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15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 UMG RECORDINGS, INC., *et al.* )  
18 Plaintiffs, )  
19 v. )  
20 )  
21 VEOH NETWORKS, INC, *et al.* )  
22 Defendants. )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

**Case No. CV 07 5744 – AHM (AJWx)**  
**VEOH’S REPLY IN SUPPORT OF ITS MOTION TO COMPEL UMG TO PRODUCE CHAIN OF TITLE DOCUMENTS FOR THE REMAINING 80% OF IDENTIFIED COPYRIGHTS BASED ON DEFECTS ADMITTED BY UMG, OR ALTERNATIVELY, EXTENDING VEOH’S DEADLINE TO COMPLETE ITS ANALYSIS OF THE 20% SAMPLE OF CHAIN OF TITLE DOCUMENTS**

Judge: Andrew J. Wistrich  
Discovery Cut-off: May 11, 2009  
Pretrial Conference: August 8, 2009  
Trial Date: August 18, 2009

Complaint Filed: September 4, 2007

LA:244905.2

1 **I. INTRODUCTION**

2 The purpose of UMG producing the 20% sample chain of title documents was  
3 to discover whether there were enough ownership defects within the 20% sample of  
4 allegedly infringing works to warrant full production. UMG does not dispute that the  
5 20% sample included ownership defects reducing potential statutory damages against  
6 Veoh by millions and millions of dollars. In fact, these defects were conceded by  
7 UMG. Remarkably, even though the production of the 20% sample has resulted in the  
8 significant reduction of potential statutory damages, UMG now asks this Court to  
9 ignore and somehow immunize from consideration UMG’s own admitted defects—  
10 which to date demonstrate that at least 13% of the sample 20% is defective—though it  
11 is apparent from the specific withdrawals UMG has made that it was the 20% sample  
12 collection and production that brought such defects to light.

13 Since Veoh filed its motion, UMG has continued to withdraw works within the  
14 20% sample. Specifically, on May 11, 2009, UMG “amended” its list of  
15 infringements. Though UMG did not provide a cover letter to specifically notify  
16 Veoh of any withdrawals like it did on April 22, 2009, UMG’s further amended list of  
17 alleged infringements demonstrates that UMG has now withdrawn eight additional  
18 works from the 20% sample. With these eight additional withdrawals from the 20%,  
19 UMG has now identified defects in at least 32 of the 241 works. In other words,  
20 before Veoh had the opportunity to complete its analysis of the 20% sample, UMG  
21 admitted that at least 13% of those 20% sample works are defective. UMG’s own  
22 admitted defects have reduced Veoh’s potential damages to a staggering degree, by  
23 more than ten million dollars. Veoh should have the opportunity to review all of the  
24 chain of title documents to locate additional defects that will likely result in the  
25 reduction of millions and millions more in potential statutory damages.

26 UMG does not dispute that the withdrawals it has made result in the reduction  
27 of potential statutory damages by millions and millions of dollars. UMG does not  
28 bother to explain why over 60% of the deficiencies identified in its April 22, 2009

1 letter are works within the 20% sample identified by Veoh. UMG does not bother to  
2 explain the suspect timing of such disclosure, coming four months from the time  
3 UMG identified the infringements, and the night before Veoh's analysis was due  
4 under the prior order, to inform Veoh of these defects. UMG does not bother to  
5 mention that on May 11, 2009, the day prior to filing its opposition, UMG withdrew  
6 additional works from the 20% sample. UMG's opposition fails to explain any of this  
7 for good reason—such explanations would simply confirm that the serious defects and  
8 errors in UMG's own identification of defects within the 20% sample warrant  
9 complete production of UMG's chain of title documents for alleged infringements in  
10 this action.

11 If the Court is not already inclined to order production of the remaining chain of  
12 title documents based on the significant defects identified by UMG, Veoh should be  
13 entitled to a full 20% sample from UMG based on UMG's amended list of  
14 infringements, and thirty days to complete such review based on the numerous  
15 amendments, errors, a belated productions that have prevented Veoh from completing  
16 its review. Veoh recently learned that UMG produced certain chain of title documents  
17 for the sample 20% two weeks after its deadline and a day before Veoh's analysis was  
18 due.<sup>1</sup> Further, on May 11, 2009, UMG added 321 new copyrights to this action (and  
19 thousands and thousands of additional instances of alleged infringements). Thus, a  
20 larger sample is now needed to constitute a full 20% sample. As the March 5, 2009  
21 Order allowed Veoh to analyze a full 20%, and UMG has taken it upon itself to  
22 preempt Veoh's discovery of the defects within at least 32 of the 241 sample works,  
23 UMG must at the very least be ordered to provide a full 20% sample of the alleged  
24 infringements in this case, as contemplated by the Court's March 5, 2009 Order, and

25  
26 <sup>1</sup> Notably, UMG does not even respond in its opposition to Veoh's request (in its  
27 motion) that if the Court requires further analysis by Veoh before deciding whether to  
28 order complete production of the chain of title documents, UMG at least be required  
to produce chain of title documents to replace the withdrawals. UMG also has refused  
to provide sample works for a complete 20% now that the number of alleged  
infringements has expanded.

1 an adequate opportunity to complete such production.

2 **II. COMPLETE PRODUCTION OF CHAIN OF TITLE DOCUMENTS**  
3 **SHOULD BE ORDERED**

4 UMG has brought a massive infringement action against Veoh seeking tens of  
5 millions of dollars in statutory damages. Veoh has gone through extensive motion  
6 practice to compel production of UMG's ownership documents. (*See* Docket Nos.  
7 194, 222, 321). The Court found a 20% sample production warranted so that the  
8 parties and/or the Court (if necessary) could determine whether there were enough  
9 errors within the 20% sample to indicate that the remainder of the production should  
10 be made. (Docket 321). The 20% sample has revealed sufficient defects that the  
11 remainder of the production is undoubtedly warranted. Accordingly, any burden<sup>2</sup>  
12 encountered by UMG through its producing documents to demonstrate that it actually  
13 owns the rights to the alleged infringements for which it seeks to collect massive  
14 statutory damages from Veoh, is outweighed by the benefit to Veoh, which is likely to  
15 result in an even greater reduction in potential statutory damages.

16 The act of UMG searching for and collecting documents to produce for the  
17 sample 20% resulted in UMG locating such significant defects in 13% of those works  
18 that UMG withdrew such works without challenge. While there may be further  
19 defects within the 20% – *indisputably, through UMG's own admissions, 32 of the 241*  
20 *works within the sample 20% are defective.* Based on the outcome of production of  
21 the 20% sample, Veoh expects that UMG will itself withdraw additional  
22 infringements if it is ordered to provide documents to prove its rights to the remainder  
23 of the works, which alone is enough to justify the additional production.<sup>3</sup> Regardless

24 <sup>2</sup> While UMG continues to complain of a "massive" burden, this burden now has to be  
25 weighed against prism of the over ten million dollar reduction in statutory damages  
though the 20% sample, before Veoh has even completed its analysis.

26 <sup>3</sup> UMG's suggestion that a 2008 amendment to Section 17 U.S.C. § 411(b)(1)(A)  
27 somehow is relevant to this motion is a red herring. As UMG has admitted, this  
28 amendment impacts a situation where an "inaccurate registration information will not  
bar a plaintiff from enforcing a copyright unless the error was intentional and would  
have, . . . caused the registration to be refused.") (Docket 246, p. 14:25-15:1).

1 of whether UMG or Veoh was the first to locate the defects, the disproportionate  
2 number of defects located within the 20% warrants the complete production.<sup>4</sup>

3 There will be no impact on the current case schedule if UMG is simply ordered  
4 to promptly make a complete production of its chain of title documents. UMG's  
5 suggestion that Veoh is to blame for any scheduling issues relating to this production  
6 ignores that UMG delayed more than a year into this lawsuit before identifying any  
7 infringements, requiring Veoh to engage in extensive motion practice.<sup>5</sup> Then, UMG  
8 waited over four months from the time it finally identified its alleged infringements to  
9 inform Veoh that at least forty of those alleged infringements were improper and  
10 several others had been misidentified. UMG continued to withdraw additional alleged  
11 infringements on May 11, 2009. Finally, though Veoh provided Audible Magic  
12 metadata on February 24, 2009 (which was UMG's latest excuse for failing to  
13 complete its identifications of alleged infringements), UMG did not identify a single  
14 additional alleged infringement until nearly three months later, on May 11, 2009.

15  
16 Whether there were inadvertent errors made to the Copyright Office with respect to  
17 such registrations is not the type of defect this chain of title production is designed to  
18 locate—which thus far has turned up errors within 13% of the 20% that even UMG  
19 concedes no longer permits it to claim such alleged infringements in this action,  
20 regardless of what is stated on the copyright registration certificates.

21 <sup>4</sup> Offering even further confirmation that UMG's withdrawals were due to the  
22 collection and review of the 20% sample, beyond the over 60% coming directly from  
23 the sample 20%, related works withdrawn outside the 20% were also withdrawn by  
24 UMG, most likely as a result of the defects identified in the process of collecting and  
25 producing chain of title documents for the 20%. For example, Veoh has recently  
26 discovered that within the sixteen withdrawals made by UMG on April 22, 2009 that  
27 fell outside the 20% sample, four were by the same artists (R. Kelly and Frankie Goes  
28 to Hollywood) for which UMG withdrew works within the 20%. In other words, four  
out of the sixteen withdrawals outside the 20% sample were likely discovered by  
locating defects within the works identified by Veoh in the 20% sample. UMG only  
located such defects by conducting whatever additional diligence was done with  
respect to the 20% – not because UMG has conducted complete diligence across all of  
the alleged infringements.

<sup>5</sup> Further, Veoh moved to compel this information in October 2008. (Docket 194).  
Veoh's renewed motion to compel chain of title information from Plaintiffs was heard  
on December 17, 2008 (*See* Docket 285), but the Court did not enter its Order on this  
matter until March 5, 2009. (Docket 321). Pursuant to this Order, UMG's production  
was due on April 9, 2009, though UMG continued to supplement such production  
through at least April 22, 2009. Such delays can hardly be attributed to Veoh.

1 Now, UMG would like this Court and Veoh to take UMG at its word that it has the  
2 rights it claims, when UMG's past admissions have shown that UMG's system for  
3 identifying its alleged infringements is seriously flawed. For all the foregoing  
4 reasons, this Court should order complete production of the chain of title documents  
5 for the works at issue in this action.

6 **III. ALTERNATIVELY, GIVEN UMG'S WITHDRAWALS AND**  
7 **AMENDMENTS, VEOH SHOULD BE ENTITLED THIRTY DAYS TO**  
8 **REVIEW A FULL 20% SAMPLE**

9 If the Court does not consider the significant defects UMG identified as  
10 sufficient to warrant the production of UMG's chain of title/rights information for the  
11 remainder of UMG's allegedly infringing works, UMG should at the very least be  
12 ordered to immediately produce chain of title/rights information for a full 20% based  
13 on the number of the alleged infringements identified by UMG's amended list of  
14 infringements on May 11, 2009, including thirty-two new replacement works for the  
15 withdrawals made by UMG within the 20%, upon selection by Veoh. Clearly with  
16 UMG having already identified defects of at least 13% of the 20% sample, the most  
17 obvious defects within the 20% have most likely been identified by UMG. If Veoh  
18 had the opportunity to complete its review before UMG withdrew any works, Veoh  
19 would have inevitably located such defects and used such defects to justify complete  
20 chain of title production. Veoh must either be able to use such defects to confirm that  
21 further production is warranted, or be entitled to review a full 20% sample to be  
22 identified by Veoh before such determination is made.

23 **IV. DESPITE UMG'S NUMEROUS AND BELATED AMENDMENTS,**  
24 **CORRECTIONS, AND OTHER DELAYS, VEOH HAS DEVOTED**  
25 **CONSIDERABLE RESOURCES AND CONTINUES TO WORK**  
26 **DILIGENTLY TO REVIEW THE CHAIN OF TITLE DOCUMENTS**

27 UMG's numerous amendments, withdrawals, corrections, electronic errors, and  
28 belated supplemental productions have made the review of the sample 20% not only

1 challenging and expensive, but impossible to complete within the deadline  
2 contemplated by the March 5, 2009 Order. Veoh just recently discovered that UMG  
3 produced chain of title documents for some of the works within the 20% on April 22,  
4 2009, the day before Veoh's analysis was due, despite the fact that such documents  
5 were due on April 9, 2009 per the Court's March 5, 2009 Order. (Supp. Ranahan Decl.  
6 ¶ 2).

7 UMG's April 9, 2009 production constituted approximately 100,000 pages in a  
8 disorganized and haphazard manner, and Veoh has been forced to devote considerable  
9 resources over the past thirty days organizing, and reorganizing the documents so that  
10 they are in an efficient and manageable order before the actual analysis takes place.  
11 UMG's baseless assertions that Veoh has not undertaken review of (what's left of) the  
12 20% sample are in direct contravention to what Veoh's counsel has explained to  
13 UMG's counsel during meet and confer discussions and related correspondence—  
14 Veoh has devoted and continues to devote extensive resources to organizing and  
15 reviewing the 100,000 pages, in addition to locating additional relevant pieces of  
16 evidence buried within UMG's over 1.6 million page production, and preparing for  
17 analysis of what is left of the 20% sample. *Id.* at ¶ 3. Veoh would likewise do the  
18 same for the remaining documents if complete production was ordered, as the  
19 potential reduction in statutory damages makes such review and analysis worth the  
20 considerable effort.

21 UMG has not explained any rationale reason why Veoh should not be afforded  
22 thirty days to complete its analysis considering the many roadblocks to completing its  
23 analysis sooner, especially considering how long it took UMG to notice its own  
24 defects, and the contributions UMG has made to the delay. Veoh should be provided  
25 this additional, reasonable time. Unlike Plaintiffs, Veoh has never sought any  
26 extension to the case schedule, and production of chain of title will not interfere with  
27 other case deadlines.

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**V. CONCLUSION**

Veoh respectfully requests that, as a result of the significant defects UMG has acknowledged exist within what once was 20% of the sample works, UMG be ordered to produce chain of title/rights information for the remaining 80% alleged infringements in this action. Alternatively, UMG should be ordered to produce chain of title/rights information for a *full* 20% sample after UMG's recent additional alleged infringements and withdrawals. Upon such production, Veoh should be provided thirty additional days to review a full 20% sample in order to complete its review/analysis, which is necessitated as a result of UMG's numerous amendments, withdrawals and corrections to its disorganized and belated production.

Dated: May 15, 2009

**WINSTON & STRAWN LLP**

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