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10 Attorneys for Defendants
 11 SHELTER CAPITAL PARTNERS, LLC AND
 12 SHELTER VENTURE FUND, L.P.

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION - SPRING STREET

16 UMG RECORDINGS, INC., et al.,
 17 Plaintiffs,
 18
 19 v.
 20 VEOH NETWORKS, INC., et al.
 21 Defendants.

Case No.: CV 07 5744 AHM (AJWx)

**EX PARTE APPLICATION BY
 INVESTOR DEFENDANTS TO
 CONTINUE HEARING AND
 BRIEFING SCHEDULE OF
 PLAINTIFFS' MOTION FOR
 PARTIAL SUMMARY
 JUDGMENT; MEMORANDUM
 OF POINTS AND AUTHORITIES
 IN SUPPORT**

The Honorable A. Howard Matz

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendants Shelter Venture Fund LP, Shelter
3 Capital LLC, Spark Capital LLC, Spark Capital LP, and The Tornante Company,
4 LLC (collectively "Investor Defendants") hereby apply, *ex parte*, for an Order
5 Continuing the Hearing and Briefing Schedule of Plaintiffs Motion For Partial
6 Summary Judgment Re: Veoh's Second Affirmative Defense until such time as all of
7 the Investor Defendants have answered the Amended Complaint herein, or have been
8 dismissed from this action.

9 Good cause exists to grant this application. The Investor Defendants have only
10 recently been served with the Amended Complaint, and intend to file a motion to
11 dismiss challenging its legal sufficiency. Should all or any of the Investor
12 Defendants be required to answer, however, each should be given the opportunity to
13 consider and present the defense that is the subject of the pending motion. There was
14 insufficient time to bring this issue to the Court's attention by way of noticed motion,
15 hence the request for *ex parte* relief. The parties met and conferred concerning this
16 issue on September 10, 2008, and the Investor Defendants requested that Plaintiffs
17 continue the hearing and briefing schedule as requested herein. Plaintiffs refused,
18 thus necessitating this application.

19 This application is made after a telephone conference between counsel for
20 Investor Defendants and counsel for Plaintiffs on September 10, 2008 at 3:00 p.m.
21 Counsel for Shelter on behalf of Investor Defendants has advised counsel for
22 Plaintiffs that such *ex parte* application will be made to the Court. Counsel for
23 Plaintiffs has indicated that Plaintiffs intend to oppose the application.

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1 This application is made pursuant to Federal Rule of Civil Procedure 7 and
2 Local Rule 7-19. This application is supported by the attached Memorandum of
3 Points and Authorities, the attached Declaration of Annette L. Hurst and Declaration
4 of Sean M. Sullivan, all other pleadings, papers, and records on file in this action.
5 The Investor Defendants have concurrently submitted a proposed order.

6
7 September 22, 2008

Respectfully submitted,

8 HELLER EHRMAN LLP

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10 By /s/ Sean M. Sullivan

11 SEAN M. SULLIVAN

12 Attorneys for Defendants

13 SHELTER CAPITAL PARTNERS, LLC and
14 SHELTER VENTURE FUND, L.P.

15 September 22, 2008

Respectfully submitted,

16 KULIK, GOTTESMAN, MOUTON & SIEGEL,
17 LLP

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19
20 By /s/ Alisa Edelson

21 GLEN L. KULIK
22 ALISA EDELSON

23 Attorneys for Defendant

THE TORNANTE COMPANY LLC

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September 22, 2008

Respectfully submitted,

WILMERHALE

By /s/ Maria Vento
MARIA VENTO

Attorneys for Defendants
SPARK CAPITAL PARTNERS, LLC AND
SPARK CAPITAL, L.P.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs filed a motion for partial summary judgment on September 5, 2008,
3 asking the Court to enter judgment as to a portion of a defense asserted by Veoh in its
4 answer to the amended complaint. The motion is set for hearing on October 20,
5 2008. Plaintiffs' motion for summary judgment is premature and unduly prejudices
6 the Investor Defendants because it could lead to the determination of issues germane
7 to the defenses of the Investor Defendants before a determination as to whether they
8 should be dismissed from this action.

9 Plaintiffs filed their FAC on August 26, 2008 adding the Investor Defendants
10 as parties and setting forth three indirect liability causes of action against the Investor
11 Defendants. Pursuant to the stipulation filed with the Court, the Investor Defendants'
12 response to the FAC is not due until October 16, 2008. The Investor Defendants
13 intend to move to dismiss Plaintiffs' FAC pursuant to Rule 12 of the Federal Rules of
14 Civil Procedure.

15 Plaintiffs, meanwhile, as referenced above, filed a motion for partial summary
16 judgment as to Veoh's second affirmative defense on September 5, 2008. Veoh's
17 second affirmative defense invokes the Digital Millennium Copyright Act, 17 U.S.C.
18 § 512(c), which limits the liability for infringement pursuant to a number of
19 provisions. In short, Veoh's defense potentially limits its – and therefore the Investor
20 Defendants' – liability to Plaintiffs. But the Investor Defendants were not served
21 with the motion until September 10, 2008, and opposition to the motion is due
22 September 29, 2008, i.e., before a determination as to whether the Investor
23 Defendants are proper parties in this action. Thus, a continuance of the motion's
24 briefing schedule, including the opposition deadline and hearing date, is required so
25 that the Investor Defendants may have an opportunity to respond if the Court denies
26 their motion to dismiss.

27 The Investor Defendants' interests are necessarily impacted by Plaintiffs'
28 motion for partial summary judgment because the claims against them depend on a

1 finding of direct copyright infringement by Veoh. *See UMG Recordings, Inc. v.*
2 *Sinnott*, 300 F. Supp. 2d 993, 997 (E.D. Cal. 2004). Plaintiffs in their FAC assert
3 three causes of action against the Investor Defendants; (i) contributory infringement;
4 (ii) vicarious infringement; and (iii) inducement of copyright infringement. Each of
5 these are indirect copyright infringement claims, which are dependent on an
6 underlying finding of direct copyright infringement. Should all or any of the Investor
7 Defendants be required to defend this action, each should have the opportunity to
8 present this defense in its Answer.

9 Thus, because Plaintiffs' motion for partial summary judgment impacts the
10 Investor Defendants, the hearing and the briefing schedule on Plaintiffs' motion
11 should be continued until such time as the Court will have ruled on the forthcoming
12 motions to dismiss. After these motions are heard and decided, those defendants
13 remaining in the case will then respond to the motion for summary judgment, to the
14 extent necessary, on a uniform schedule to be determined by the Court.

15 The Court may continue a hearing upon good cause shown pursuant to an *ex*
16 *parte* application. For the reasons set forth herein, the Investor Defendants
17 respectfully request that the Court continue the briefing and hearing on Plaintiffs'
18 motion for summary judgment to a date subsequent to the Court's ruling on the
19 Investor Defendants' forthcoming motions to dismiss.

20 September 22, 2008

Respectfully submitted,

HELLER EHRMAN LLP

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24 By /s/ Sean M. Sullivan

SEAN M. SULLIVAN

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26 Attorneys for Defendants
27 SHELTER CAPITAL PARTNERS, LLC and
28 SHELTER VENTURE FUND, L.P.

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September 22, 2008

Respectfully submitted,

KULIK, GOTTESMAN, MOUTON & SIEGEL,
LLP

By /s/ Alisa Edelson
GLEN L. KULIK
ALISA EDELSON

Attorneys for Defendant
THE TORNANTE COMPANY LLC

September 22, 2008

Respectfully submitted,

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By /s/ Maria Vento
MARIA VENTO

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SPARK CAPITAL PARTNERS, LLC AND
SPARK CAPITAL, L.P.