

1 IRELL & MANELLA LLP
 Steven A. Marenberg (101033) (smarenberg@irell.com)
 2 Elliot Brown (150802) (ebrown@irell.com)
 Brian D. 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 UMG RECORDINGS, INC., *et al.*,
 12 Plaintiffs,
 13 vs.
 14 VEOH NETWORKS, INC., *et al.*,
 15 Defendants.

Case No. CV-07-05744 AHM (AJWx)

**UMG'S EX PARTE APPLICATION
 FOR ORDER CONTINUING
 HEARING ON VEOH'S MOTION
 FOR SUMMARY JUDGMENT TO
 APRIL 27, 2009**

- Filed Concurrently Herewith:**
- (1) **Declaration of Steve Marenberg in Support of *Ex Parte* Application;**
 - (2) **Declaration of Brian Ledahl in Support of *Ex Parte* Application;**
 - (3) **[Proposed] Order**

Judge: Hon. A. Howard Matz
 Date: TBD
 Time: TBD
 Ctrm: 14

Discovery Cutoff: April 13, 2009
 Pretrial Conference: July 13, 2009
 Trial Date: July 28, 2009

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

2 PLEASE TAKE NOTICE that pursuant to Local Rule 7-19, Plaintiffs UMG
3 Recordings, Inc., Universal Music Corp., Songs of Universal, Inc., Universal-
4 Polygram International Publishing, Inc., Rondor Music International, Inc., Universal
5 Music – MGB NA LLC, Universal Music – Z Tunes LLC, and Universal Music –
6 MBG Music Publishing Ltd., (collectively “UMG”) hereby apply to the Court *ex*
7 *parte* for an Order Continuing the Hearing on Veoh Networks, Inc.’s (“Veoh”)
8 Motion for Summary Judgment Re: Entitlement to Section 512(c) Safe Harbor (Dkt.
9 No. 336) (“Motion for Summary Judgment” or “Motion”) to April 27, 2009.

10 The basis for this *ex parte* is simple: UMG’s lead counsel, Steven Marenberg,
11 is unavailable April 13, 2009, the date for which Veoh noticed hearing on its Motion
12 for Summary Judgment. Mr. Marenberg is lead counsel on a separate matter, the
13 arbitration for which runs from April 14 to April 20, 2009, in New York, NY.
14 Declaration of Steven Marenberg (“Marenberg Decl.”) ¶ 4. Veoh’s Motion for
15 Summary Judgment presents significant issues relating to UMG’s claims against
16 Veoh, and, not unreasonably, UMG desires that its lead counsel argue its opposition
17 to Veoh’s Motion. UMG therefore requests that this Court continue hearing on
18 Veoh’s Motion to April 27, 2009, when Mr. Marenberg is available for argument.
19 This small continuance is consistent with the extended briefing schedule Veoh
20 requested – and to which UMG agreed – in connection with UMG’s previously filed
21 motion for summary judgment.

22 The name, address, and telephone number of counsel for all parties are as
23 follows:

24
25
26
27
28

1 Jennifer Golinveaux
2 WINSTON & STRAWN LLP
3 101 California Street
4 San Francisco, CA 94111-5894 Fax:
5 Telephone: (310) 586-7800
6 Facsimile: (310) 591-1400
7 Email: jgolinveaux@winston.com

8 Michael S. Elkin
9 Thomas P. Lane
10 WINSTON & STRAWN LLP
11 200 Park Avenue
12 New York, New York 10166
13 Telephone: (212) 294-6700
14 Facsimile: (212) 294-4700
15 Email: tlane@winston.com
16 Email: melkin@winston.com

17 Maria K. Vento
18 WILMER CUTLER PICKERING
19 HALE AND DORR LLP
20 1117 California Avenue
21 Palo Alto, CA 94304
22 Telephone: (650) 858-6000
23 Facsimile: (650) 858-6100
24 Email: maria.vento@wilmerhale.com

25 ///
26 ///
27 ///
28 ///

Rebecca Calkins
Erin Ranahan
WINSTON & STRAWN LLP
333 South Grand Avenue, 38th Floor
Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
Facsimile: (213) 615-1750
Email: rcalkins@winston.com
Email: eranahan@winston.com

Robert G. Badal
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 S. Grand Avenue, Suite 2100
Los Angeles, CA 90071
Telephone: (213) 443-5300
Facsimile: (213) 443-5400
Email: robert.badal@wilmerhale.com

Alisa S. Edelson
KULIK, GOTTESMAN, MOUTON &
SIEGEL, LLP
15303 Venture Boulevard, Suite 1400
Sherman Oaks, CA 91403
Telephone: (310) 557-9200
Facsimile: (310) 557-0224
Email: aedelson@kgmslaw.com

1 Counsel for all parties received notice of this *ex parte* application on March
2 17, 2009. Declaration of Brian Ledahl (“Ledahl Decl.”) ¶ 4 & Exhibit (“Ex.”) B.
3 Veoh intends to oppose UMG’s application. See Ledahl Decl. ¶ 4.

4
5 Dated: March 18, 2009

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

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

By: _____ /s
Brian Ledahl

Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Veoh noticed hearing on its Motion for Summary Judgment for April 13,
4 2009. It did so notwithstanding UMG’s informing Veoh – pre-filing – that April 13
5 was unworkable for UMG. UMG’s lead counsel, Steven Marenberg, has an
6 arbitration trial scheduled in New York City from April 14 through 20. Because
7 Veoh’s Motion presents significant issues relating to UMG’s claims, UMG desires
8 that Mr. Marenberg argue its opposition, something that is not possible given the
9 present hearing date. In addition, because Mr. Marenberg plays a key role in the
10 preparation and editing of UMG’s motion papers in this case, UMG also desires Mr.
11 Marenberg to be available to prepare and edit UMG’s opposition to Veoh’s Motion
12 for Summary Judgment, currently due on March 30, 2009, a date on which Mr.
13 Marenberg is scheduled to be in Wilmington, Delaware for a short trial on another
14 matter. Veoh’s noticed hearing date also denies UMG that opportunity. Having
15 been informed of these matters, Veoh will not agree to continue the hearing on its
16 Motion to accommodate UMG’s lead counsel’s existing scheduling conflicts. UMG
17 therefore requests that the Court grant this application and continue hearing on
18 Veoh’s Motion to April 27, 2009 and continue the date by which UMG must file its
19 opposition until April 6, 2009.

20 **II. EX PARTE RELIEF IS APPROPRIATE AND NECESSARY**

21 *Ex parte* relief is appropriate where the moving party seeks relief that cannot
22 be addressed by a regularly-noticed motion, and will face prejudice if its application
23 is denied, provided that the party is without fault in creating the problem at issue.
24 Here, UMG merely seeks to continue a motion for two weeks to permit its lead
25 counsel to appear in connection with the motion and to participate in the preparation
26 of its opposition papers. This matter could not be addressed by a regularly-noticed
27 motion consistent with the timing required under Local Rule 7. UMG attempted to
28 avoid this difficulty through discussions with counsel for Veoh before the motion

1 was filed, but Veoh chose to ignore UMG's requests regarding calendaring the
2 motion.

3 **A. UMG Will Face Unfair Prejudice If This Application Is Denied**

4 If Veoh's Motion goes forward on April 13, 2009 as noticed, UMG's lead
5 counsel will be unable to appear on UMG's behalf at the hearing. Veoh's Motion
6 for Summary Judgment seeks an order establishing its entitlement to the so-called
7 "safe harbor" provided under 17 U.S.C. § 512(c). Veoh's Motion argues that it
8 should be exempt from all damages for its extensive infringement of UMG's
9 copyrights.

10 These are – without dispute by either party – significant issues. It is therefore
11 important that UMG's lead counsel – hired by UMG to address precisely such issues
12 – be permitted to argue UMG's opposition to Veoh's Motion. Veoh's proposed
13 hearing date denies Mr. Marenberg that opportunity. Mr. Marenberg is lead counsel
14 in an unrelated arbitration proceeding scheduled between April 14 and April 20,
15 2009 in New York City. *See* Marenberg Decl. ¶ 4. This arbitration proceeding
16 prevents Mr. Marenberg from appearing before this Court (in Los Angeles) on April
17 13, 2009. *See id.*

18 **B. Veoh Created This Problem Despite UMG's Efforts**

19 Veoh purported to confer with UMG about scheduling before filing its motion
20 but then ignored UMG's indication that April 13 and 20 were unworkable hearing
21 dates. On Monday, March 9, and Tuesday, March 10, 2009, UMG and Veoh
22 discussed the briefing schedule for Veoh's then-unfiled Motion for Summary
23 Judgment. *See* Ledahl Decl. ¶¶ 2-3. Veoh initially proposed noticing its motion for
24 April 20, 2009. *Id.*, Ex. A (3/9/2009 email from J. Golinveaux). UMG informed
25 Veoh that this date was unworkable because of Mr. Marenberg's trial obligations.
26 *See id.* ¶ 3; *see also* Marenberg Decl. ¶ 4. Veoh briefly raised the possibility of an
27 April 13 hearing date, which UMG indicated was also unworkable. UMG proposed
28 to Veoh a particular briefing schedule with an April 27 hearing date to

1 accommodate Mr. Marenberg's schedule. UMG also pointed out that Mr.
2 Marenberg had a separate trial conflict on March 30 and 31 and consequently sought
3 to insure that UMG's responsive brief would not be due during that short interval.
4 *See* Ledahl Decl. ¶ 3; *see also* Marenberg Decl. ¶ 3. Veoh agreed to consider
5 UMG's proposal and get back to UMG regarding its proposed schedule. *See* Ledahl
6 Decl. ¶ 3. Instead, Veoh filed its Motion, noticing it for an even earlier hearing date
7 than they had initially proposed – April 13 – a date UMG had expressly
8 communicated was not workable (and which would place UMG's response brief due
9 precisely during Mr. Marenberg's other trial proceeding). UMG requested that Veoh
10 re-notice hearing on its Motion for April 27, but Veoh declined to do so. *See id.* ¶ 4.

11 Veoh refuses to reschedule its motion for a hearing only one week after the
12 hearing date Veoh itself initially proposed in discussions with UMG. Moreover,
13 Veoh's conduct stands in stark contrast to the accommodations Veoh sought, and
14 UMG provided, to Veoh when UMG moved for summary judgment in September
15 2008. Then, Veoh requested nearly four weeks to prepare its response to UMG's
16 motion. *See* Ledahl Decl. ¶ 5. Veoh's stated reason for needing this long briefing
17 schedule was to accommodate the plans of one of its attorneys, Jennifer Golinveaux
18 (not its lead counsel), to be out of the office for a week to celebrate her 40th
19 birthday. *See id.* UMG accommodated this request and calendared its motion
20 accordingly. Veoh's refusal to accommodate the scheduling conflicts of UMG's lead
21 counsel is entirely unjustified. Veoh has never provided any reason for its refusal to
22 calendar its motion for April 27 except that Veoh does not want to. Ledahl Decl.
23 ¶ 4. Veoh has not (and cannot) identify any prejudice it would suffer from the two-
24 week adjustment (only one week from Veoh's initial scheduling proposal) sought by
25 this application.

26
27
28

1 **III. CONCLUSION**

2 For the foregoing reasons, UMG requests that this Court continue hearing on
3 Veoh's Motion for Summary Judgment to April 27, 2009.

4
5 Dated: March 18, 2009

Respectfully submitted,

6 IRELL & MANELLA LLP
7 Steven A. Marenberg
8 Elliot Brown
9 Brian D. Ledahl
10 Benjamin Glatstein

11 By: _____/s

Brian D. Ledahl
Attorneys for Plaintiffs

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28