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 16 SHELTER CAPITAL PARTNERS, LLC and  
 17 SHELTER VENTURE FUND, L.P.  
 18 [OTHER COUNSEL LISTED ON SIGNATURE PAGES]

19 UNITED STATES DISTRICT COURT  
 20 CENTRAL DISTRICT OF CALIFORNIA  
 21 WESTERN DIVISION

22 UMG RECORDINGS INC. et al.,  
 23  
 24 Plaintiffs,  
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 26 v.  
 27 VEOH NETWORKS, INC. et al.,  
 28  
 29 Defendants.

Case No. CV07-5744 AHM (AJW<sub>x</sub>)  
**INVESTOR DEFENDANTS' EX  
 PARTE APPLICATION FOR  
 ORDER SHORTENING TIME  
 TO HEAR MOTION TO SEVER  
 AND STAY OR, IN THE  
 ALTERNATIVE, FOR STATUS  
 CONFERENCE;  
 MEMORANDUM OF POINTS  
 AND AUTHORITIES; BADAL  
 DECLARATION**

Date: December 15, 2008  
 Time: 10:00 a.m.  
 Trial Date: April 21, 2009

The Honorable A. Howard Matz

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Defendants Shelter Capital Partners, LLC,  
3 Shelter Venture Fund, L.P., Spark Capital, LLC, Spark Capital, L.P. and The  
4 Tornante Company, LLC (the “Investor Defendants”) hereby apply to this Court *ex*  
5 *parte*, pursuant to Local Rule 7-19, for an order expediting the hearing of Investor  
6 Defendants’ Motion to Sever and Stay (the “Motion”). Investor Defendants request  
7 that the Motion be heard on December 15, 2008; that Plaintiffs’ opposition to the  
8 Motion be filed and served no later than 5 p.m. December 5, 2008; and that  
9 Defendant Investors’ reply to the opposition be filed and served no later than 5p.m.  
10 December 9, 2008.

11 The Motion for which an expedited hearing is sought asks this Court to sever  
12 Investor Defendants from the above captioned case and stay the claims as they relate  
13 to the Investor Defendants. As grounds for this Motion, Investor Defendants submit  
14 that Plaintiffs did not move to add the Investor Defendants as parties until the last day  
15 available under the schedule and well after the Court scheduled the discovery  
16 deadlines and trial date in this matter. The Investor Defendants promptly moved to  
17 dismiss the First Amended Complaint as it relates to them. That motion is pending  
18 before this Court. Investor Defendants have not yet answered the First Amended  
19 Complaint, and under the existing schedule, the time to answer may not come due  
20 until after the close of fact discovery. Moreover, the close of discovery is rapidly  
21 approaching and Plaintiffs and Veoh have continued to engage in discovery since the  
22 Investor Defendants were added to the case, without Plaintiffs providing Investor  
23 Defendants with copies of discovery served both prior to and since the time they  
24 were added in the case and without meeting and conferring with Investor Defendants  
25 as to a deposition schedule.

26 In light of the impending close of the fact discovery deadline, the prejudice  
27 that will result to Investor Defendants if forced to continue on the current schedule,  
28 and potential waste of judicial and parties’ resources that may result if resolution of

1 the Motion is delayed, Investor Defendants ask this Court to hear their Motion on an  
2 expedited schedule.

3 Under Local Rule 6-1, the earliest date that Defendant Investors' current  
4 Motion would normally be heard by this Court is December 22, 2008 – only three  
5 weeks before the discovery cut-off date of January 12, 2009. For the reasons set  
6 forth above, Investor Defendants request that the hearing date on the Motion be  
7 moved forward one week to December 15, 2008, with Plaintiffs' opposition brief due  
8 December 5 at 5 p.m. (just one business day less than under a regular briefing  
9 schedule), and the Investor Defendants' reply brief due December 9 at 5 p.m.

10 Pursuant to Local Rule 7-19, Investor Defendants hereby notify the Court that  
11 the names and contact information of Plaintiffs' counsel are as follows: Brian D.  
12 Ledahl and Benjamin Glatstein, Irell & Manella LLP, 1800 Avenue of the Stars,  
13 Suite 900, Los Angeles, CA 90067; telephone (310) 277-1010; facsimile (310) 203-  
14 7199. As set forth in the Declaration of Robert Badal attached hereto, Plaintiffs'  
15 counsel was provided advance notice of the Investor Defendants' intention to bring  
16 this application by email on Monday, November 24, 2008 at 5:44 p.m. and again on  
17 Tuesday, November 25, 2008 at 10:06 a.m. See Declaration of Robert G. Badal ¶¶  
18 17, 19. Plaintiffs' counsel has not yet informed Investor Defendants' counsel  
19 whether Plaintiffs will oppose this application or not. *Id.* Additionally, counsel for  
20 the Investor Defendants provided Plaintiffs with a courtesy copy of this Application  
21 and filed the Motion on Wednesday, November 26, 2008.

22 In support of their application, Investor Defendants rely on this *Ex Parte*  
23 Application, the attached Memorandum of Points and Authorities, the attached  
24 Declaration of Robert G. Badal, the Motion, all other pleadings, papers, documents,  
25 and records on file with the Court, and any such other and further arguments and  
26 evidence as may properly be presented to the Court.

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December 1, 2008

Respectfully submitted,  
  
WILMER CUTLER PICKERING HALE &  
DORR LLP  
  
ORRICK HERRINGTON & SUTCLIFFE LLP

By  /s/ Robert G. Badal  
ROBERT G. BADAL

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

December 1, 2008

Respectfully submitted,  
  
KULIK, GOTTESMAN, MOUTON & SIEGEL,  
LLP

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

Attorneys for Defendant  
THE TORNANTE COMPANY LLC

December 1, 2008

Respectfully submitted,  
  
WILMER CUTLER PICKERING HALE AND  
DORR LLP

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 Investor Defendants have filed before this Court a Motion to Sever and Stay  
3 Or, In the Alternative, For Status Conference (hereafter “Motion”). By this  
4 application, Investor Defendants respectfully request that the hearing of this Motion,  
5 and related briefing, be expedited to resolve the issues in the Motion as promptly as  
6 possible and to prevent future harm and prejudice to Investor Defendants.

7 Investor Defendants’ ex parte application for an expedited briefing schedule is  
8 required in response to Plaintiffs’ late addition of Investor Defendants as parties, the  
9 rapidly approaching close of the fact discovery deadline, Plaintiffs’ refusal to provide  
10 Investor Defendants with copies of discovery served both prior to and after the filing  
11 of the First Amended Complaint, and Plaintiffs’ scheduling of discovery without  
12 Defendant Investors’ consent or participation. The late date upon which Investor  
13 Defendants were named as parties combined with Plaintiffs’ refusal to cooperate with  
14 Investor Defendants or include them in discovery in this case threaten Investor  
15 Defendants’ ability to meaningfully participate in discovery and to adequately  
16 prepare for depositions, other discovery, and trial. Under Local Rule 6-1, the earliest  
17 date that Defendant Investors’ current Motion would normally be heard by this Court  
18 is December 22, 2008 – only three weeks before the discovery cut-off date of January  
19 12, 2009.

20 Plaintiffs did not name Investor Defendants in their First Amended Complaint  
21 until the last day available under the schedule and well after the Court scheduled the  
22 discovery deadlines and trial date in this matter. Investor Defendants promptly  
23 moved to dismiss the claims under 12(b)(6) as they relate to them. That motion is  
24 pending. Moreover, from early September 2008 when Investor Defendants filed their  
25 notices of appearances shortly after being named parties, through mid-November  
26 2008, Investor Defendants made repeated requests that Plaintiffs provide copies of  
27 discovery served to date and participate in a meet and confer session regarding  
28 ongoing discovery in the case. Badal Decl., ¶¶ 3, 5, 7, 9, 12, 13. Plaintiffs have

1 repeatedly refused these requests. *Id.* ¶¶ 4, 6, 8, 14.

2 Investor Defendants will be irreparably prejudiced if Plaintiffs are permitted to  
3 continue discovery without providing Investor Defendants with copies of existing  
4 discovery and without meeting and conferring with Investor Defendants as to a  
5 deposition and discovery schedule that reflects their status as new parties to the  
6 litigation. For example, the Investor Defendants have not yet answered the First  
7 Amended Complaint, and if they were forced to continue under the existing schedule,  
8 their answer might not be due until after the close of fact discovery.

9 In light of the impending close of fact discovery deadline, the prejudice that  
10 will result to Investor Defendants if forced to continue on the current schedule, and  
11 potential waste of judicial and parties' resources that may result if resolution of the  
12 Motion is delayed, Investor Defendants ask this Court to hear their motion on an  
13 expedited schedule. Investor Defendants request that the hearing date on the Motion  
14 be moved forward one week to December 15, 2008 to prevent the continued  
15 prejudice Investor Defendants will suffer if not provided adequate time to participate  
16 in discovery and prepare for depositions. The issuance of an order to expedite is  
17 especially warranted in cases of "temporal urgency" such as this. *See Mission Power*  
18 *Eng'g Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

19 Plaintiffs will not suffer any prejudice in having the Motion heard and briefed  
20 on an expedited basis. Plaintiffs' counsel already has been made aware of the issues  
21 presented in Investor Defendants' Motion, and was provided a courtesy copy of this  
22 application on Wednesday, November 26, 2008. *See* Badal Decl. ¶¶ 15, 20.  
23 Moreover, under the briefing schedule set forth in the Proposed Order (filed  
24 concurrently herewith), Plaintiffs' counsel will have nine days to respond to the  
25 Motion (only one less business day than if the motion is heard on a regular calendar).

26 For all of the reasons stated above, Investor Defendants respectfully request  
27 that this Motion be heard on December 15, 2008; that Plaintiffs' opposition to the  
28 Motion be filed and served no later than 5 p.m. on December 5, 2008; and that

1 Defendant Investors' reply to the opposition be filed and served no later than 5 p.m.  
2 December 9, 2008.

3 December 1, 2008

Respectfully submitted,  
WILMER CUTLER PICKERING HALE &  
DORR LLP  
  
ORRICK HERRINGTON & SUTCLIFFE LLP

8 By /s/ Robert G. Badal  
ROBERT G. BADAL

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

12 December 1, 2008

Respectfully submitted,  
  
KULIK, GOTTESMAN, MOUTON & SIEGEL,  
LLP

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

Attorneys for Defendant  
THE TORNANTE COMPANY LLC

20 December 1, 2008

Respectfully submitted,  
  
WILMER CUTLER PICKERING HALE AND  
DORR LLP

25 By /s/ Maria Vento  
MARIA VENTO

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

1 I, Robert G. Badal, declare as follows:

2 1. I am an attorney at law duly licensed to practice before this Court and  
3 the courts of the State of California. I am a partner with the law firm of Wilmer,  
4 Cutler, Pickering, Hale, and Dorr LLP, counsel of record in this action for defendants  
5 Shelter Venture Fund, LP and Shelter Capital Partners, LLC (collectively, "Shelter").  
6 I have personal knowledge of the facts set forth below, and, if called as a witness, I  
7 could and would competently testify thereto.

8 2. On October 14, 2008, Benjamin Glatstein, counsel for Plaintiffs UMG  
9 Recordings, Inc. et al. ("Plaintiffs"), sent a letter to all defense counsel notifying  
10 them that Plaintiffs would be taking the deposition of third party Time Warner in  
11 New York on October 28, 2008. Shelter, Spark Capital LLC, Spark Capital LLP and  
12 The Tornante Company, LLC ("Investor Defendants") were not consulted in the  
13 scheduling of this deposition or formally served with a copy of the deposition  
14 subpoena. Attached hereto as Exhibit "A" is a true and correct copy of Mr.  
15 Glatstein's email attaching a letter from Brian Ledahl of October 14, 2008.

16 3. On October 23, 2008, I caused to be emailed a letter to Mr. Ledahl,  
17 another of Plaintiffs' counsel, and Jennifer Golvineaux, counsel for Defendant Veoh  
18 Networks, Inc. My letter addressed certain outstanding discovery matters including a  
19 request for copies of all discovery and documents produced in this action. Attached  
20 hereto as Exhibit "B" is a true and correct copy of the email and my letter of October  
21 23, 2008.

22 4. The following day, Mr. Ledahl emailed me a letter on October 24, 2008  
23 refusing my request. Attached hereto as Exhibit "C" is a true and correct copy of Mr.  
24 Ledahl's email and letter of October 24, 2008.

25 5. On October 29, 2008, I emailed a second letter to Mr. Ledahl renewing  
26 my request for copies of discovery. In addition, I also asked Mr. Ledahl to work with  
27 counsel for Investor Defendants to fashion a meaningful deposition and discovery  
28 schedule that took account of the fact that Investor Defendants had been named as



1 parties late in the case. Attached hereto as Exhibit “D” is a true and correct copy of  
2 my email and letter of October 29, 2008.

3 6. Mr. Ledahl emailed me a letter on November 3, 2008 rejecting my  
4 requests. Attached hereto as Exhibit “E” is a true and correct copy of Mr. Ledahl’s  
5 letter of November 3, 2008.

6 7. On November 7, 2008, I caused to be emailed a letter to Mr. Ledahl  
7 responding to his most recent correspondence and again renewing my requests for  
8 copies of discovery and a meeting to arrange a discovery and deposition schedule for  
9 the Investor Defendants. Attached hereto as Exhibit “F” is a true and correct copy of  
10 my letter to Mr. Ledahl of November 7, 2008.

11 8. On November 12, 2008, Mr. Ledahl informed me as well as other  
12 counsel for Investor Defendants that he disagreed with my letter of November 7,  
13 2008 and would later address those assertions. Attached hereto as Exhibit “G” is a  
14 true and correct copy of Mr. Ledahl’s email of November 12, 2008.

15 9. On November 17, 2008, I emailed Mr. Ledahl and asked for copies of  
16 discovery from Plaintiffs and Veoh. In addition, I again requested UMG and Investor  
17 Defendants agree to a deposition and discovery schedule that took account of the fact  
18 that Plaintiffs had added Investor Defendants late in the case. This email was also  
19 sent to Michael Elkin, counsel for Defendant Veoh Networks, Inc. Attached hereto  
20 as Exhibit “H” is a true and correct copy of my email of November 17, 2008.

21 10. Later that same day, Mr. Elkin informed me written copies of Veoh’s  
22 discovery had been provided and Veoh’s document production would be  
23 forthcoming. Attached hereto as Exhibit “I” is a true and correct copy of Mr. Elkin’s  
24 email of November 17, 2008.

25 11. On November 19, 2008, Mr. Ledahl informed me that based on Mr.  
26 Elkin’s email he assumed Investor Defendants had all the requested discovery. Mr.  
27 Ledahl did not address or even reference my previous requests for an agreed upon  
28 deposition and discovery schedule that would apply to the Investor Defendants.

1 Attached hereto as Exhibit “J” is a true and correct copy of Mr. Ledahl’s email of  
2 November 19, 2008.

3 12. On November 19, 2008, Annette Hurst, co-counsel, informed Mr.  
4 Ledahl he was mistaken, that Veoh had only provided copies of its own discovery,  
5 and that Plaintiffs were still obligated to provide copies of their discovery. Attached  
6 hereto as Exhibit “K” is a true and correct copy of Ms. Hurst’s email of November  
7 19, 2008, which was copied to my attention.

8 13. On this same date, I sent another email to Mr. Ledahl confirming Ms.  
9 Hurst’s email and stating that Plaintiffs still needed to produce copies of their own  
10 discovery. I also noted Mr. Ledahl had not responded to my previous requests to  
11 meet and agree to a deposition and discovery schedule with the Investor Defendants.  
12 Attached hereto as Exhibit “L” is a true and correct copy of my email of November  
13 19, 2008.

14 14. To the best of my knowledge, Plaintiffs recently produced documents to  
15 Veoh on or about September 30, 2008. Plaintiffs have not provided these documents  
16 to Shelter or to Defendants Spark Capital LLC, Spark Capital LLP and The Tornante  
17 Company, LLC; nor have Plaintiffs provided the Investor Defendants with Plaintiffs’  
18 June 30, 2008 document production, Plaintiffs’ written discovery to Veoh, Plaintiffs’  
19 written discovery responses, Time Warner’s third party documents, and Plaintiffs’  
20 written discovery to third parties and the third parties’ responses served prior to the  
21 date the First Amended Complaint was filed. In addition, Plaintiffs have not agreed  
22 to meet and coordinate a deposition and discovery schedule with the Investor  
23 Defendants.

24 15. On November 21, 2008, Annette Hurst, co-counsel for Shelter, sent an  
25 email to Mr. Ledahl requesting to meet and confer regarding the Investor Defendants’  
26 motion to sever and stay. Ms. Hurst also explained the basis for the motion.  
27 Attached hereto as Exhibit “M” is a true and correct copy of Ms. Hurst’s email of  
28 November 21, 2008, which was copied to my attention.

1           16. Ms. Hurst telephoned Mr. Ledahl on November 24, 2008 at  
2 approximately 1:00 p.m. and left him a voicemail requesting to meet and confer.  
3 Attached hereto as Exhibit “N” is a true and correct copy of Ms. Hurst’s email of  
4 November 24, 2008, which was copied to my attention.

5           17. On November 24, 2008 at 5:44 p.m., I emailed Mr. Ledahl to follow up  
6 on the meet and confer regarding the motion to sever and stay. In addition, I also  
7 informed Mr. Ledahl that Investor Defendants intended to also request the Court  
8 consider scheduling a status conference in the event the Court denies the motion to  
9 sever and stay. I further informed Mr. Ledahl that Investor Defendants intended to  
10 move ex parte to set a shorter briefing schedule. Attached hereto as Exhibit “O” is a  
11 true and correct copy of my email of November 24, 2008.

12           18. On November 25, 2008 at 12:01 a.m., Mr. Ledahl emailed me Plaintiffs  
13 would not stipulate to the motion to sever and stay their claims against the Investor  
14 Defendants. He also stated that he would be available on December 1, 2008 to  
15 discuss the possibility of a case management conference because “some adjustments  
16 to the schedule may be appropriate.” Attached hereto as Exhibit “P” is a true and  
17 correct copy of Mr. Ledahl’s email of November 25, 2008.

18           19. At 10:06 a.m. on November 25, 2008, I responded to Mr. Ledahl’s email  
19 asking him to propose a time for December 1, 2008 to schedule a conference call  
20 between counsel for Plaintiffs and the Investor Defendants. In addition, I also stated  
21 since Plaintiffs had not agreed to stipulate to the motion to sever and stay the action  
22 as to the Investor Defendants, Investor Defendants intended to seek an order  
23 shortening time to have the motion heard on December 15, 2008. I asked if Mr.  
24 Ledahl would agree to a proposed briefing schedule of December 5, 2008 for his  
25 clients’ opposition and December 9 for any reply brief. Attached hereto as Exhibit  
26 “Q” is a true and correct copy of my email of November 25, 2008. As of the date of  
27 this declaration, I have not yet heard back from Mr. Ledahl.

28           20. On November 26, 2008 at 4:33 p.m., Amanda Walker, on behalf of the

1 Investor Defendants, emailed a courtesy copy of the ex parte application to Plaintiffs'  
2 counsel.

3 I declare under the penalty of perjury under the laws of the United States of  
4 America that the foregoing is true and correct.

5 Executed this 1st day of December, 2008, at Los Angeles, California.

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/s/ Robert G. Badal

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ROBERT G. BADAL

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