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11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA  
 13 WESTERN DIVISION

14 UMG RECORDINGS, INC., <i>et al.</i> , 15 16 Plaintiffs, 17 18 v. 19 20 VEOH NETWORKS, INC., 21 22 Defendant.	) Case No. CV-07-05744 AHM (AJWx) ) ) <b>NOTICE OF MOTION AND MOTION</b> ) <b>FOR LEAVE TO AMEND</b> ) <b>COMPLAINT TO ADD DEFENDANTS;</b> ) <b>MEMORANDUM OF POINTS AND</b> ) <b>AUTHORITIES IN SUPPORT</b> ) <b>THEREOF</b> ) ) <b>FILED CONCURRENTLY</b> ) <b>HEREWITH: DECLARATION OF</b> ) <b>ANJULI MCREYNOLDS;</b> ) <b>[PROPOSED] FIRST AMENDED</b> ) <b>COMPLAINT; [PROPOSED] ORDER</b> ) ) Magistrate: Hon. A. Howard Matz ) ) Date: July 7, 2008 ) Time: 10:00 a.m. ) Courtroom: 14 ) ) Discovery Cutoff: January 12, 2009 ) Pretrial Conference: April 6, 2009 ) Trial Date: April 21, 2009
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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on July 7, 2008, at 10:00 a.m., or as soon  
3 thereafter as this matter can be heard before the Honorable A. Howard Matz of the  
4 United States District Court for the Central District of California, at 312 N. Spring  
5 Street, Courtroom 14, Los Angeles, CA, 90012, Plaintiffs (collectively “UMG”) will  
6 move and hereby move for leave to amend UMG’s complaint to add Shelter Capital  
7 Partners, LLC, Shelter Venture Fund, L.P., Spark Capital, LLC, Spark Capital, L.P.,  
8 The Tornante Company, LLC, and Goldman Sachs Group, Inc., as defendants.

9 UMG’s counsel and Veoh’s counsel met and conferred regarding UMG’s  
10 intent to file this motion on May 22, 2008. Veoh said it will not stipulate to the  
11 amendment, and will oppose the motion.

12 This motion is based on the attached memorandum of points and authorities  
13 in support thereof, the declaration of Anjuli McReynolds in support thereof, and all  
14 files and pleadings in this action.

15 Dated: June 16, 2008

Respectfully Submitted,  
  
IRELL & MANELLA LLP

19 By: \_\_\_\_\_ /s  
20 Steven A. Marenberg

21 Attorneys for Plaintiffs  
22 UMG RECORDINGS, INC.;  
23 UNIVERSAL MUSIC CORP.;  
24 SONGS OF UNIVERSAL, INC.;  
25 UNIVERSAL-POLYGRAM  
26 INTERNATIONAL PUBLISHING,  
27 INC.; RONDOR MUSIC  
28 INTERNATIONAL, INC.;  
UNIVERSAL MUSIC – MGB NA  
LLC; UNIVERSAL MUSIC – Z  
TUNES LLC; UNIVERSAL MUSIC –  
MBG MUSIC PUBLISHING LTD.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 In this motion, Plaintiffs (collectively “UMG”) seek leave of Court to file a  
4 First Amended Complaint (“FAC”) for the purpose of adding as defendants certain  
5 firms that own, control, and operate defendant Veoh Networks, Inc. Specifically,  
6 UMG’s FAC names Shelter Capital Partners, LLC, Shelter Venture Fund, L.P.  
7 (collectively “Shelter Capital”), Spark Capital, LLC, Spark Capital, L.P.  
8 (collectively “Spark Capital”), The Tornante Company, LLC (“Tornante”), and  
9 Goldman Sachs Group, Inc. (“Goldman Sachs”) as defendants.

10 As alleged in the proposed FAC (based on preliminary discovery in the case),  
11 each of the additional defendants has actively enabled, facilitated, and contributed to  
12 the infringing operations of veoh.com. They have done so both by supplying  
13 millions of dollars in operating capital (without which, Veoh would long ago have  
14 ceased operations), and by demanding and obtaining seats on Veoh’s Board of  
15 Directors, from which they exercise majority control over Veoh and make all  
16 material decisions regarding its operations. These decisions include, for example,  
17 deciding on the types of content that Veoh makes available – copyrighted music  
18 videos, but not adult content – and deciding not to implement filtering technology  
19 that could avoid or curtail infringement.<sup>1</sup> The FAC further alleges (as did the  
20 original complaint) that the presence of infringing copies of UMG’s copyrighted  
21 works on Veoh’s internet site and “client” software draws users, and therefore  
22 advertisers and revenue, to Veoh. The proposed additional defendants, Shelter  
23 Capital, Spark Capital, Tornante, and Goldman Sachs, reap financial benefits from  
24 Veoh’s infringement.

25  
26 <sup>1</sup> As UMG made clear in its original complaint, Rule 26(f) Report, and  
27 statements to the Court during the scheduling conference, UMG chose not to assert  
28 claims against Veoh’s owners until UMG could conduct discovery to ascertain the  
extent of their facilitation of, and complicity in, Veoh’s infringement. Preliminary  
discovery has now confirmed facts underscoring the propriety of claims against  
these firms, and UMG therefore now seeks leave to amend its complaint.

1 Good cause exists to grant this motion under the extremely liberal standards  
2 of Rule 15(a). *See* Fed. R. Civ. P. 15(a)(2) (stating that leave to amend “shall be  
3 freely given when justice so requires”); *see also Owens v. Kaiser Found. Health*  
4 *Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). The allegations of the FAC, if  
5 proven, would render Shelter Capital, Spark Capital, Tornante and Goldman Sachs  
6 liable for vicarious and contributory copyright infringement, at the least. *See, e.g.,*  
7 *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996); *UMG*  
8 *Recordings, Inc. v. Bertelsmann AG*, 222 F.R.D. 408 (N.D. Cal. 2004).

9 Other factors considered by courts in evaluating motions to amend under Rule  
10 15(a) similarly militate in favor of permitting amendment here. As noted (*see*  
11 footnote 1, *supra*), UMG has acted cautiously, responsibly and in good faith in  
12 waiting for the results of preliminary discovery before adding Shelter Capital, Spark  
13 Capital, Tornante and Goldman Sachs (but not other owners of Veoh) as defendants.  
14 Likewise, neither Veoh nor the proposed new defendants can credibly claim any  
15 unfair prejudice as a result of the proposed amendment. Discovery is still at an early  
16 stage in this case, and the proposed amendment has been brought within the time  
17 period set by the Court for adding parties. Indeed, given that the applicable statutes  
18 of limitations have not yet even run, UMG could simply file new, individual cases  
19 against each of the proposed additional defendants. Instead, adding them to the  
20 current case ensures that the claims against Veoh and its owners will be litigated in  
21 an efficient and non-duplicative manner.

22 Accordingly, UMG respectfully submits that, pursuant to Rule 15(a)(2), the  
23 Court grant the instant motion to amend.

## 24 **II. FACTUAL BACKGROUND**

25 This is an action for direct, contributory and vicarious copyright infringement  
26 and for inducement of copyright infringement brought by UMG against defendant  
27 Veoh Networks, Inc. (“Veoh”). UMG’s claims arise out of Veoh’s unauthorized  
28 exploitation of UMG’s copyrighted materials on its website, www.veoh.com, and

1 through the use of its “VeohTV” player software. Much of the content that Veoh  
2 makes available for streaming and downloading is not so-called “user-generated  
3 content,” but is the stolen intellectual property of UMG and others. *See* Complaint  
4 ¶¶ 2-4. At the time this lawsuit was filed, Veoh knew that thousands of UMG’s  
5 copyrighted works -- music videos embodying UMG’s copyrighted sound  
6 recordings and musical compositions -- were available for viewing and download at  
7 veoh.com and through the VeohTV player. *See id.* ¶ 13, 26. Veoh did nothing to  
8 prevent this infringement; indeed it encouraged it. *See id.* ¶ 27.

9 As UMG alleged in its Complaint, Veoh attracted tens of millions of dollars  
10 of financial support from various investors, including Shelter Capital, Spark Capital,  
11 Tornante and Goldman Sachs. *Id.* ¶ 14. All of these companies benefit financially  
12 from Veoh’s infringing acts. *Id.* Further, as a condition to their contribution of  
13 money to Veoh, each of these firms secured representation on the Veoh Board of  
14 Directors and the assurance that all important operational decisions would be made  
15 at the Board level. *Id.*

16 When UMG first filed this case, it expressly reserved the right in its original  
17 complaint to add additional potential defendants, including Veoh’s  
18 investors/owners, once the full nature and extent of their contribution to, and  
19 enabling of, Veoh’s infringing conduct was known. *Id.* Preliminary discovery has  
20 made the nature and extent of these firms’ facilitation of Veoh’s infringement of  
21 UMG’s copyrighted works sufficiently clear to support UMG’s addition of the  
22 investors/owners as defendants. Each of these firms, both through financial  
23 investments and seats on Veoh’s Board of Directors, have the right and ability to  
24 supervise and/or control the infringing conduct of Veoh and its users, and materially  
25 contributed to that infringing conduct. Evidence exists that each of these firms  
26 knew that veoh.com was riddled with copyrighted content without licenses, yet they  
27 did nothing either to remedy the infringement or ensure that the funding that they  
28 were providing did not constitute, in essence, the lifeblood for further infringement.

1 Instead of exercising the control they enjoyed to eliminate infringement, Spark  
2 Capital, Shelter Capital, Tornante and Goldman Sachs have chosen to pursue  
3 infringement as a business plan and reap the benefits of Veoh’s infringement as it  
4 attracts additional users to veoh.com, thereby generating not only additional  
5 revenues through advertising, but additional value to the company.<sup>2</sup> UMG therefore  
6 respectfully seeks leave, through the instant motion, to amend its Complaint to add  
7 claims against the additional defendants.

8 **III. UMG’S PROPOSED AMENDMENT MEETS THE REQUIREMENTS**  
9 **OF RULE 15**

10 UMG seeks leave to amend its complaint to allege claims for vicarious  
11 copyright infringement against additional defendants—Shelter Capital, Spark  
12 Capital, Tornante, and Goldman Sachs—who have invested in, *and* taken a  
13 substantial role in the operation of, Veoh (hereinafter, the “Veoh Owner-  
14 Defendants”). As the Court recognized during the March 17, 2008 scheduling  
15 conference, Rule 15(a) sets a liberal standard for amendment. Declaration of Anjuli  
16 McReynolds (“McReynolds Decl.”), ¶ 5, Ex. 4 (Transcript of Scheduling  
17 Conference). Rule 15(a)(2) states that such “leave shall be freely given when justice  
18 so requires.” This policy is “to be applied with extreme liberality.” *Owens v.*  
19 *Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting  
20 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)).

21 Courts generally consider four factors when evaluating a plaintiff’s request to  
22 amend a complaint: (1) bad faith or dilatory motive; (2) undue delay; (3) prejudice  
23 to the opposing party; and (4) futility of the proposed amendment. *Foman v. Davis*,  
24 371 U.S. 178, 182 (1962); *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194  
25

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26 <sup>2</sup> Although not required to do so, UMG has specifically alleged facts relating  
27 to the timing and significance of each of the various new defendants’ investments in  
28 Veoh, and the consequences thereof. (See FAC ¶¶ 30-32). These facts are  
supported by documents produced in discovery or elsewhere, attached as exhibits to  
the McReynolds Declaration.

1 F.3d 980, 986 (9th Cir. 1999). Each of these four factors support UMG’s request for  
2 leave to amend.

- 3 • UMG has shown its good faith. From the outset of this case, UMG  
4 explained that it might assert claims against one or more of Veoh’s  
5 owners and discussed this fact openly with the Court at the Initial  
6 Status Conference.
- 7 • UMG’s amendment is timely. UMG propounded discovery on Veoh’s  
8 investors at the earliest opportunity. The Court specifically set a  
9 timetable for UMG to follow for a possible amendment at the Initial  
10 Status Conference. UMG complied with this timetable.
- 11 • UMG’s amendment will not prejudice Veoh. This case is at a relatively  
12 early stage of discovery. Veoh has not yet produced its documents, and  
13 no depositions have been conducted. No discovery need be repeated  
14 and Veoh cannot identify any prejudice from UMG’s amendment.
- 15 • UMG could simply file new and separate complaints against each of  
16 the proposed defendants. Adding them to the existing suit merely  
17 guarantees consistency and reduces the expense for all concerned.
- 18 • UMG’s amendment alleges a proper claim. Veoh cannot meet the very  
19 high burden of showing futility of UMG’s amendment. In fact, UMG  
20 alleges facts showing the necessary elements of claims for vicarious  
21 and contributory infringement.

22 **A. UMG Acted In Good Faith And Has Timely Moved To Amend**

23 The factors of “good faith” and “undue delay” substantially overlap. *See,*  
24 *e.g.,* Wright & Miller, Federal Practice and Procedure, § 1487 (“When the court  
25 inquires into the good faith of the moving party, it typically will take account of the  
26 movant’s delay in seeking the amendment.”). Courts also consider whether the  
27 proposed amendment is interposed for some improper purpose, such as to affect the  
28 Court’s jurisdiction or for reasons of litigation tactics. *See id.* (if the Court

1 “determines that the amendment was asserted in bad faith, as, for example, when  
2 plaintiff attempts to destroy the federal court’s removal jurisdiction over the case by  
3 altering the complaint so that the case will be remanded, the court may not allow the  
4 amendment”). Here, Veoh cannot make any showing that UMG has acted in  
5 anything but good faith in pursuing this amendment. UMG’s proposed amendment  
6 will not affect this Court’s jurisdiction over this matter, and if UMG had sought  
7 some tactical advantage through amendment, it hardly would have explained, in  
8 advance, the potential for the amendment to both Veoh and the Court from the  
9 outset of this case.

10       Specifically, in its September 4, 2007 Complaint, UMG expressly reserved  
11 the right to add the Veoh Owner-Defendants as defendants once it had more  
12 information about their contribution to, and facilitation of, Veoh’s infringement.  
13 Complaint ¶ 14. Soon thereafter, on October 18, 2007, UMG wrote to the Veoh  
14 Owner-Defendants informing them of UMG’s suit against Veoh and their potential  
15 liability. McReynolds Decl., ¶ 2, Ex. 1 (October 18, 2007 letters). On February 15,  
16 2008, UMG served document subpoenas upon the Veoh Owner-Defendants. *See*  
17 *id.*, ¶ 3, Ex. 2 (subpoenas).

18       UMG also stated in the Joint Rule 26(f) Report that “it may seek to amend its  
19 complaint to add one or more of the investors in Veoh as defendants in this action,  
20 depending upon information learned in discovery.” McReynolds Decl., ¶ 4, Ex. 3  
21 (Joint Rule 26(f) Report at 6). During the scheduling conference with the Court on  
22 March 17, 2008, counsel for UMG noted that UMG had subpoenaed the Veoh  
23 Owner-Defendants, and that UMG would make an appropriate determination  
24 regarding these investors after receiving discovery from them. McReynolds Decl.,  
25 ¶ 5, Ex. 4 (Transcript of Scheduling Conference). In light of these facts, the Court  
26 set June 16, 2008, as the last day to move to amend the complaint to add new  
27 parties. *Id.* Thereafter, discovery was delayed because the Veoh Owner-Defendants  
28 withheld most of their productions pending entry of a protective order in this case.



1 UMG worked diligently with counsel for Veoh to obtain such agreement and an  
2 Interim Protective Order was entered May 21, 2008. The Veoh Owner-Defendants  
3 began producing their documents shortly thereafter, and UMG promptly undertook  
4 to review that information. Now, less than one month later, UMG asks the Court for  
5 leave to amend.

6 Accordingly, it is plain that UMG has acted with good faith throughout  
7 regarding the potential addition of the Veoh Owner-Defendants as defendants, and  
8 has not unduly delayed the instant motion to amend. *See DCD Programs, Ltd. v.*  
9 *Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (finding no bad faith and affirming  
10 grant of leave to amend where plaintiff sought to develop evidence of wrongful  
11 conduct before asserting claims); *Qualcomm, Inc. v. Motorola, Inc.*, 989 F. Supp.  
12 1048, 1050 (N.D. Cal. 1997) (finding no undue delay where the plaintiff's ongoing  
13 investigation and discovery had revealed sufficient information upon which to base  
14 new claims for relief).

15 **B. UMG's Amendment Will Not Prejudice Veoh or the Veoh Owner-**  
16 **Defendants**

17 Veoh bears the burden of establishing that prejudice will result from UMG's  
18 amendment. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th  
19 Cir. 2003). Veoh cannot possibly make such a showing. As noted previously, Veoh  
20 and its investors have been aware of the possibility of this amendment since UMG  
21 first filed suit. No depositions have yet been conducted. Fact discovery remains  
22 open until January 2009, providing ample opportunity for the additional defendants  
23 to participate in any necessary discovery. No other substantive proceedings have  
24 taken place that would prejudice the rights of Shelter Capital, Spark Capital,  
25 Tornante or Goldman Sachs. Moreover, to date, at least two of the investor  
26 defendants (Spark Capital and the Tornante Company) have been represented by the  
27 same counsel who represents Veoh in this matter, further confirming that their  
28 interests are aligned and have been protected.

1           Given the early stage of the case and UMG’s express reservation of its right  
2 to amend, Veoh can point to no unfair prejudice that will result from the Court’s  
3 granting of the instant motion. *See ABM Indus., Inc. v. Zurich Am. Ins. Co.*, 237  
4 F.R.D. 225, 227 (N.D. Cal. 2006) (holding that defendants were not prejudiced by  
5 amendment because litigation was at an early stage, and defendants were not  
6 surprised by the new factual allegations). Indeed, as noted earlier, UMG could  
7 simply file separate complaints against the Veoh Owner-Defendants, if it chooses to  
8 do so, and then coordinate or consolidate the cases. As such, Veoh cannot credibly  
9 claim any undue prejudice from the proposed amendment.

10           **D. UMG’s Proposed Amendment States Valid Claims Against the**  
11           **Veoh Owner-Defendants**

12           The final factor considered by Courts under Federal Rule 15 is futility of the  
13 proposed amendment. Where, as here, the amended complaint alleges a legally  
14 sufficient claim for relief (vicarious and contributory infringement against the Veoh  
15 Owner-Defendants), leave to amend should be granted. *See Miller v. Rvkoff-Sexton,*  
16 *Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). A substantive evaluation of the merits of  
17 UMG’s allegations, however, would be improper on a motion for leave to amend.  
18 *See William Schwarzer, et al., Federal Civil Procedure Before Trial* § 8:422 (noting  
19 that, “[o]rdinarily, courts do not consider the validity of a proposed amended  
20 pleading in deciding whether to grant leave to amend.”).

21           Liability for contributory infringement of copyright lies where a party  
22 “knowingly contributes to the infringing conduct of another.” *Fonovisa, Inc. v.*  
23 *Cherry Auction, Inc.*, 76 F.3d 259, 264 (9th Cir. 1996) (holding plaintiff’s allegation  
24 that defendant “actively [strove] to provide the environment and the market [i.e., the  
25 site and facilities] for counterfeit recording sales to thrive” was sufficient to state  
26 contributory infringement claim); *see UMG Recordings, Inc. v. Bertelsmann AG,*  
27 222 F.R.D. 408 (N.D. Cal. 2004) (refusing to dismiss claims for contributory  
28

1 infringement against investors in the Napster online peer-to-peer network where the  
2 plaintiffs alleged the investors were directly responsible for the infringing activity).

3 Vicarious liability for copyright infringement may be imposed where the  
4 defendant (1) possesses the right and ability to supervise the infringing activity, and  
5 (2) has a direct financial interest in the exploitation of the copyrighted materials.  
6 See M. Nimmer & D. Nimmer, *Copyright*, § 12.04[A][2] (2007); *Metro-Goldwyn-*  
7 *Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005); *Fonovisa*, 76 F.3d  
8 at 262-63 (holding that defendant swap meet owner had a financial interest in the  
9 infringement because “sale of pirated recordings at the Cherry Auction [acted as] a  
10 ‘draw’ for customers”); *UMG Recordings, Inc. v. Bertelsmann AG*, 222 F.R.D. 408  
11 (N.D. Cal. 2004) (refusing to dismiss claims for vicarious infringement against  
12 investors in the Napster online peer-to-peer network); *Broadcast Music, Inc. v.*  
13 *Hartmarx Corp.*, 1988 WL 128691, at \*3 (N.D. Ill. Nov. 17, 1988) (holding that the  
14 right to control the Board of Directors constituted control of day-to-day activities  
15 and thus made investor vicariously liable for infringement).

16 As alleged by UMG in the FAC, the Owner-Defendants have actively  
17 supported Veoh – both financially and operationally – in its infringing activities.  
18 The Owner-Defendants supplied the funding which Veoh has used to operate its  
19 business, including constructing and maintaining its hardware and software systems,  
20 which not only accomplishes the direct infringement of UMG’s copyrighted works,  
21 but facilitates third parties who use Veoh’s systems to infringe UMG’s copyrighted  
22 works. In addition, the Veoh Owner-Defendants sought and obtained seats on  
23 Veoh’s Board of Directors as a condition of their investments (indeed, they obtained  
24 majority control of the Board). FAC ¶¶ 30-32. Through these seats, the Owner-  
25 Defendants exercised substantial control over Veoh’s operations, with full  
26 knowledge that Veoh’s users used Veoh to engage in massive copyright  
27 infringement. *Id.* These investors controlled all critical decisions regarding the  
28 content available on Veoh, including the removal of adult content, and “whether and

1 how Veoh might implement any technology and filter copyrighted content to  
2 prevent infringement on Veoh’s site.” *Id.* ¶¶ 31-32. The Owner-Defendants failed  
3 to use their control to remove infringing content from Veoh, and instead “decided to  
4 continue Veoh’s infringing operations in order to continue to attract users and  
5 advertising dollars to Veoh, and increase the value of their financial interests in  
6 Veoh.” *Id.* ¶ 31. The Owner-Defendants are not – and never have been – passive  
7 investors in Veoh. They sought and obtained control far in excess of the degree of  
8 involvement and control that shareholders would typically obtain so that they could  
9 direct the operations of Veoh, knowing full well that the site displayed and  
10 distributed copyrighted works without appropriate licenses, and knowing full well  
11 that Veoh’s users used Veoh to engage in massive copyright infringement.

12       As in *Fonovisa* and *Bertelesmann*, and under established Ninth Circuit  
13 standards, UMG has alleged sufficient facts to state claims for contributory and  
14 vicarious infringement. UMG has alleged that the Veoh Owner-Defendants had full  
15 knowledge of Veoh’s infringement, and were directly involved with and materially  
16 contributed to Veoh’s unlawful conduct. UMG has also alleged that the Veoh  
17 Owner-Defendants had the right and ability to control Veoh’s infringement through  
18 their positions on the Veoh Board of Directors, and financially benefited when  
19 Veoh’s infringement drew more users, advertisers, and revenue.

20       Although here UMG merely needs to show that it can allege sufficient claims,  
21 and need not provide any supporting evidence, UMG has supplied such evidence,  
22 and it confirms that UMG’s allegations are both sufficient and true. Preliminary  
23 discovery from the Veoh Owner-Defendants confirms that the Veoh Owner-  
24 Defendants have the right and ability to control Veoh’s infringement, had  
25 knowledge of that infringement, and materially contributed to that infringement.<sup>3</sup>

26 \_\_\_\_\_  
27 <sup>3</sup> Unlike the other Veoh Owner-Defendants, Shelter Capital has not yet  
28 produced any discovery in response to UMG’s subpoena. However, Board minutes  
produced by the other Veoh Owner-Defendants demonstrate Shelter Capital’s  
involvement in the operation and control of Veoh.

1 For example, minutes of Veoh Board meetings reveal that the Veoh Owner-  
2 Defendants have an important role in virtually all key strategic and operational  
3 decisions affecting Veoh. McReynolds Decl., Ex. 8 (March 21, 2006 Board  
4 Minutes); Ex. 9 (June 19, 2006 Board Minutes<sup>4</sup>); Ex. 10 (September 25, 2007 Board  
5 Minutes). *See also* McReynolds Decl., Ex. 11 (March 30, 2006 email); Ex. 12  
6 (March 15, 2007 email). Other documents produced by some of the Veoh Owner-  
7 Defendants further confirm their complicity in Veoh's infringement of copyrighted  
8 works. *See id.*, Ex. 13 (June 27, 2006 Tornante email). These documents reveal  
9 that the Veoh Owner-Defendants recognize the financial benefit they seek to derive  
10 from Veoh's infringement and their complicity in that infringement.

11       UMG includes this evidence not as exhaustive proof of its claims (indeed,  
12 there is a lot more evidence), but merely to show that, far from being futile, the  
13 proposed amendment is meritorious. As discovery proceeds, UMG will  
14 undoubtedly receive even more evidence confirming its allegations. In sum, this is  
15 not a close case; amendment is overwhelmingly appropriate under Rule 15.

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27       <sup>4</sup> Because the documents evidencing these matters have been (wrongly, we  
28 believe) designated highly confidential under the Interim Protective Order, to avoid  
the need to file this brief under seal, we have only provided cursory descriptions of  
the documents attached to the McReynolds Declaration here.

1 **IV. CONCLUSION**

2 For the foregoing reasons, UMG respectfully requests that the Court grant the  
3 instant motion to amend.

4  
5 Dated: June 16, 2008

Respectfully Submitted,

6 IRELL & MANELLA LLP

7  
8 By: \_\_\_\_\_ /s

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21 LLC; UNIVERSAL MUSIC – Z  
22 TUNES LLC; and UNIVERSAL  
23 MUSIC – MBG MUSIC  
24 PUBLISHING LTD.  
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