videos – which regularly includes copyrighted works – for users to
13 consider while watching the video;
- 14 n) Allowed users to “rate” audiovisual works and made this data available
15 to all users;
- 16 o) Provided users with data such as a video’s “rating,” how many times
17 the video has been viewed, and how many times it has been
18 downloaded, and allowed users to post and read comments about
19 particular videos;
- 20 p) Allowed users to “Embed this Video” in other websites or to add
21 videos to blogs with the “Add to Blog” function; such embedded
22 videos are presented with a “Veoh” watermark;

23 24. Taken together, the foregoing acts indicate Veoh’s ability and intent to
24 facilitate, encourage, and profit from the mass unauthorized exploitation of
25 copyrighted content, including Plaintiffs’ Copyrighted Sound Recordings and
26 Copyrighted Musical Compositions.

27 25. Veoh currently provides several methods by which a Veoh user can
28 easily view, permanently copy, and/or share unauthorized reproductions of music

1 videos. Any member of the public can, for example, visit Veoh.com where
2 thousands of infringing works are available for immediate viewing, downloading
3 and other forms of “sharing.” To take but one example, a person looking for a
4 music video featuring the music of the popular UMG recording artist, Fergie need
5 only enter “Fergie” into Veoh.com’s search box. As seen in Exhibit B, Veoh
6 supplies a list of available Fergie videos (including many infringing copies of music
7 videos featuring UMGR’s copyright sound recordings) that are available to be
8 viewed from Veoh.com, download or otherwise “shared” by clicking on any of the
9 buttons Veoh prominently displays. When a user searches on “Fergie,” Veoh also
10 displays targeted advertisements based on the search term “Fergie,” for example
11 advertising for cell phone “ringtones” featuring Fergie’s music. The user can then
12 view any video appearing in the search results, for example to view the Fergie video
13 for the song “Fergalicious,” with one mouse click mouse. See Exhibit C. With one
14 more mouse click, the Veoh member can also download a permanent copy of the
15 video to his or her computer. Veoh supplies statistics about how often each work
16 has been used without the permission of the copyright owner, for example, this one
17 copy of the Fergalicious video, which is clearly marked in the bottom left-hand
18 corner as a copyrighted video, has been viewed 872 times and downloaded 200
19 times.

20 26. Veoh also allows its users to view, copy, and share copyrighted works
21 through Veoh’s software, VeohTV and Veoh Player. As seen in Exhibit D, any
22 member of the public can download Veoh’s software for free. As with the infamous
23 Napster software, Veoh’s software makes Veoh’s members computer part of a peer-
24 to-peer network used to facilitate “sharing” media files over the Internet. VeohTV
25 software also includes search functionality that searches for videos not only on
26 Veoh.com, but relevant videos that can be found on third party websites. *See*
27 Exhibit E. VeohTV software is designed so that the videos – including videos on
28

1 third party sites – can be viewed or downloaded using the Veoh software. *See*
2 Exhibit F.

3 27. To encourage and enable even further dissemination of infringing copies
4 across the Internet, Veoh supplies its members with a number of other tools,
5 including a button to “Share Video,” that is, email a link to the infringing video or
6 “embed” a link to the video in another webpage. Veoh also provides buttons to
7 “post” links of the video to other popular websites including Digg, Facebook,
8 del.icio.us, and StumbleUpon. Veoh’s distribution of videos on many third party
9 websites is done to drive more traffic to Veoh.com thereby increasing Veoh’s
10 popularity and profitability.

11 28. As Defendants know, should know, and/or with reasonable diligence
12 could ascertain, many of the audiovisual works on Veoh’s website contain
13 copyrighted material, including the Copyrighted Sound Recordings and the
14 Copyrighted Musical Compositions. These works often embody popular songs or
15 “hits” performed by prominent recording artists. Many are synchronized with
16 expensive, professionally-made videos, and may include titles, credits, or other
17 indicia that make apparent the source of the recordings. It is widely known and
18 understood that such sound recordings and compositions are protected by copyright.

19 29. Defendants and their users did not receive any license, authorization,
20 permission, or consent to use the Copyrighted Sound Recordings or the Copyrighted
21 Musical Compositions. Instead, in violation of Plaintiffs’ rights under copyright
22 law, Defendants have willfully, intentionally, and purposefully reproduced, adapted,
23 distributed, and publicly performed the Copyrighted Sound Recordings and the
24 Copyrighted Musical Compositions, and/or knowingly facilitated, enabled, induced,
25 and materially contributed to infringing uses thereof, and/or refused to exercise their
26 ability to control or supervise infringing uses thereof from which Defendants
27 financially benefit, including by earning revenue from selling advertising keyed to
28 the content of the work selected for viewing, and from the overall increase in user

1 traffic and commercial value of its business and property arising from the “draw” of
2 infringing Copyrighted Sound Recordings and Copyrighted Musical Compositions.
3 Further, Defendants have continued to willfully infringe Plaintiffs’ rights even after
4 Plaintiffs have notified them that their use of Plaintiffs’ copyrighted materials
5 violates Plaintiffs’ rights under copyright. In these ways, among others, Defendants
6 have infringed Plaintiffs’ copyrights and rights under copyright in the Copyrighted
7 Sound Recordings and the Copyrighted Musical Compositions.

8 30. Veoh’s infringement has been directly facilitated and actively
9 encouraged by the actions of its investors. Throughout its history, Veoh has relied
10 heavily on the contributions of a small number of well-heeled investors to provide
11 the necessary funding to allow Veoh to operate and expand its infringing business.
12 Without these funds, Veoh would have been unable to continue its infringing
13 operations. Starting in 2005, Veoh obtained a substantial investment from Shelter
14 Capital, which allowed it to fund its basic operations including paying for hardware,
15 software, and employees to develop its infringing service. To protect its investment
16 and ensure that Veoh operated in the manner it desired, Shelter Capital sought and
17 obtained two seats on Veoh’s Board of Directors as a condition of its investment.
18 Through its seats on Veoh’s Board of Directors, Shelter Capital obtained and
19 exercised substantial control over Veoh’s operations, including decisions regarding
20 key staffing and senior executive employment and decisions about content to be
21 offered by Veoh and whether or not Veoh would employ the necessary filters to
22 block copyrighted content from being uploaded to the Veoh website.

23 31. Subsequently, in early 2006, Veoh required a substantial infusion of
24 cash in order to allow it to continue as a business. Much of this capital was
25 provided through an additional investment by Shelter Capital, as well as new
26 investments by Spark Capital and Tornante. As with Shelter Capital’s initial
27 investment, this further investment by Shelter Capital, Spark Capital and Tornante
28 provided critical funding necessary for Veoh to continue its infringing operations.

1 All three of these investors sought and obtained seats on Veoh's Board of Directors
2 as a condition of their investments. Indeed, these three investors obtained three of
3 the five seats on Veoh's Board of Directors, thus obtaining full control of Veoh's
4 Board and of Veoh's operations. These investors used this control to make
5 decisions regarding the selection and hiring of employees, including the CEO of
6 Veoh, as well as decisions about which content would continue to be offered on
7 Veoh and which would not. For example, these investors exercised their control to
8 remove adult content, but did not use their control over Veoh to remove copyrighted
9 content, including Plaintiffs Copyrighted Sound Recordings and Copyrighted
10 Musical Compositions. Instead, these investors decided to continue Veoh's
11 infringing operations in order to continue to attract users and advertising dollars to
12 Veoh, and increase the value of their financial interests in Veoh.

13 32. In 2007, Veoh still again required a sizable infusion of capital to
14 continue its operations. More than \$25 million was collectively provided by Shelter
15 Capital, Spark Capital, Tornante, among other investors. Once again, Shelter
16 Capital, Spark Capital, and Tornante used their sizable investments to obtain board
17 seats and otherwise obtain and maintain operational control over all of Veoh's
18 operations. These investors controlled all critical decisions regarding the content
19 available on Veoh, including whether and how Veoh might implement any
20 technology to identify and filter copyrighted content to prevent infringement on
21 Veoh's site. Further, these investors evaluated and approved Veoh's launch of its
22 VeohTV software client which facilitated further infringement. These investors, in
23 using their control over Veoh's activities to protect and enhance the value of their
24 investment, controlled decisions over how to monetize Veoh's business, including
25 its substantial use of infringing content. The investors' control over Veoh was so
26 pervasive and dominant that the in person meetings of the Board of Directors were
27 not even held at Veoh's corporate offices, they were held at the offices of Shelter
28 Capital.

1 COUNT I

2 DIRECT COPYRIGHT INFRINGEMENT

3 [Against Defendant Veoh Networks, Inc.]

4 33. Plaintiffs incorporate herein by this reference each and every averment
5 contained in paragraphs 1 through 32, inclusive.

6 34. Through their conduct averred herein, Veoh has infringed Plaintiffs'
7 copyrights in the Copyrighted Sound Recordings and the Copyrighted Musical
8 Compositions by reproducing, adapting, distributing, and/or publicly performing
9 audiovisual works embodying the copyrighted material without authorization in
10 violation of Sections 106, 115, and 501 of the Copyright Act, 17 U.S.C. §§ 106,
11 115, and 501.

12 35. Each infringement by Veoh in and to the Copyrighted Sound Recordings
13 or the Copyrighted Musical Compositions constitutes a separate and distinct act of
14 infringement.

15 36. Veoh's acts of infringement were willful, in disregard of and with
16 indifference to the rights of Plaintiffs.

17 37. As a direct and proximate result of the infringements by Veoh, Plaintiffs
18 are entitled to damages and Veoh's profits in amounts to be proven at trial which are
19 not currently ascertainable. If necessary, Plaintiffs will seek leave to amend this
20 complaint to state the full amount of such damages and profits when such amounts
21 have been ascertained.

22 38. Alternatively, Plaintiffs are entitled to the maximum statutory damages
23 in the amount of \$150,000 with respect to each work infringed, or for such other
24 amounts as may be proper under 17 U.S.C. § 504(c).

25 39. Plaintiffs further are entitled to their attorneys' fees and full costs
26 pursuant to 17 U.S.C. § 505.

27 40. As a direct and proximate result of the foregoing acts and conduct,
28 Plaintiffs have sustained and will continue to sustain substantial, immediate, and

1 irreparable injury, for which there is no adequate remedy at law. Plaintiffs are
2 informed and believe and on that basis aver that unless enjoined and restrained by
3 this Court, Veoh will continue to infringe Plaintiffs' rights in the Copyrighted Sound
4 Recordings and the Copyrighted Musical Compositions. Plaintiffs are entitled to
5 preliminary and permanent injunctive relief.

6 **COUNT II**
7 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**
8 **[Against All Defendants]**

9 41. Plaintiffs incorporate herein by this reference each and every averment
10 contained in paragraphs 1 through 32, inclusive.

11 42. Defendants have and continue to knowingly and systematically
12 materially contribute to, intentionally induce, and/or cause unauthorized
13 reproductions, adaptations, distributions, and/or public performances of the
14 Copyrighted Sound Recordings and the Copyrighted Musical Compositions and thus
15 to the infringement of Plaintiffs' copyrights and exclusive rights under copyright in
16 the Copyrighted Sound Recordings and the Copyrighted Musical Compositions.

17 43. Each infringement by Defendants in and to the Copyrighted Sound
18 Recordings or the Copyrighted Musical Compositions constitutes a separate and
19 distinct act of infringement.

20 44. Defendants' acts of infringement were willful, in disregard of and with
21 indifference to the rights of Plaintiffs.

22 45. As a direct and proximate result of the infringements by Defendants,
23 Plaintiffs are entitled to damages and Defendants' profits in amounts to be proven at
24 trial which are not currently ascertainable. If necessary, Plaintiffs will seek leave to
25 amend this complaint to state the full amount of such damages and profits when
26 such amounts have been ascertained.

27
28

1 46. Alternatively, Plaintiffs are entitled to the maximum statutory damages
2 in the amount of \$150,000 with respect to each work infringed, or for such other
3 amounts as may be proper under 17 U.S.C. § 504(c).

4 47. Plaintiffs further are entitled to their attorneys' fees and full costs
5 pursuant to 17 U.S.C. § 505.

6 48. As a direct and proximate result of the foregoing acts and conduct,
7 Plaintiffs have sustained and will continue to sustain substantial, immediate, and
8 irreparable injury, for which there is no adequate remedy at law. Plaintiffs are
9 informed and believe and on that basis aver that unless enjoined and restrained by
10 this Court, Defendants will continue to infringe Plaintiffs' rights in the Copyrighted
11 Sound Recordings and the Copyrighted Musical Compositions. Plaintiffs are
12 entitled to preliminary and permanent injunctive relief.

13 **COUNT III**

14 **VICARIOUS COPYRIGHT INFRINGEMENT**

15 **[Against All Defendants]**

16 49. Plaintiffs incorporate herein by this reference each and every averment
17 contained in paragraphs 1 through 32, inclusive.

18 50. Defendants have the right and ability to supervise and/or control the
19 infringing conduct of Veoh's users. Defendants have refused to exercise such
20 supervision and/or control over Veoh's users to the extent required under law. As a
21 direct and proximate result of such refusal, Defendants' users and Veoh have
22 infringed Plaintiffs' copyrights in the Copyrighted Sound Recordings and the
23 Copyrighted Musical Compositions, including by reproducing, adapting,
24 distributing, and publicly performing such Copyrighted Sound Recordings and the
25 Copyrighted Musical Compositions.

26 51. Defendants derive a direct financial benefit, including but not limited to
27 from advertising revenue and from the increased user traffic and increase in value of
28

1 Defendants' business arising from the "draw" of infringing Copyrighted Sound
2 Recordings and Copyrighted Musical Compositions.

3 52. Each infringement by Defendants in and to the Copyrighted Sound
4 Recordings or the Copyrighted Musical Compositions constitutes a separate and
5 distinct act of infringement.

6 53. Defendants' acts of infringement were willful, in disregard of and with
7 indifference to the rights of Plaintiffs.

8 54. As a direct and proximate result of the infringements by Defendants,
9 Plaintiffs are entitled to damages and Defendants' profits in amounts to be proven at
10 trial which are not currently ascertainable. If necessary, Plaintiffs will seek leave to
11 amend this complaint to state the full amount of such damages and profits when
12 such amounts have been ascertained.

13 55. Alternatively, Plaintiffs are entitled to the maximum statutory damages
14 in the amount of \$150,000 with respect to each work infringed, or for such other
15 amounts as may be proper under 17 U.S.C. § 504(c).

16 56. Plaintiffs further are entitled to their attorneys' fees and full costs
17 pursuant to 17 U.S.C. § 505.

18 57. As a direct and proximate result of the foregoing acts and conduct,
19 Plaintiffs have sustained and will continue to sustain substantial, immediate, and
20 irreparable injury, for which there is no adequate remedy at law. Plaintiffs are
21 informed and believe and on that basis aver that unless enjoined and restrained by
22 this Court, Defendants will continue to infringe Plaintiffs' rights in the Copyrighted
23 Sound Recordings and the Copyrighted Musical Compositions. Plaintiffs are
24 entitled to preliminary and permanent injunctive relief.

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT IV
INDUCING COPYRIGHT INFRINGEMENT
[Against All Defendants]

58. Plaintiffs incorporate herein by this reference each and every averment contained in paragraphs 1 through 32, inclusive.

59. Defendants have designed, distributed, and made available technology and devices with the object and intent of promoting their use to infringe copyrighted materials. As a direct and proximate result of such inducement, Veoh and its users have infringed Plaintiffs' copyrights in the Copyrighted Sound Recordings and the Copyrighted Musical Compositions, including by reproducing, adapting, distributing, and publicly performing such Copyrighted Sound Recordings and the Copyrighted Musical Compositions.

60. Each infringement by Veoh and its users in and to the Copyrighted Sound Recordings or the Copyrighted Musical Compositions – including, without limitation, each act of inducing a third party to infringe one of the Copyrighted Sound Recordings or Copyrighted Musical Compositions – constitutes a separate and distinct act of infringement.

61. Defendants' acts of infringement and inducement of infringement were willful, in disregard of and with indifference to the rights of Plaintiffs.

62. As a direct and proximate result of the acts of infringement and inducement of infringement by Defendants, Plaintiffs are entitled to damages and Defendants profits in amounts to be proven at trial which are not currently ascertainable. If necessary, Plaintiffs will seek leave to amend this complaint to state the full amount of such damages and profits when such amounts have been ascertained.

63. Alternatively, Plaintiffs are entitled to the maximum statutory damages in the amount of \$150,000 with respect to each act of inducing another to infringe

1 one of the Copyrighted Sound Recordings or Copyrighted Musical Compositions, or
2 for such other amounts as may be proper under 17 U.S.C. § 504(c).

3 64. Plaintiffs further are entitled to their attorneys' fees and full costs
4 pursuant to 17 U.S.C. § 505.

5 65. As a direct and proximate result of the foregoing acts and conduct,
6 Plaintiffs have sustained and will continue to sustain substantial, immediate, and
7 irreparable injury, for which there is no adequate remedy at law. Plaintiffs are
8 informed and believe and on that basis aver that unless enjoined and restrained by
9 this Court, Defendants will continue to infringe and induce infringement of
10 Plaintiffs' rights in the Copyrighted Sound Recordings and the Copyrighted Musical
11 Compositions. Plaintiffs are entitled to preliminary and permanent injunctive relief.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
14 them, jointly and severally, as follows:

15 1. For Plaintiffs' damages and Defendants' profits in such amount as may
16 be found; alternatively, for maximum statutory damages in the amount of \$150,000
17 with respect to each copyrighted work infringed either directly or indirectly, and
18 with respect to each act of inducing another to infringe one of the copyrighted
19 works, or for such other amounts as may be proper pursuant to 17 U.S.C. § 504(c).

20 2. For a preliminary and a permanent injunction enjoining Defendants, and
21 each of them, and their respective agents, servants, employees, officers, successors,
22 licensees and assigns, and all persons acting in concert or participation with each or
23 any of them, from: (i) directly or indirectly reproducing, adapting, distributing,
24 publicly performing (in the case of Plaintiffs' sound recordings, by means of a
25 digital audio transmission), or otherwise infringing in any manner any of Plaintiffs'
26 copyrights (whether now in existence or hereafter created), including, without
27 limitation, the copyrights listed on Exhibit A; and (ii) causing, contributing to,
28 inducing, enabling, facilitating, or participating in the infringement of any of

1 Plaintiffs' copyrights, including, without limitation, the copyrights listed on
2 Exhibit A.

- 3 3. For prejudgment interest according to law.
4 4. For Plaintiffs' attorneys' fees and full costs incurred in this action.
5 5. For such other and further relief as the Court may deem just and proper.
6

7 Dated: August 26, 2008

Respectfully submitted,

8 IRELL & MANELLA LLP
9 Steven A. Marenberg
10 Elliot Brown
11 Brian Ledahl
12 Benjamin Glatstein

13 By: 

14 Steven A. Marenberg

15 Attorneys for Plaintiffs
16 UMG RECORDINGS, INC.;
17 UNIVERSAL MUSIC CORP.; SONGS
18 OF UNIVERSAL, INC.; UNIVERSAL-
19 POLYGRAM INTERNATIONAL
20 PUBLISHING, INC.; RONDOR MUSIC
21 INTERNATIONAL, INC.; UNIVERSAL
22 MUSIC – MGB NA LLC; UNIVERSAL
23 MUSIC – Z TUNES LLC; and
24 UNIVERSAL MUSIC – MBG MUSIC
25 PUBLISHING LTD.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury on all issues triable by jury.

Dated: August 26, 2008

Respectfully submitted,

IRELL & MANELLA LLP
Steven A. Marenberg
Elliot Brown
Brian Ledahl
Benjamin Glatstein

By: 
Steven A. Marenberg

Attorneys for Plaintiffs
UMG RECORDINGS, INC.;
UNIVERSAL MUSIC CORP.; SONGS
OF UNIVERSAL, INC.; UNIVERSAL-
POLYGRAM INTERNATIONAL
PUBLISHING, INC.; RONDOR MUSIC
INTERNATIONAL, INC.; UNIVERSAL
MUSIC – MGB NA LLC; UNIVERSAL
MUSIC – Z TUNES LLC; and
UNIVERSAL MUSIC – MBG MUSIC
PUBLISHING LTD.