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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

UMG RECORDINGS, INC., *et al.*,  
 Plaintiffs,  
 vs.  
 VEOH NETWORKS, INC., *et al.*,  
 Defendants.

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

**UMG’S SURREPLY IN  
 OPPOSITION TO VEOH’S  
 MOTION TO COMPEL THE  
 PRODUCTION OF ADDITIONAL  
 CHAIN-OF-TITLE DOCUMENTS,  
 OR ALTERNATIVELY TO  
 EXTEND VEOH’S DEADLINE TO  
 COMPLETE ITS REVIEW OF  
 UMG’S CHAIN-OF-TITLE  
 DOCUMENTS**

**Filed Concurrently Herewith:  
 Supplemental Declaration of Carter  
 Batsell**

Judge: Hon. Andrew J. Wistrich

Discovery Cutoff: May 4, 2009  
 Pretrial Conference: August 3, 2009  
 Trial Date: August 18, 2009

1 **I. INTRODUCTION**

2 Veoh’s latest brief rehashes its demand for so-called “chain-of-title”  
3 documents for all copyrighted works at issue. In support of this demand, Veoh’s  
4 Reply – like its other papers – identifies no “chain-of-title” document produced by  
5 UMG that purportedly supports Veoh’s defenses. Nor does it identify a single  
6 defect in UMG’s ownership of copyrights contained in Veoh’s sample of works—  
7 despite Veoh’s having and allegedly reviewing UMG’s production of “chain-of-  
8 title” documents for over a month. Nor does Veoh’s Reply even indicate how Veoh  
9 intends to use the documents already produced by UMG, or the mountain of  
10 additional documents it seeks, to rebut liability for its massive infringement of  
11 UMG’s copyrights. All Veoh points to in support of its demand are UMG’s good  
12 faith, limited corrections to a list of thousands of works infringed by Veoh. UMG’s  
13 honesty and diligence is no basis for ordering the burdensome production sought by  
14 Veoh, and the Court should therefore deny Veoh’s motion.

15 Alternatively, Veoh’s Reply seeks production of “chain-of-title” documents  
16 for a 20% sample of the thousands of additional infringed works identified by UMG  
17 through its review of Audible Magic metadata. Veoh has known since at least April  
18 7, 2009 that UMG would identify additional infringements based on Audible Magic  
19 metadata. It could have previously raised this “alternative” relief with the Court—  
20 including in its opening brief. It did not. Instead, it waited until now to request  
21 these documents, the location, production, and review of which will threaten the  
22 current case schedule. Further, Veoh’s request is no “alternative.” Veoh’s  
23 discovery conduct confirms that, even if it receives “chain-of-title” documents for a  
24 20% sample of the Audible Magic-identified infringed works, Veoh will simply  
25 return to the Court at a later date seeking production of “chain-of-title” documents  
26 for all works at issue. Given Veoh’s inability to dispute the burden to UMG of  
27 producing these documents; Veoh’s inability to identify a single defect in UMG’s  
28 ownership of copyrights identified in Veoh’s original sample; and the conflict this

1 production poses to the current case schedule, the Court should likewise reject this  
2 alternative.<sup>1</sup>

3 **II. VEOH FURTHER MISREPRESENTS THE FACTUAL RECORD**

4 As with Veoh’s opening brief, so here: Veoh further distorts the factual record  
5 to get what it wants. Veoh claims to have “learned that UMG produced certain  
6 chain of title documents for the sample 20% two weeks after its deadline and a day  
7 before Veoh’s analysis was due.” Reply at 2:16-18. This is a deliberate  
8 misrepresentation. On April 22nd, UMG produced documents Bates stamped  
9 UMG01704657-UMG01706993. Supplemental Declaration of Carter Batsell  
10 (“Supp. Batsell Decl.”) at ¶ 2. This production contained financial documents  
11 regarding the works at issue and comprehensive financial statements for UMG. *Id.*  
12 There is not a single “chain-of-title” document in this production, *id.*, and thus no  
13 “belated production” of “chain-of-title documents” relating to the sample works  
14 slowed Veoh’s review.

15 This misrepresentation aside, Veoh’s Reply nowhere rebuts UMG’s  
16 correction of inaccuracies put forward in Veoh’s opening brief. For example, UMG  
17 noted the sensible organization of its production of “chain-of-title” documents,  
18 which was neither “disorganized” nor “haphazard” as Veoh claimed. Opp. at 4:6-  
19 28. Veoh’s Reply nowhere disputes this fact. Responding to Veoh’s claim that a  
20 limited number of typographical errors “caused [it] to waste significant resources  
21 searching for copyright registrations that were apparently erroneous,” UMG noted  
22 that it corrected registration number typos as to just two works in Veoh’s sample,  
23 works for which UMG had correctly identified the registration numbers elsewhere  
24 in its list of infringements. Opp. at 5 n.2. Again, Veoh nowhere disputes this fact.  
25 Further, UMG noted that a minor, technical glitch regarding document metadata did

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27 <sup>1</sup> Veoh also seeks “thirty days to complete its analysis” of the “chain-of-title”  
28 documents produced by UMG. Reply at 6:21-24. As UMG explained in its  
opposition, this request is moot: Veoh has already had *forty* days to review these  
documents.

1 not impede Veoh’s review of the documents in UMG’s “chain-of-title” production,  
2 Veoh’s claim to the contrary notwithstanding, *see* Opp. at 5:1-12. Again, Veoh does  
3 not dispute this correction. In sum, Veoh’s Reply effectively concedes that multiple  
4 grounds for its requested relief simply were not true. Like Veoh’s latest false claim  
5 of a “belated chain-of-title production,” these were misleading distractions set forth  
6 to justify the imposition of an undue burden on UMG.

7 **III. VEOH’S REQUESTED RELIEF REMAINS INCOMPATIBLE WITH**  
8 **THE CURRENT CASE SCHEDULE**

9 UMG’s Opposition explained why the massive document production sought  
10 by Veoh is unduly burdensome<sup>2</sup> and incompatible with the current case schedule.  
11 Opp. at 8:1-8, 10:3-6. Veoh does not rebut these arguments, except to say that  
12 “[t]here will be no impact on the current case schedule if UMG is simply ordered to  
13 promptly make a complete production of its chain of title documents.” Reply at 4:3-  
14 4. This is no answer. Veoh has infringed thousands of UMG’s copyrights; UMG’s  
15 Opposition and the accompanying Declaration of Michael Ostroff detailed the  
16 expense and burden of producing “chain-of-title” documents for all of these works.  
17 *See* Opp. 7:5-26. UMG’s papers clearly articulate why locating, reviewing, and  
18 producing chain-of-title documents for all the works at issue is extremely  
19 burdensome and infeasible within the current schedule.

20 Veoh’s alleged intention to review these documents is equally untenable,  
21 given the current schedule. Through its current motion, Veoh seeks more than thirty  
22 days to review the chain-of-title documents already produced for the sample of  
23 works; those works alone generated almost 100,000 pages of “chain-of-title”  
24 documents. Veoh nowhere explains how it will review the universe of chain-of-title  
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26 <sup>2</sup> Veoh argues that this burden “has to be weighed against the prism of the  
27 over ten million dollar reduction in statutory damages though [sic] the 20% sample .  
28 . . .” Veoh’s “ten million dollar reduction” claim is in stark contrast to its recently  
submitted expert report, which advocates the award of minimum statutory damages  
– \$750 – for each work infringed by Veoh.

1 documents, or even chain-of-title documents pertaining to a 20% sample of the  
2 Audible Magic-identified infringements, within the current schedule.

3 Unable to meaningfully dispute this scheduling conflict, Veoh blames the  
4 impasse on UMG, alleging that “UMG delayed more than a year into this lawsuit  
5 before identifying any infringements, requiring Veoh to engage in extensive motion  
6 practice.”<sup>3</sup> Reply at 4:6-7. Veoh claims to have “moved to compel this information  
7 in October 2008.” *Id.* at 4 n.5. Veoh did move to compel this information in  
8 October 2008 (its second motion to compel on this issue)—improperly. The Court  
9 rejected Veoh’s motion, noting that “it [was] unclear whether Veoh [was] essentially  
10 attempting to compel a response to the interrogatory it served on October 24, 2008.”  
11 November 21, 2008 Order (Docket No. 219). That was precisely what Veoh had  
12 done. UMG timely identified infringements in response to the interrogatory Veoh  
13 served in October 2008, without any attendant motion practice. Thus, any delay is  
14 attributable to Veoh, who did not propound its discovery request until “more than a  
15 year into this lawsuit,” and who persisted in bringing motions to compel “chain-of-  
16 title” discovery rejected as insufficient by this Court. *See* Opp. at 10 n.5.

17 **IV. UMG’S GOOD FAITH AND DILIGENCE REMAIN VEOH’S SOLE**  
18 **BASIS FOR COMPELLING A MASSIVELY BURDENSOME**  
19 **PRODUCTION**

20 UMG’s Opposition explained that Veoh must come forward with something  
21 more than UMG’s honesty and diligence to warrant the burdensome production it  
22 would impose on UMG. Opp. at 8:10-9:17. Despite having UMG’s production of  
23 “chain-of-title” documents for forty days, and despite demanding that UMG produce  
24

25 <sup>3</sup> Veoh also complains that UMG did not identify infringements based on  
26 Audible Magic metadata until May 11, 2009, engendering further delay. Again, any  
27 delay is attributable to Veoh’s conduct. Veoh did not provide UMG with Audible  
28 Magic metadata until almost March. The data set was massive, and UMG  
ultimately located over 5,000 additional infringing videos based on this information.  
Supp. Batsell Decl. at ¶ 3. UMG timely identified these videos on May 11th, the  
deadline set by this Court. *See* April 6, 2009 Order (Docket No. 400).

1 “chain-of-title” documents for all of the thousands of works at issue, Veoh still has  
2 not indicated how it intends to use these documents to rebut liability for its massive  
3 infringement. Nor has Veoh identified a single defect in the infringed works’  
4 “chain-of-title.” Put differently, Veoh’s Reply, like its other papers, advances no  
5 persuasive basis for compelling production of additional “chain-of-title” documents.

6 Previous motion papers submitted by UMG explained why the “chain-of-  
7 title” documents sought by Veoh have no bearing on this action. The facially valid  
8 copyright registrations produced by UMG are not subject to challenge by *Veoh* on  
9 the basis that UMG may have failed to observe statutory formalities, or because  
10 contracts assigning copyrights to UMG are defective. “Inadvertent mistakes on  
11 registration certificates do not invalidate a copyright and thus do not bar  
12 infringement actions, unless the claimant intended to defraud the Copyright Office  
13 by making the misstatement.” *Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345  
14 F.3d 1140, 1145 (9th Cir. 2003) (citations and ellipsis omitted); *see also* 17 U.S.C.  
15 § 411(b)(1)(A), (B) (inaccurate registration information will not bar a plaintiff from  
16 enforcing a copyright unless the error was intentional and would have, if known to  
17 the Copyright Office, caused the registration to be refused).<sup>4</sup> Nor may Veoh use  
18 “chain-of-title” discovery to challenge assignments between UMG and its artists  
19 and/or composers: third parties lack standing to challenge the absence of a written  
20 assignment where neither the transferor nor the transferee disputes the assignment.  
21 *See, e.g., Billy-Bob Teeth, Inc. v. Novelty, Inc.*, 329 F.3d 586 (7th Cir. 2003);  
22 *Magnuson v. Video Yesteryear*, 85 F.3d 1424 (9th Cir. 1996); *Hart v. Sampley*, 1992  
23 WL 336496, \*1 (D.D.C. June 24, 1992) (“Even if, as defendants suggest, the  
24 transfer was in some way defective, the defendants would not have standing to

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25 <sup>4</sup> Veoh claims that this “is not the type of defect this chain of title production  
26 is designed to locate . . . .” Reply at 4 n.3. But Veoh previously noted its intention  
27 to make precisely this sort of challenge. *See* Veoh’s Renewed Motion to Compel  
28 Chain-of-Title Documents at 19:8-13 (“[d]ocuments relating to the registrations may  
29 . . . reveal a variety of defects” including “registrations” that “failed to contain all  
30 requisite information”).

1 challenge the validity of the transfer because they were not parties to the  
2 agreement”). Despite having and purportedly reviewing UMG’s “chain-of-title”  
3 documents for over a month, Veoh never indicates how, in light of this authority, it  
4 will use “chain-of-title” documents to rebut its liability for the massive infringement  
5 of UMG’s copyrights.

6 As such, the basis for Veoh’s requested relief remains the same: UMG’s good  
7 faith, limited corrections to its list of infringements warrant further burdensome  
8 discovery. In other words, Veoh asks the Court to punish UMG for diligently  
9 reviewing its list of videos and correcting a small number of errors identified  
10 therein—corrections not limited to the sample works identified by Veoh, or even the  
11 artists in Veoh’s sample. Ordering burdensome discovery on these grounds – and  
12 not on any purported defect identified by *Veoh* – unjustly penalizes UMG. UMG’s  
13 good faith is no basis for further production.

14 **V. CONCLUSION**

15 For all of the foregoing reasons, the Court should deny Veoh’s Motion.

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17 Dated: May 19, 2009

Respectfully submitted,  
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