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16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 UMG RECORDINGS, INC., *et al.*,
21 Plaintiffs,

22 vs.

23 VEOH NETWORKS, INC., *et al.*
24 Defendants.

Case No. CV 07 5744 – AHM (AJWx)
Discovery Matter

**DECLARATION OF REBECCA
LAWLOR CALKINS IN SUPPORT
OF VEOH NETWORK INC.'S
MOTION TO COMPEL
PLAINTIFFS TO IDENTIFY
WORKS AT ISSUE AND PRODUCE
CHAIN OF TITLE/RIGHTS
INFORMATION RE SAME**

Expedited Hearing: 11/13/08 10:00 a.m.
Discovery Cut off: 1/12/09

1 DECLARATION OF REBECCA LAWLOR CALKINS

2 I, Rebecca Lawlor Calkins, declare as follows pursuant to 28 U.S.C. § 1746:

3 1. I am an attorney at the law firm of Winston & Strawn LLP, attorneys for
4 Defendant Veoh Networks, Inc. ("Veoh") in this matter. I am licensed to practice
5 before the Courts of the State of California and this United States District Court. I
6 have personal knowledge of the matters set forth herein, and if called as a witness,
7 could and would competently testify thereto.

8 2. I have engaged in extensive meet and confer discussions with Plaintiffs'
9 counsel in an effort to resolve the matters addressed in this Motion informally, to no
10 avail. On April 25 and 28, I had discussions with Plaintiffs' Counsel Brian Ledahl,
11 who claimed that Plaintiffs could not identify allegedly infringing works because
12 Veoh had not produced video files. We also discussed Plaintiffs' refusal to produce
13 chain of title/ownership documents, which Plaintiffs insisted was too burdensome and
14 unnecessary.

15 3. Attached hereto as Exhibit A is a true and correct copy of the transcript
16 from an August 25, 2008 scheduling conference in *UMG Recordings, Inc. et al., v.*
17 *Divx, Inc., et al.*, (Case No. CV07-6385-AHM (AJWx)).

18 4. Plaintiffs' Counsel originally sought to limit discovery to copyright
19 registrations during the March 17, 2008 discovery conference in this action. Judge
20 Matz refused to limit discovery in such a manner. Attached hereto as Exhibit B is a
21 true and correct copy of the relevant portions of this transcript.

22 5. During the August 25, 2008 hearing on the parties respective motions to
23 compel, Plaintiffs' Counsel specifically stated that "to cover the breadth of what's
24 infringing on [Veoh's] site, we need the videos . . . we need to be able to look at
25 them." Attached hereto as Exhibit C are the relevant portions of the transcript from
26 this hearing.

27 6. During the November 5, 2008 hearing in *MySpace/Grouper* Actions (at
28 p. 108: 18-20) UMG's Counsel, Mr. Marenberg, acknowledged that "**the most**

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1 **important document in the chain of title is the recording agreement, which gives**
2 **us rights to the copyright."** A true and correct copy of the relevant portions of this
3 transcript is attached hereto as Exhibit D.

4
5 I declare under penalty of perjury under the laws of the United States of
6 America, the foregoing is true and correct. Executed on October 29, 2008, in Los
7 Angeles, California.

8
9 /s/ Rebecca Lawlor Calkins
10 Rebecca Lawlor Calkins

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

- - -

COPY

UMG RECORDING, INC. ET AL,)
)
)
) PLAINTIFFS,)
)
) vs.) No. CV07-6835-AHM(AJWx)
)
) DIVX, INC., ET AL.,)
)
) DEFENDANTS.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, AUGUST 25, 2008
1:38 P.M.

CINDY L. NIRENBERG, CSR 5059
U.S. Official Court Reporter
312 North Spring Street, #438
Los Angeles, California 90012
www.cindynirenberg.com

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1 LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 25, 2008

2 1:38 P.M.

3 - - - - -

4 THE CLERK: Calling Item Number 2, CV07-6835, UMG
5 Recording, Inc., et al. versus DivX, Inc., et al.

6 Counsel, state your appearances, please.

7 MR. JOHNSTON: Ronald Johnston and Murad Hussain for
8 plaintiff UMG.

9 THE COURT: What's your name?

10 MR. HUSSAIN: Murad Hussain.

11 THE COURT: Okay. H-U-S-A-N?

12 MR. HUSSAIN: H-U-S-S-A-I-N.

13 THE COURT: Okay.

14 MR. KRAMER: I'm Dave Kramer from Wilson Sonsini for
15 DivX, Inc. With me is Lee Milstein who is in-house counsel at
16 DivX.

17 THE COURT: All right. We're here for the scheduling
18 conference, as you know.

19 The first issue I want to raise is whether you've
20 received and read the order that I issued on Friday granting
21 the motion to dismiss the counterclaims.

22 MR. JOHNSTON: Yes.

23 MR. KRAMER: Yes, Your Honor.

24 THE COURT: I don't think I need any further argument
25 on that, so that's going to stand as is.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT

A

PAGE

6

1 MR. KRAMER: Okay.

2 THE COURT: Unless there is something that you think
3 is factually erroneous in the analysis.

4 MR. KRAMER: I think, Your Honor, I'd like to speak
5 to one point in particular.

6 THE COURT: Go ahead.

7 MR. KRAMER: The Court's order assumes that the
8 declaratory relief counterclaims were addressed to the concern
9 that UMG would dismiss the entire action. That is not what the
10 counterclaims were directed to.

11 They were directed instead to a practice that we have
12 seen in other cases brought by content providers against online
13 service providers where the process by which alleged
14 infringements are added on an ad hoc basis and then dropped
15 from the case when the defendants demonstrate the particular
16 claims of infringement, specific works and specific
17 infringements are meritless.

18 So we prove, for example, that UMG doesn't own the
19 copyrights to a particular work that they've put at issue in
20 this case or we prove that they've uploaded a particular work
21 to the Stage 6 site and, therefore, can't complain that that's
22 unauthorized.

23 And what the plaintiffs in these cases tend to do is
24 to say, well, never mind, that one's not part of this case.

25 And so our concern is to insure that those specific

1 claims of infringement are resolved on the merits. So that
2 there is a judgment in DivX's favor, we need the declaratory
3 relief counterclaims.

4 It's not directed to the entirety of the action, but
5 rather this ad hoc addition and removal of claims.

6 THE COURT: Well, at the end of this process -- and
7 it won't go on that long, as you'll hear -- of selective
8 pruning of the claims or the identified works that supposedly
9 were infringed, you could independently turn around and bring a
10 declaratory action.

11 Alternatively or in addition, at the end of the fray
12 when it comes time to determine prevailing parties and award
13 attorneys' fees, I would give you leave to include whatever it
14 took to demonstrate the invalidity or the absence of merit to
15 the claims on those specified works of art as part of your
16 array that would go into an award of attorneys' fees to your
17 firm.

18 So in both respects, both in terms of the merits and
19 the cost of litigation, I can't see how DivX would be
20 prejudiced by this ruling. So I don't think that your point
21 really causes me to change my view.

22 MR. KRAMER: Understood, Your Honor.

23 THE COURT: Now, in terms of the scheduling
24 conference matters that are typically at issue and that are
25 raised -- I'll get to the issue of specification of precise

1 allegedly infringed works and the conflict safeguards in a
2 moment -- let me just confirm some open issues.

3 Where do things stand with respect to the Protective
4 Order that is referred to at Page 11 of the 16(b) or 26(f)
5 report?

6 I'm referring to Page 11 in which I'm told that UMG
7 was going to propose a Protective Order.

8 MR. KRAMER: They have not yet done so, Your Honor.

9 MR. JOHNSTON: We will do so with haste.

10 THE COURT: Okay. And the parties don't anticipate
11 any sparring about that, right?

12 MR. KRAMER: Hope not.

13 MR. JOHNSTON: I do not.

14 THE COURT: Okay. Next question is -- well, let's
15 address this threshold issue or at least this important issue
16 of specification of infringed works.

17 I construe what I read in this report to mean that
18 within 30 days of today, you're prepared to identify the works
19 that you claim to own the copyright in that you know have been
20 infringed, right?

21 MR. JOHNSTON: Correct.

22 THE COURT: We'll make it 28 days from today, so --
23 because I function and my orders try to be based upon weekly
24 intervals that make for very efficient administration.

25 So I'm ordering that as to the works that, regardless

1 of whatever the discovery from DivX may show, UMG currently or
2 by 28 days from now knows or knows part of the array of
3 supposedly infringed works, that those be identified and fully
4 identified.

5 And since there's going to be a clear and maybe
6 understandable effort on the part of DivX to challenge the
7 legitimacy of ownership claims, attach not only the
8 specification of the works but the ownership evidence as well.

9 Now, registration is presumptive. Evidence of
10 ownership, if you have anything readily available that goes
11 beyond that, to avoid avoidable sideshows and disputes and
12 especially avoid motion practice before the magistrate judge --
13 and I'll get back to that later -- include it in the 28 days
14 from now.

15 Just anticipate what you are going to have to deal
16 with anyway. Get it all together and identify it.

17 Now, in other cases -- and I just had this issue
18 arise in the Perfect 10/Google/Amazon litigation, there has
19 been varying lengths of time before which I've imposed a
20 deadline for the specification of the infringed works. And the
21 deadline specification contemplates that that will be the
22 outside limit on potential issues of liability and
23 corresponding damages. It doesn't address issues of
24 willfulness, punitive damages and the like; just sets the
25 contours for what the dispute is about.

1 There have been issues in that case which I don't
2 think will arise here. And I think this case may lend itself
3 more readily to settlement. Apparently, that's been the course
4 that UMG has taken in parallel types of cases, but have you
5 discussed with each other what the legitimate or reasonable
6 time frame should be? Because I definitely will impose that
7 obligation on UMG. I'm not going to permit amendments. I'm
8 not going to permit specifications right up to the date of
9 trial.

10 MR. JOHNSTON: We have not discussed the timetable.
11 It depends upon looking at their website that's been archived,
12 as I understand it, and doing tests on that.

13 THE COURT: It's been archived because it's been
14 closed down, right?

15 MR. JOHNSTON: Right.

16 THE COURT: And what kind of tests are you referring
17 to?

18 MR. JOHNSTON: We need to have somebody analyze the
19 history of the content on it and what content is ours.

20 THE COURT: What does that take in terms of time and
21 cost and effort?

22 MR. JOHNSTON: I would be speculating. I'm not sure
23 what the timetable would be. We're forming discovery requests
24 now -- formulating discovery requests now to serve to get the
25 information that would best allow us to do that. I can

1 certainly get back to the Court.

2 THE COURT: How long was the website up?

3 MR. JOHNSTON: The website was up for approximately
4 18 months.

5 THE COURT: And when was it closed down? How long
6 ago approximately?

7 MR. JOHNSTON: February of this year. January or
8 February of this year. It went up in August of 2006, I
9 believe.

10 THE COURT: Do you have a basis to give me with some
11 degree of reliability, if not precision, a guesstimate as to
12 the maximum number of infringing displays that you think you're
13 going to find? A ballpark number.

14 MR. JOHNSTON: The maximum number? I believe we'll
15 find several thousand. Under 5,000 would be a guess, but --

16 THE COURT: Yeah, I'm not going to hold you to it.

17 MR. JOHNSTON: Particularly if you look at the amount
18 of time it was up. But that's really a guess. I have reason
19 to believe we will show several thousand.

20 THE COURT: You haven't served the discovery yet on
21 DivX?

22 MR. JOHNSTON: Correct.

23 THE COURT: So just tell us orally -- just describe
24 what the discovery will demand, what the request will demand.

25 MR. JOHNSTON: The discovery that's being drafted

1 would demand that they produce the archived website, as well as
2 other internal communications, so we -- we need to determine
3 the ownership of the content on the website, and then we need
4 to determine the conduct of the website in the sense of what
5 they knew, what they induced to have their users put on the
6 website. So I guess it's two buckets.

7 THE COURT: Those are two different issues.

8 MR. JOHNSTON: Correct.

9 THE COURT: I just want to address for the moment
10 what it was that was allegedly infringing. I don't know what
11 you mean by requiring that the archived website be provided, if
12 that's what you just said. Do you know what that would
13 encompass?

14 MR. KRAMER: I have a fear that it is a request for
15 an entire functioning copy of the Stage 6 service as it existed
16 at the time it was shut down, which would be a massive
17 engineering undertaking and require a significant amount of
18 time and expense to generate. But if UMG is willing to work
19 with us on the cost issues, I'm not suggesting that it's
20 infeasible.

21 MR. JOHNSTON: What we're looking for is the content
22 on the website more specifically than other services and
23 whatnot that were on the website.

24 THE COURT: I'll tell you what. I'm not going to be
25 able to negotiate a demand, and that wouldn't be reasonable

1 even if it were feasible, so I don't want to spend too much
2 time trying to scope this out, but I got to tell you that I'm
3 going to be setting dates now.

4 I'm going to try to set dates on an informed basis,
5 which is why I'm asking these questions. I'll be very loathed
6 to change the dates. And I will add to the dates that I'm
7 imposing an outside date by which UMG will have to specify what
8 the allegedly infringed works were.

9 That's going to help the parties in settlement
10 anyway. It won't preclude demands and counteroffers and the
11 like. Just on the basis of that universe, people could
12 extrapolate and surmise and assume other facts, but at least it
13 will provide a focus.

14 Now, how much time do you want as time to respond to
15 that?

16 MR. JOHNSTON: 120 days.

17 THE COURT: Oh, that sounds pretty reasonable to me.

18 MR. KRAMER: Yes, Your Honor. I think that 120 days
19 is fine provided we have a sufficient amount of time thereafter
20 to take discovery with respect to works that are added at the
21 last minute. We may need to redepose witnesses. We may need
22 to reserve document requests. We may need to engage in motion
23 practice with respect to stuff that comes thereafter.

24 THE COURT: Say it again. Provided that what?

25 MR. KRAMER: Provided that DivX has a sufficient

1 opportunity to take discovery with respect to works that are
2 identified thereafter.

3 By thereafter, I mean if their deadline is 120 days
4 from today, then after that point, we will need an opportunity
5 for discovery with respect to whatever has been identified. So
6 the last day, if we get a list of 50 more or 500 more
7 copyrighted works, that would --

8 THE COURT: That's just the day where you know what
9 you have to deal with.

10 MR. KRAMER: Understood.

11 THE COURT: It doesn't preclude you from engaging in
12 other discovery as to that. And that's going to be the last
13 day.

14 Okay. I will read off other dates shortly, but it
15 will be 17 weeks from today -- that's 119 days -- that UMG has
16 to identify the works that it alleges were infringed by the
17 defendant and provide available corresponding proof of
18 ownership as to those works, which will, by the way, make it
19 fair to accelerate the amount of time or narrow the amount of
20 time that you need to conduct follow-up discovery.

21 You are going to be allowed to, but you are going to
22 get a lot of this stuff to begin with.

23 MR. KRAMER: That would be my hope, Your Honor.

24 THE COURT: And that's the last day, that 17 weeks.

25 So by that, I mean it can be rolling -- and it should be

1 rolling discovery.

2 MR. JOHNSTON: Understood.

3 THE COURT: Don't wait and don't invite claims of bad
4 faith, discovery practice or need for further extension of
5 these dates.

6 You're the plaintiff. You would benefit from an
7 efficient and enforceable deadline series that I impose today.
8 So you have this stuff next week, you have it tomorrow, or
9 whenever you have it, you provide it.

10 MR. JOHNSTON: Can I offer one comment?

11 THE COURT: Yes.

12 MR. JOHNSTON: This is just -- candor requires this
13 comment. I have a lot of experience with computers but not
14 this particular issue. So when I say 120 days, I'm assuming
15 that we're going to do our best to get everything together
16 because that's in our interest, but in terms of the technical
17 requirements and what it will take for technicians to determine
18 this, I'm really speculating.

19 THE COURT: Well, if you make a very concrete and
20 compelling showing that your good faith estimate -- and I
21 understand why you are providing this qualification. You have
22 a right to do it -- turns out to be not feasible or not
23 informed or requires some change, then I'll consider it on the
24 merits. But right now, 17 weeks.

25 The case has been pending for a while, in part

1 because of my inability to turn to it faster and all these
2 issues about conflicts, but now it's ready to be moved.

3 MR. KRAMER: Your Honor, two points with respect to
4 this process, and I think that this is a sensible way to
5 proceed.

6 One is that in addition to identifying the
7 copyrighted works that are at issue in this case, it's
8 important from our perspective to know what it is on the Stage
9 6 service that the plaintiffs contend was infringing, the U-R-L
10 or URL at which a supposedly infringing clip was located is
11 important because if they just say, well, it's this work, we
12 have no idea within the universe of hundreds of thousands or
13 millions of clips on the service where it is they contend it
14 appeared or why they contend it's infringing.

15 So in the You Tube/Viacom case, what the plaintiffs
16 have been doing -- have been ordered to do is to identify the
17 copyrighted work and then the URL at which the alleged
18 infringement exists so that it's easy for us to compare and
19 say, oh, yes, I see that you contend that it's this song, and
20 this song appears to show up in the video.

21 THE COURT: I understand what you're saying, and I am
22 sure Mr. Johnston and Mr. Hussain understand it as well.

23 They're going to be giving you this information based
24 upon what they have independent of what you've produced.

25 It's undoubtedly going to be consistent with that

1 ability and that requirement that they specify the URL because
2 that's how they got it.

3 Am I not right?

4 MR. JOHNSTON: That would be a fair assumption going
5 forward.

6 In terms of exactly -- whether we have it all in that
7 form today for those we are aware of today, that, I can't
8 represent one way or the other, but I understand what --

9 THE COURT: Eventually, you're going to have to.

10 MR. JOHNSTON: -- your expressed interest is.

11 Yes, I understand.

12 THE COURT: You're going to have to do that.

13 And, in fact, that would be an obligation in order
14 to -- I think. I'm not making a definitive ruling on this --
15 in order to carry out your DMCA obligations anyway. So I think
16 that's something that plaintiffs and entities in your client's
17 position are expecting to have to do no matter what, so --

18 Okay. You raised the point. I don't want to make it
19 appear that I think it's been resolved, but I also don't want
20 it to linger as an ambiguous or unresolved issue.

21 URL identification will be in both sides' interests.

22 Okay? You have a problem with the material you get on this
23 rolling basis, then pick up the phone. All right?

24 MR. KRAMER: To opposing counsel, not to the Court,
25 I'm gathering.

1 THE COURT: I don't want this to disintegrate in the
2 kind of sideshow I've seen in too many of these infringement
3 case.

4 And I know that Judge Wistrich, who is the magistrate
5 judge who will have to resolve it at first blush in discovery
6 disputes, is very busy, very hardworking. Some, I'm going to
7 take away from him.

8 I will permit you -- and I'll tell you what I have in
9 mind in a minute to bring directly to me, but you really need
10 to avoid a wasteful and avoidable discovery practice and motion
11 practice.

12 MR. KRAMER: Your Honor, on that same point -- and
13 this is relatively minor, but with respect to the
14 identification of the copyrighted works at issue, I think
15 consistent with the Copyright Act and Section 508, we'd like
16 the plaintiffs' lists of works that are identified --
17 infringements that are identified to constitute an amendment to
18 the complaint so that it's not just, "Here's a letter. Here
19 are five things I'm talking about asserting today. Tomorrow
20 I've decided to take two of those away."

21 THE COURT: That's the whole premise of what I said
22 at the beginning of this conversation.

23 But I don't want 37 amendments -- if there are 37
24 productions -- on a rolling basis.

25 17 weeks from now, the complaint will be amended as a

1 right. No motion practice is necessary. No meet and confer is
2 necessary.

3 All of the infringed works that plaintiff has
4 identified by then will be specified in the -- I don't know if
5 it's going to be the First Amended Complaint. Whatever the
6 then-operative pleading will be -- and they will be part of the
7 pleading.

8 But we're not going to have constant amendments the
9 way I have seen some judges have to deal with in other
10 contexts.

11 So you deal with them when you get this information
12 as though they are going to be incorporated into the complaint,
13 and eventually they will -- into the amended complaint.

14 MR. KRAMER: Understood, Your Honor. Thank you.

15 THE COURT: All right. Now, one of the dates that I
16 always set at these scheduling conferences is the last day to
17 amend the pleadings, so that will be 17 weeks from today also.

18 We're going to have dates set today, Steve, that are
19 not necessarily triggered by the presumptive schedule. In
20 fact, they won't be.

21 Now, in order to be reasonably informed before I do
22 set the remaining dates, let's talk about this issue of the
23 conflict because it could affect how discovery is provided.

24 I've already told you what you should do on
25 identifying the works in the suit. So that's one issue that's

1 been resolved.

2 It seems to me there is a tempest in the teapot about
3 this issue of the in-house counsel. Okay? The in-house
4 counsel doesn't have to be walled off in the sense that
5 somebody else has to replace her or him and start anew.

6 In order to comply with the spirit, if not the
7 precise little language of the order I issue, it should be
8 sufficient. And I doubt if it's going to be a problem if
9 whoever the in-house counsel is -- or are, if there's more than
10 one -- file a declaration that simply confirms that they will
11 not orally disclose or physically make available the work
12 product of Irell & Manella to the current lawyers from Arnold &
13 Porter. So they are not going to say, you know, "This is the
14 way we did it in that case. Irell said this is the best way we
15 should handle it, or this is the form and the format or the
16 template that I already developed for handling this kind of
17 discovery response."

18 That doesn't mean they can't make use of whatever
19 they previously experienced and previously done and the
20 information they acquired, the access to facts within UMG's
21 business and business structure. It's absolutely unnecessary
22 to replace them.

23 But if this kind of good faith compliance with the
24 spirit of the order is accepted by them and accepted by Arnold
25 & Porter, we got no problem. Everybody agree?

1 MR. KRAMER: Agreed, Your Honor. That's acceptable
2 to us.

3 MR. JOHNSTON: Just to clarify. Maybe this is to
4 state the obvious. If Irell in some other case prepared
5 discovery, and it's been served -- I mean, it's a public
6 document. We could use --

7 THE COURT: Yes.

8 MR. JOHNSTON: So you are talking about confidential
9 work product and whatnot?

10 THE COURT: Yes. If Irell -- I don't know what they
11 did, but -- and maybe you don't, but if they say, "In order to
12 comply with your discovery obligations, this is what you've got
13 to send out to the empire of officials in UMG," and they gave
14 UMG not only that oral advice, but the form to do it, to me, it
15 wouldn't really affect the ultimate concerns, but you can't use
16 it in the sense that the people that you're dealing with, who
17 were responsible for getting information or making a decision
18 and the like, can't simply tell you what they did as a result
19 of -- and explicitly tell you that this is the advice that
20 Irell gave.

21 If a form was developed to obtain information, it can
22 be used again. If information was provided, it can be used
23 again.

24 MR. JOHNSTON: Okay.

25 THE COURT: But any of the product of the analysis or

1 the experience of the Irell lawyers is where the curtain has to
2 be dropped.

3 MR. JOHNSTON: I think I -- I certainly understand
4 the point the Court is addressing, and, in principle, that
5 sounds very reasonable to me.

6 THE COURT: And, you know, you don't have to file
7 those declarations with me. Get the declarations from the
8 individuals, whoever it was that Irell dealt with, and they're
9 not going to communicate to you their communications with
10 Irell, their -- the advice that they were given by Irell either
11 orally or in writing.

12 Send their declarations to Mr. Kramer and just
13 proceed on that basis.

14 You're dealing with reputable counsel here, both
15 in-house at UMG and at Arnold & Porter. That should be your
16 presumption. This stuff doesn't have to go public and get
17 filed in the court. And then if you got a problem, see where
18 it takes you. All right?

19 MR. JOHNSTON: Thank you.

20 THE COURT: Okay. So we don't have to deal with that
21 as an open matter.

22 Now, you have competing dates that you're requesting.

23 For scheduling conferences that would be held today,
24 presumptively I would be setting -- and this really has little
25 significance given the different dimensions in this case, but I

1 would be setting a discovery cutoff of March 23rd. We're not
2 going to be able to do that here. The plaintiff wants
3 March 16th. The defendant wants August 17th.

4 What is 17 weeks from today?

5 THE CLERK: December 22nd.

6 THE COURT: December 22nd?

7 I have an idea, another way I think to proceed
8 sensibly here.

9 Suppose next week you get ten -- you get a letter or
10 some kind of document from Mr. Johnston and he says, "Here are
11 the first ten works that were identified," okay, that are
12 eventually going to be part of the amended complaint and
13 specifically alleged infringed works. So I already told you,
14 you are going to have to seek the discovery you want as to
15 those ten. Okay? It's going to be the same discovery the
16 following week when you get 20 new ones, right?

17 MR. KRAMER: To a large extent, yes. The basic
18 discovery will be the same.

19 THE COURT: Okay. So you send out your discovery the
20 minute you get this. Okay? There is going to be reciprocal or
21 at least parallel discovery. It's going to be ongoing for both
22 sides.

23 So you see whatever he tells you. You send out your
24 discovery demand in light of that. You propose a stipulation,
25 getting him to sign it, saying, "This is going to be deemed to

1 be a discovery demand we make as to every ensuing disclosure
2 you make as to the infringed work." You don't have to send it
3 out the following week. Save your client money.

4 You just know what he wants in responses already.
5 You start getting together your response to the first discovery
6 demand on the first ten that I hypothesized, and you know
7 you're going to have to do it for the next week's disclosure of
8 the ensuing 20. Okay?

9 So everybody has a limited number of assaults on the
10 forest and everybody knows what kind of discovery is going to
11 be mounted, at least as to this issue of specified infringed
12 works.

13 I'm not in a position and I'm not going to attempt to
14 come up with any limitations or any suggestions on other kinds
15 of discovery, but that's going to be the core of it anyway or
16 at least a big part of it.

17 So with that in mind, you don't have to wait until --
18 what did you say? December what?

19 THE CLERK: 22nd.

20 THE COURT: You don't have to wait until then. You
21 will have most of your discovery as to that aspect of
22 discovery.

23 MR. KRAMER: We've already served it, Your Honor.
24 We've already gotten responses.

25 They suggest that it's going to be a long slog

1 through the motion to compel process, but we've already served
2 our discovery with respect to the works ensued.

3 Whatever it is that they have identified that they
4 intend to assert, we would expect them to give us those
5 documents, and, unfortunately, it looks like it's going to move
6 a little slower than we had hoped. But, yes, I think that's a
7 very sensible approach.

8 THE COURT: Okay. The non-expert discovery cutoff
9 will be June 1st.

10 Now, the expert discovery that you want to have a
11 longer interval, usually I require opening disclosures a week
12 after the completion of non-expert discovery. Both sides seem
13 to want more time. I don't know how much more time.

14 How much more time after the completion of non-expert
15 fact discovery do you want?

16 MR. JOHNSTON: I think we had estimated three weeks.
17 They had estimated some more, but three weeks was our estimate.

18 THE COURT: Mr. Kramer?

19 MR. KRAMER: Actually, I think we've estimated five,
20 so if you want to split the baby and --

21 THE COURT: Yeah, that's what I'm going to do.

22 So the opening expert witness disclosure will be
23 June 29th. And adjust the -- and the last day for hand serving
24 motions and filing it probably should be after you complete
25 expert discovery?

1 MR. KRAMER: I think it has to be, Your Honor.

2 THE COURT: I don't know why there is so much expert
3 discovery and why it's critical, but let's do it. All right?
4 I just want to breeze through this.

5 So six weeks from June 29th will be August 10th. The
6 expert discovery cutoff will be August 10th.

7 And that means the last day for serving motions will
8 be two weeks after that, which will be August 24th.

9 And then work up to the trial date using my
10 presumptive schedule, Steve. Okay?

11 I don't know what that will land you to.

12 We will set this down for an eight-day jury trial.

13 I really am confident we can do it. Maybe it would
14 take ten, but we'll set it for eight. You'll see why I think
15 so. I'm not blustering. We can do a lot of things to make it
16 efficient. It probably won't go that distance anyway, but we
17 will set it down for an eight-day jury trial.

18 You already have the last day to amend the pleadings.

19 The mechanism to comply with Local Rule 16-15 will be
20 outside mediation.

21 Have you talked about a mediator? You told me in
22 your report that you talked about settlement, and I know there
23 is an incentive, business incentive, for both sides to settle,
24 so I'm confident there will be one, but have you talked about a
25 mediator?

1 MR. JOHNSTON: We haven't discussed a specific
2 mediator, no.

3 THE COURT: Okay. The last date to complete your
4 compliance with Local Rule 16-15 will be August 17th, a week
5 after the completion of expert discovery.

6 That's a last date. You can settle the case in the
7 corridor if you want.

8 You can set a mediation at any time that the parties
9 think it's propitious and you have an available date from the
10 mediator you select.

11 You have the duty, Mr. Johnston, as counsel for the
12 plaintiff to notify me who the mediator is who has been
13 selected and what the date is that that person has set aside
14 for the mediation.

15 Just file a status report and then file a second
16 status report within a week after the mediation as to the
17 outcome, or if it's ongoing, that it's still ongoing.

18 Yes?

19 MR. KRAMER: Your Honor, as you noted in your opening
20 remarks, this case is slightly -- not slightly, considerably
21 differently situated from some of the other cases that appear
22 on their face to involve the same legal issues in the sense
23 that the operation here has been shut down and was not in
24 operation very long and was a tiny operation.

25 The concern that I think we have is that the cost of

1 the litigation will exceed any possible recovery in this case
2 and that we'd like to have a forum for discussion whether it be
3 ENE or judicial mediation earlier than August of 2009.

4 THE COURT: You can. That's the last date.

5 MR. KRAMER: Okay. Okay.

6 THE COURT: Now, are you talking about with me?

7 MR. KRAMER: Well, no. I don't think -- unless it's
8 the Court's practice to entertain settlement conferences,
9 but --

10 THE COURT: Well, occasionally, but --

11 MR. KRAMER: I'm actually thinking that there be some
12 form of early evaluation in this case before we undertake what
13 I think the parties have experienced already is going to be a
14 costly litigation.

15 THE COURT: It makes a lot of sense, but why do I
16 have to get involved in that?

17 MR. KRAMER: Well, our overtures have been -- have
18 not been accepted in that regard. So if there is a process by
19 which the Court can direct the parties to a neutral evaluation
20 rather than simply leave it to the local rules to supply the
21 deadlines, I think we would both benefit by virtue of having
22 that earlier rather than later.

23 THE COURT: Do you want to respond?

24 MR. JOHNSTON: I have no -- time is not magic in this
25 except for the pressures of cost and the pressures of

1 proceedings in court. I have no problem with having early
2 settlement discussions in a case where it makes sense.

3 The reason their overtures have not been very
4 acceptable is because in our view they were totally unrealistic
5 in terms of the amount of controversy here.

6 I suspect that maybe it will be more realistic after
7 we have determined how many infringing materials they have had
8 on their website. But I think at this point --

9 THE COURT: Well, look. Will you make a good faith
10 representation right here that, since you are going to in 28
11 days provide your initial specification, that you will be
12 amenable to sitting down with somebody that both sides select?
13 It doesn't necessarily have to be the ultimate mediator, but
14 probably should be. And if you want to do ENE within 28 days
15 after that?

16 MR. JOHNSTON: I'll represent that I will act in good
17 faith to resolve this case, but I don't think we're going to
18 know the extent of the infringement, which is going to
19 dramatically affect the number, until we've seen their website.
20 That's my only pause in doing exactly what the Court suggests.

21 I think the more sensible --

22 THE COURT: Well, but you see "before you see their
23 website" is going to prompt a statement probably from
24 Mr. Kramer that I don't want him to make, because we've got to
25 move it along, but I'll bet it's his thought that, you know,

1 "If they want to see our website, that's going to cost us a
2 hell of a lot of money, and we're going to object to that
3 because it isn't necessary or it isn't fair or isn't reasonable
4 and they're going to have to pay for half of it," and then we
5 are off and running on the usual skirmishing.

6 So you, Mr. Johnston, and you, Mr. Kramer, and your
7 various colleagues figure out a way to meet -- to talk to each
8 other on a continuing basis and to figure out -- and it could
9 be staged and stepped and it may mean more than one person --
10 how you can bring an end to this dispute fairly and timely.
11 Okay?

12 You really -- it's going to happen anyway, so it
13 might as well happen -- and that doesn't mean that I'm just
14 putting the pressure on UMG to cave in and to meet when it
15 would be a waste of time and ultimately more costly to do so
16 before you have a basis or a framework, but I don't think
17 you're going to be functioning in a desert of information,
18 certainly not after you have gone through the drill of
19 specifying what you currently have. And you can extrapolate a
20 whole lot of things from what you've already learned, even if
21 you don't have the actual content of the website. I'll bet
22 your experts will tell you that.

23 So I'm just going to stop there. Okay? I'm not
24 going to set an earlier date than the one I set, but I am going
25 to be relying on the lawyers, and I trust the lawyers and

1 respect the lawyers in this case to figure out how to function
2 both professionally and practically in the interest of their
3 respective clients.

4 Okay. I think I've accomplished everything I really
5 needed to.

6 Is there anything else that I typically set?

7 THE CLERK: No.

8 THE COURT: Listen to the dates. Mr. Montes will
9 read off the dates and you'll take it from there.

10 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT A PAGE 32

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: SEPTEMBER 4, 2008

Cindy L. Nirenberg, CSR No. 5059

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT A PAGE 33

EXHIBIT B

EXHIBIT

b

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

COPY

UMG RECORDINGS, INC.,)	
)	
PLAINTIFF,)	
)	
vs.)	No. CV07-5744-AHM(AJWx)
)	
VEOH NETWORKS, INC., ET AL,)	
)	
DEFENDANTS.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HELD IN CHAMBERS
LOS ANGELES, CALIFORNIA
MONDAY, MARCH 17, 2008

CINDY L. NIRENBERG
U.S. Official Court Reporter
312 North Spring Street, #438
Los Angeles, California 90012
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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 17, 2008

2 2:04 P.M.

3 - - - - -

4 THE CLERK: Calling Item Number 5, CV07-5744, UMG
5 Recordings, Inc. versus Veah Networks, Inc., et al.

6 Counsel, state your appearances, please.

7 MR. MARENBERG: Good afternoon, Your Honor. Steve
8 Marenberg, and with me is my colleague, Brian Ledahl, from
9 Irell & Manella for the plaintiffs.

10 THE COURT: Good afternoon.

11 MR. ELKIN: Your Honor, Michael Elkin, Winston &
12 Strawn, and with my colleague, Erin Ranahan, we represent the
13 defendant, Veah Network.

14 THE COURT: Okay. We are here for the scheduling
15 conference, as you know. I have looked at the 16(b) report,
16 and I have a couple of questions. The case in the Northern
17 District, IO Group versus Veah, who's the judge on that case?

18 MR. ELKIN: Harold Lloyd, U.S. Magistrate.

19 THE COURT: Wasn't there a district judge?

20 MR. ELKIN: There was, but the parties waived.

21 THE COURT: They did?

22 MR. ELKIN: Yes.

23 THE COURT: And which division is it in?

24 MR. ELKIN: It's in the San Jose division.

25 THE COURT: San Jose. And what's the name of the

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

1 magistrate?

2 MR. ELKIN: Harold Lloyd.

3 THE COURT: Okay. And has he issued any rulings that
4 have any bearing on the management of this case or the issues
5 that are revealed in this 16(b) report?

6 MR. ELKIN: No. There were obviously different
7 deadlines imposed in the scheduling conference, the Rule 16
8 conference, but I --

9 THE COURT: Has he ruled on anything relating to the
10 DMCA?

11 MR. ELKIN: No. We argued the motions for summary
12 judgment on September 4, 2007, and the motions are sub judice.
13 There was additional briefing requested and submitted I believe
14 in late November of 2007. We're awaiting the decision.

15 THE COURT: And you were the moving party?

16 MR. ELKIN: Both parties were. We made a motion --
17 defense made a motion for a determination that Veoh was
18 entitled to rely on Section 512(c), and the plaintiffs made a
19 motion that their direct contributory vicarious liability
20 motions, the claims should be adjudicated under Rule 56, and to
21 save for trial the issues of damages. So both of those motions
22 were argued and submitted, so cross motions, as it were.

23 THE COURT: Okay. But underlying those motions are
24 some of the same contentions relating to the requirements under
25 Section 512(c), correct?

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

1 MR. ELKIN: Correct.

2 THE COURT: Did you cite a lot of other rulings
3 relating to the application of 512(c) in the context of the
4 burden on the part of the plaintiff to identify the allegedly
5 copyrighted material?

6 MR. ELKIN: If I understand Your Honor's question
7 correctly, I believe that every conceivable Section 512 case
8 that's been decided was briefed before the Court.

9 THE COURT: All right. Well, you lodge a copy of
10 your briefs and the opposing sides' briefs so I have it here --

11 MR. ELKIN: Okay.

12 THE COURT: -- in the event that I want to see what
13 the parties contended in that case, and I will just stop with
14 that.

15 Now, Mr. Marenberg, you say on Page 8 that this
16 approach of delaying discovery into ownership of the -- alleged
17 ownership of the copyrights and chain of title -- I'm not sure
18 exactly what that concept chain of title means, but I think I
19 know -- has been consistently employed by courts. What courts?
20 I don't see any reference to any.

21 MR. MARENBERG: We can supply you with the
22 transcripts. First, Judge Patel in the Napster cases put off
23 discovery on the chain of title on the works until the end.
24 And second -- I'm just blanking on his name in the Southern
25 District of New York -- recently addressed just this issue, and

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

1 we can get you a copy of the transcript or lodge it, where he
2 put off the chain of title issues until the end.

3 THE COURT: Well, you tell me what you understand
4 that shorthand reference to mean --

5 MR. MARENBERG: Sure.

6 THE COURT: -- as opposed to -- well, just tell me.

7 MR. MARENBERG: Let's posit that there are
8 ultimately -- when we finally get all of the discovery, we need
9 to identify every copyrighted work that was on the thousand
10 different copyrights at issue, be it the sound recording
11 copyright or the publishing copyright. We have gotten
12 discovery in this case and others up front saying, "Give us
13 every document that relates to the chain of title -- to your
14 chain of title or the validity to your chain of title to every
15 one of those copyrights."

16 Discovery also includes --

17 THE COURT: Well, wait a minute. What does chain of
18 title encompass after you've established -- are these
19 copyrighted works registered?

20 MR. MARENBERG: Yes.

21 THE COURT: So if you were to give them certificates
22 of registration, what remains within the purview of the dispute
23 suggested by the phrase chain of title? That you haven't
24 assigned it, is that it?

25 MR. MARENBERG: The argument that we have been faced

1 with is that our copyright registrations are only prima facie
2 evidence of validity in ownership and that they are entitled to
3 go behind those registrations and see for themselves whether
4 there is any defect in those chain of titles. And so, for
5 example, we get this document request for every contract, every
6 assignment that might be in that chain of title.

7 We also get document requests, "Tell us if anyone has
8 ever raised a claim in any case, whether it went to lawsuit or
9 not, as to the validity of your chain of title and produce
10 those to us."

11 And, obviously, when you are in a mass infringement
12 case, it's not like one work where you can say, "Here are the
13 chain of title documents. Have at it if you want."

14 This is an enormous burden to produce and ultimately
15 for no good reason, because let's assume -- and we don't even
16 know that this is the case, but let's assume of the thousand
17 works, there is a problem with one or two. That would not
18 materially affect the damage award in any of these cases, but
19 it does --

20 THE COURT: What evidence of ownership are you
21 prepared to provide right now?

22 MR. MARENBERG: Well, for those -- well, we will
23 provide them right now with the copyright of registrations,
24 which is a prima fascia ownership. We have done that in
25 MySpace and Grouper, we'll do it for Veoh. And we will also

1 identify, as we go along when we identify the works, the
2 registration numbers so they can see that there is a
3 registration for every work that we are claiming is infringed.

4 THE COURT: Is this contention on your part that
5 going beyond that should not be permitted, during at least the
6 first phase of discovery, something that has been addressed by
7 Judge Wistrich in any of these cases?

8 MR. MARENBERG: It is before him. He has not ruled.

9 But that is something that I raised in the first
10 round of motions that was filed and heard in October. And we
11 are waiting for a ruling on that so that -- and depending on
12 what the ruling is, we may bring that to you. And that's why
13 we averted to it here as an issue, but it's not really ready to
14 be teed up.

15 I suspect that it will get teed up before you in the
16 context of MySpace or Grouper, and then we obviously think that
17 however that comes out, we'd have to live with it in Veoh.

18 THE COURT: Yeah, well, I'm not going to preclude the
19 initiation of discovery at this phase in this case.

20 I'm not familiar with the facts and the issues to the
21 extent that I assume that Judge Wistrich is. And if the case
22 comes to me on review of any decision he makes, then it would
23 make sense to apply the same analysis and same conclusion to
24 this case, unless there are factors here that require something
25 materially different, and I doubt that.

1 But right now, the dates that I am going to set
2 contemplate that discovery will be, for lack of a better term,
3 reciprocal and without any preconceived or preliminary
4 limitations and restrictions. So we'll see what happens on the
5 other matter.

6 Now, before I recite the dates that I think should be
7 applied here, have you -- meaning both sides here -- discussed
8 coordinating any discovery in this case with the DivX matter?

9 MR. MARENBERG: No.

10 THE COURT: What's your preliminary view about that?
11 I'm just throwing it out on the table.

12 MR. MARENBERG: I would not coordinate anything on
13 this case with the DivX matter.

14 THE COURT: Because you are not going to be involved
15 with it?

16 MR. MARENBERG: I'm not involved in the DivX matter.
17 I'm not coming close to it.

18 THE COURT: Well, I have something under submission
19 on that, so I'll not go any further, but -- well, I'll stop
20 there.

21 What is this about suing the investors?

22 MR. MARENBERG: I don't know if you are familiar with
23 this, but in the Napster case, ultimately the investors in
24 Napster, such as --

25 THE COURT: Well, I'm familiar because of the --

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

EXHIBIT C

EXHIBIT C PAGE 44

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UMG RECORDINGS, INC., ET AL.,)
)
PLAINTIFFS,)
)
VS.) CASE CV 07-5744-AHM(AJWX)
)
)
VEOH NETWORKS, INC., ET AL.,) LOS ANGELES, CALIFORNIA
) AUGUST 25, 2008
) (10:07 A.M. TO 11:17 A.M.)
DEFENDANTS.)
_____)

HEARING
BEFORE THE HONORABLE ANDREW J. WISTRICH
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
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I N D E X

CASE NO. CV 07-5744-AHM(AJWX) AUGUST 25, 2008

PROCEEDINGS: PLAINTIFF'S MOTION TO COMPEL DISCOVERY
RESPONSES FROM VEOH
DEFENDANTS' MOTION TO COMPEL FURTHER RESPONSES
AND FOR PRODUCTION OF DOCUMENTS FROM
PLAINTIFFS.

1 LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 25, 2008; 10:07 A.M.

2 THE CLERK: THIS DISTRICT COURT IS NOW IN SESSION.

3 THE HONORABLE ANDREW J. WISTRICH PRESIDING.

4 PLEASE BE SEATED.

5 CALLING CV 07-5744-AHM(AJWX), UMG RECORDINGS,
6 INCORPORATED, ET AL. VERSUS VEOH NETWORKS, INCORPORATED.

7 COUNSEL, PLEASE MAKE YOUR APPEARANCES.

8 MR. LEDAHL: GOOD MORNING, YOUR HONOR.

9 BRIAN LEDAHL, STEVE MARENBERG AND ANJULI
10 MC REYNOLDS OF IRELL & MANELLA ON BEHALF OF THE PLAINTIFFS.

11 MR. LANE: GOOD MORNING, YOUR HONOR.

12 THOMAS LANE, REBECCA CALKINS AND JENNIFER
13 GOLINVEAUX ON BEHALF OF THE DEFENDANT.

14 THE COURT: GOOD MORNING.

15 SO, I WANT AN UPDATE, FIRST OF ALL, ON WHETHER
16 ANYTHING HAS HAPPENED WITH RESPECT TO THIS MOTION, JUST WHERE
17 THE CASE STANDS GENERALLY.

18 MAYBE I SHOULD ASK PLAINTIFF'S COUNSEL TO BEGIN
19 WITH THAT.

20 MR. LEDAHL: THANK YOU, YOUR HONOR.

21 I THINK UNTIL FRIDAY I WOULD SAY THERE WERE NO
22 DEVELOPMENTS FURTHER. ON FRIDAY WE RECEIVED THE FIRST
23 ADDITIONAL PRODUCTION OF ANY MATERIAL BEYOND WHAT'S
24 REFERENCED IN THE PAPERS THAT WERE SUBMITTED TO THE COURT.
25 WE RECEIVED APPROXIMATELY 23,000 ADDITIONAL PAGES OF

1 ME -- THE DEFENDANTS ARE UNDOUBTEDLY GOING TO TRY TO MAKE
2 VARIOUS ARGUMENTS ABOUT WHAT'S IN THIS VIDEO, ET CETERA. WE
3 NEED THE VIDEOS TO ADDRESS THAT.

4 WE ALSO HAVE AN ISSUE ABOUT PLAINTIFFS -- EXCUSE ME
5 -- PLAINTIFFS NEED TO IDENTIFY WHAT INFRINGING VIDEOS THERE
6 ARE AND DEFENDANTS' REPEATED REQUESTS FOR THAT INFORMATION.

7 WELL, ONE OF THE THINGS WE NEED TO BE ABLE TO LOOK
8 FOR THE SCOPE OF THE BREADTH OF INFRINGEMENT -- WE'VE
9 OBVIOUSLY IDENTIFIED SPECIFIC EXAMPLES. BUT TO COVER THE
10 FULL BREADTH OF WHAT'S INFRINGING ON THEIR SITE, WHICH IS
11 QUITE SUBSTANTIAL, WE NEED THE VIDEOS. WE NEED TO BE ABLE TO
12 LOOK AT THEM.

13 WE THINK THAT IT WOULD BE PRACTICALLY SPEAKING VERY
14 BENEFICIAL, FOR EXAMPLE, TO BE ABLE TO RUN AUTOMATED
15 TECHNOLOGY THAT MIGHT BE ABLE TO REVIEW THEM, TO ANALYZE THE
16 VIDEOS, TO HELP US IDENTIFY VIDEOS THAT MIGHT BE OF INTEREST.

17 WE NEED THE VIDEOS TO DO THAT. WE HAVEN'T -- I'VE
18 MADE THAT CLEAR TO COUNSEL. I'VE MADE CLEAR THAT WE WOULD BE
19 HAPPY TO DISCUSS SOME OF THESE ISSUES, BUT WE NEED TO BE ABLE
20 TO DO THINGS LIKE THAT. AND I'VE RECEIVED NO ASSURANCE THAT
21 ANY PROPOSAL THAT'S BEEN MADE WOULD ADDRESS THOSE.

22 THE COURT I'M SURE RECALLS THAT WE HAD SOME ISSUES
23 WITH ATTEMPTS TO OBTAIN ACCESS AS OPPOSED TO THE VIDEOS
24 THEMSELVES IN PRIOR CASES. AS THE COURT MIGHT IMAGINE, WE'RE
25 UNDERSTANDABLY WARY AS A RESULT OF THAT EXPERIENCE BECAUSE IT

EXHIBIT D

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ANDREW J. WISTRICH, MAGISTRATE JUDGE PRESIDING

UMG RECORDINGS, INC.,)
ET AL.,)
)
PLAINTIFFS,)
)
VS.)
)
MYSPACE, INC.,)
ET AL.)
)
DEFENDANTS.)
_____)

CASE NO. CV 06-07361-AHM(AJWX)

MOTION TO COMPEL
LOS ANGELES, CALIFORNIA
NOVEMBER 5, 2007

COURT DEPUTY/RECORDER: YSELA BENAVIDES
TRANSCRIBED BY: HUNTINGTON COURT REPORTERS
& TRANSCRIPTION INC.
1450 W. COLORADO BOULEVARD
SUITE 100
PASADENA, CALIFORNIA 91105
(626) 792-7250

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HONORABLE ANDREW J. WISTRICH, MAGISTRATE JUDGE PRESIDING

6 UMG RECORDINGS, INC.,)
ET AL.,)
7)
PLAINTIFFS,)
8) CASE NO. CV 06-06561-AHM(AJWX)
VS.)
9)
GROUPER NETWORKS, INC.,)
10 ET AL.)
11)
DEFENDANTS.)
_____)

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MOTION TO COMPEL
LOS ANGELES, CALIFORNIA
NOVEMBER 5, 2007

20 COURT DEPUTY/RECORDER: YSELA BENAVIDES
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1 APPEARANCES:
2 ON BEHALF OF THE PLAINTIFFS:
3 LAW OFFICE OF IRELL & MANELLA
4 BY: STEVEN A MARENBERG, ATTORNEY AT LAW
BENJAMIN GLATSTEIN, ATTORNEY AT LAW
Page 2

11 05 07 Court Hearing Transcript before wistrich.txt
1800 AVENUE OF THE STARS, SUITE 900
LOS ANGELES, CA 90067

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ON BEHALF OF MYSPACE AND NEWS CORP.:

O'MELVENY & MYERS
BY: DIANA TORRES, ATTORNEY AT LAW
MARCUS QUINTANILLA, ATTORNEY AT LAW
SHANNON KEAST, ATTORNEY AT LAW
400 S. HOPE STREET, 15TH FLOOR
LOS ANGELES, CA 90071

ON BEHALF OF CRACKLE INC., FORMERLY KNOWN AS GROUPER,
INC., AND SONY PICTURES ENTERTAINMENT, INC.:

GREENBERG & TRAUERIG
BY: JEFF E. SCOTT, ATTORNEY AT LAW
RICHARD K. WELSH, ATTORNEY AT LAW
2450 COLORADO AVENUE, SUITE 400E
SANTA MONICA, CA 90404

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1 LOS ANGELES, CALIFORNIA, MONDAY, NOVEMBER 5, 2007

2

3 THE CLERK: ALL RISE AND COME TO ORDER. THIS
4 UNITED STATES DISTRICT COURT IS NOW IN SESSION. THE
5 HONORABLE ANDREW J. WISTRICH PRESIDING.

6 PLEASE BE SEATED.

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11 05 07 Court Hearing Transcript before wistrich.txt
7 CALLING CV 06-7361-AHM(AJWX), UMG RECORDINGS,
8 INCORPORATED, ET AL. VERSUS MYSPACE, INCORPORATED, ET AL.
9 CV 06-6561-AHM(AJWX), UMG VERSUS GROUPER.
10 COUNSEL, PLEASE MAKE YOUR APPEARANCES FOR THE
11 RECORD.
12 MR. MARENBERG: GOOD AFTERNOON, YOUR HONOR.
13 STEVE MARENBERG FROM IRELL & MANELLA FOR THE
14 PLAINTIFFS. WITH ME IS MY COLLEAGUE, BENJAMIN GLATSTEIN.
15 MS. TORRES: GOOD AFTERNOON, YOUR HONOR.
16 DIANA TORRES, O'MELVENY & MYERS FOR MYSPACE,
17 INC. AND NEWS CORPORATION.
18 AND WITH ME ARE MARCUS QUINTANILLA AND SHANNON
19 KEAST.
20 MR. SCOTT: GOOD AFTERNOON, YOUR HONOR.
21 JEFF SCOTT AND RICHARD WELSH ON BEHALF OF
22 GROUPER, NOW KNOWN AS CRACKLE, AND SONY PICTURES
23 ENTERTAINMENT.
24 THE COURT: ALL RIGHT. HOW SHOULD WE PROCEED?
25 WHAT DO YOU WANT TO START WITH?

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1 MR. MARENBERG: I SUGGEST WE FIRST PROCEED BY
2 INDICATING TO YOU WHERE WE ARE ON THE MYSPACE -- EXCUSE
3 ME -- ON THE UMG VERSUS GROUPER/CRACKLE ACTION, AND WHERE
4 WE STAND ON -- BOTH, WHAT WE'VE BEEN ABLE TO RESOLVE, AND
5 WHAT WE --
6 THE COURT: OKAY.
7 MR. MARENBERG: -- ARE SUBMITTING TO YOU.
8 AND THEN WE CAN MOVE ON TO MYSPACE.
9 THE COURT: OKAY.

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13 MR. MARENBERG: FIRST OF ALL, WE'RE NOT
14 TALKING --
15 THE COURT: I -- I JUST WANTED TO KNOW.
16 MR. MARENBERG: RIGHT. TWO SEPARATE ISSUES,
17 THOUGH.
18 THE COURT: SO YOU HAVE IDENTIFIED SOME, BUT YOU
19 HAVEN'T PRODUCED EVEN AS TO THOSE? OKAY.
20 MR. MARENBERG: WELL, LET ME -- YOU NEED TO
21 BREAK IT UP.
22 WE HAVE PRODUCED -- THERE ARE 25 WORKS
23 IDENTIFIED IN THE COMPLAINT, WHICH WE'VE IDENTIFIED AS THE
24 BASIS FOR GOING FORWARD WITH THIS CASE.
25 WE HAVE OFFERED -- IN FACT, I THINK WE'VE

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1 PRODUCED, THE "CHAIN OF TITLE DOCUMENTS" AS TO THOSE.
2 WE'RE -- THE BASIC CHAIN OF TITLE DOCUMENT AS TO THOSE IS
3 THE RECORDING AGREEMENTS, OR THE PUBLISHING AGREEMENTS.
4 AND THEY'VE GOT THEM.
5 ALL RIGHT. THEN, THEIR --
6 THE COURT: IS THAT COMPLETE, BY THE WAY?
7 MR. MARENBERG: I THINK SO.
8 THE COURT: THE ONLY CHAIN OF TITLE DOCUMENTS AS
9 TO THOSE 25 WORKS --
10 MR. MARENBERG: WELL, YOU KNOW, THE OTHER CHAIN
11 OF TITLE DOCUMENTS, I SUPPOSE, COULD BE, TO THE EXTENT
12 THAT THESE RECORDING AGREEMENTS WERE ASSIGNED -- SIGNED BY
13 A PREDECESSOR OF UMG. IN OTHER WORDS, LET'S SAY POLYGRAM
14 RECORDS, WHICH WAS ACQUIRED BY SEAGRAM, WHICH THEN

15 11 05 07 Court Hearing Transcript before Wistrich.txt
COMBINED WITH UMG IN 2000.

16 THEN THERE'S PROBABLY AN ASSIGNMENT, OR SOME
17 SORT OF ACQUISITION DOCUMENT.

18 BUT THE MOST IMPORTANT DOCUMENT IN THE CHAIN OF
19 TITLE IS THE RECORDING AGREEMENT, WHICH GIVES US RIGHTS TO
20 THE COPYRIGHT.

21 NOW, THEN THERE WAS A -- WE TOOK A PERIOD OF
22 TIME WHERE WE ESSENTIALLY HAD HIRED PEOPLE -- NOT HIRED
23 PEOPLE -- WE ASKED PEOPLE TO SEARCH THE GROUPEE SITE, OR
24 SEARCH THE MYSPACE SITE FOR THIS LIST OF ARTISTS. IN
25 OTHER WORDS, TYPE IN U2, TYPE IN BLACK EYED PEAS, TYPE IN

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1 STING, AND SEE WHAT VIDEOS YOU GET, AND COPY THE VIDEOS.

2 AND THAT'S WHERE WE GET THE 900, OR THE 9,000.

3 AND THAT WAS FOR A LIMITED PERIOD OF TIME.

4 BUT WE DON'T HAVE THE ABILITY OURSELVES, EVER,
5 TO FIGURE OUT HOW MANY THERE ARE.

6 THE COURT: YEAH. BUT YOU KNOW 9,000 --

7 MR. MARENBERG: AND -- AND THAT'S WHY I'VE
8 SAID --

9 THE COURT: -- OR IS THAT FOR --

10 MR. MARENBERG: -- WE'VE AGREED --

11 THE COURT: -- FOR EXAMPLE?

12 MR. MARENBERG: AND THAT'S WHAT I'VE SAID WE ARE
13 AGREEING TO GIVE THEM TITLE OF WORK, ARTIST, THE URL,
14 BECAUSE WE -- WHERE WE HAVE THAT AVAILABLE TO US. THE URL
15 OF THE -- OF THE -- YOU KNOW, ON THE SITE OF THE -- AT THE
16 VIDEO -- THAT PLAYED THE VIDEO. AND WE'LL MATCH IT WITH
17 THE COPYRIGHT REGISTRATIONS. WE NEED SOME TIME TO DO IT.

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EXHIBIT

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