

EXHIBIT 4

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December 10, 2010

## VIA HAND DELIVERY

The Honorable Debra C. Freeman  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

Re: *Arista Records LLC, et al. v. Lime Wire LLC, et al.*, No. 06 CV 5936 (KMW) (DCF)

Dear Judge Freeman:

Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants"), submit this letter brief in support of their application for an Order, pursuant to Federal Rule of Civil Procedure 45(c)(2)(B)(i), overruling discovery objections asserted by non-party Google, Inc. ("Google") and directing Google to produce documents in response to a subpoena served on Google by Defendants (the "Subpoena").

Google is an entity that provides access to digital music over the internet with the express blessing (pursuant to contract) of Plaintiffs and the major record labels. Google owns and is the corporate parent of YouTube LLC ("YouTube"), which has agreements with some or all of the major record companies that allow YouTube to broadcast copyrighted music videos on the internet in exchange for a percentage of the advertising revenue generated from viewings of those videos. Defendants seek discovery from Google because, like several other non-parties Defendants have subpoenaed -- such as VEVO, LLC ("VEVO") -- Defendants believe they have information relevant to the issues to be tried in early 2011.

In fact, the Subpoena at issue seeks from Google the same categories of information sought by Defendants' subpoena to VEVO, a digital music provider which licenses content from the Plaintiff record labels. As Your Honor may recall, Defendants were forced to move to compel VEVO to comply with the subpoena, which motion was granted in part. In an order dated November 23, 2010, this Court ordered VEVO to produce three categories of documents (the "VEVO Order"):

1. All signed contracts, licenses, or other agreements between VEVO and any plaintiff in this case, concerning the use, publication, display, or broadcast of any material to which any plaintiff owns, holds, claims, or otherwise maintains a copyright.
2. All reports submitted by VEVO to any plaintiff showing amounts paid by VEVO pursuant to any such contract, agreement, or license.
3. All documents contained in the files of certain specified VEVO custodians, to be located through an electronic search based on search terms identified in the VEVO Order.

Notwithstanding the VEVO Order, Google has agreed to produce the first category of documents, but refuses to produce the second and third categories. We respectfully submit that Google should be compelled to produce those documents for the same reasons that the Court ordered VEVO to produce them. The motion should therefore be granted.

### **Background and Overview**

On September 23, 2010, Defendants served the Subpoena on Google, requesting that Google produce certain documents and appear for a deposition (the "Subpoena").<sup>1</sup> (Ex. 1.) The Subpoena requests production of, *inter alia*, three principal types of documents (collectively, the "Documents"): (1) licenses or agreements between Google and any Plaintiffs in this action "concerning the use, publication, display, or broadcast of any material" to which any Plaintiff holds the copyright; (2) communications between Google and any Plaintiff regarding those licenses or agreements, including the negotiation thereof; and (3) documents reflecting amounts paid by Google to any Plaintiff pursuant to those agreements or licenses, *e.g.*, annually or on a song-by-song basis, together with figures relating to the total aggregate number of times that each of Plaintiffs' copyrighted songs (collectively, the "Songs") was accessed or viewed by Google or YouTube users. (*See id.*, Request Nos. 1, 2, 4, 5, 11.) The Subpoena contains substantially the same requests as the subpoena to VEVO and other non-party digital music providers whom Defendants know or believe to have licensing or distribution agreements with the major record companies.

On September 29, 2010, Plaintiffs moved to quash the subpoenas Defendants had served on Google and others. Defendants agreed to adjourn the return dates of the Subpoenas until after the Court ruled on Plaintiffs' motion to quash. In an Order dated October 15, 2010, the Court denied Plaintiffs' motion to quash in its entirety and also ruled, in response to a request by Defendants that Plaintiffs supplement their prior production, that licensing agreements between plaintiffs and non-parties, together with communications regarding those licensing agreements, were relevant to the amount of Plaintiffs' lost revenues from copyright infringement and the conduct and attitude of the parties, both

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<sup>1</sup> Defendants intend to depose Google. But such a deposition cannot take place until Google produces its documents.

of which are factors that the Court must take into account in determining the amount of damages to award to plaintiffs. (10/15/10 Order, Dkt. 329, at 5-6.)

Promptly after the Court issued the October 15 Order, Defendants sent a copy to Google and stated their willingness to work with Google to make complying with the Subpoena as minimally burdensome as possible. (Ex. 2.) In a meet and confer meeting held by telephone on October 21, Defendants' counsel informed Google's in-house counsel that Defendants were most interested in receiving from Google agreements between Google and any Plaintiffs, together with related communications and revenue information, and proposed that Google produce those categories of documents in the first instance. Google's in-house counsel said it would take Defendants' proposal under advisement.

On November 1, 2010, Google's counsel informed Defendants' counsel that Google would produce the agreements that week. (It was not until several weeks later, however, that Google produced the promised agreements, and that production still appears to be incomplete).<sup>2</sup> Google refused, however, to produce any other documents. Instead, Google objected to the Subpoena on the grounds that: (1) the Subpoena seeks information that Defendants can obtain from Plaintiffs; (2) the Subpoena is overbroad and unduly burdensome; and (3) Google is under no obligation to respond to a subpoena issued from the Southern District of New York because the company is headquartered in, and most documents concerning its business are retrievable in, Mountain View, California. (*See* Ex. 3.)

Defendants sent Google a copy of the VEVO Order by email, requesting that Google reconsider its position and informing Google that, if it refused to do so, Defendants would have no other choice but to move to compel. Google has not responded to Defendants.

As demonstrated below, the Subpoena seeks the production of documents that this Court has already held to be relevant and that can properly be sought from non-parties, and is limited enough in scope not to be unduly burdensome, especially in light of the accommodations Defendants' counsel offered to Google. Moreover, the Subpoena is fully enforceable against Google, which does business in New York and is registered with the New York Secretary of State. Accordingly, the Court should enter an order overruling the Google Objections and directing Google to comply with the Subpoena forthwith by producing the documents.

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<sup>2</sup> On November 18, 2010, Google produced 176 pages of documents reflecting agreements with three of the four major record labels. One of those agreements with Warner Music Group, Inc., entitled "Sound Recording and Audiovisual Content License," states that the agreement "supersedes and replaces the Video Streaming License Agreement dated September 17, 2006" between Warner and Google. That earlier agreement was not produced. Accordingly, Defendants know that at least one agreement between Google and a plaintiff was not produced, and do not know if other such agreements were not produced.

I. *THE SUBPOENA SEEKS THE PRODUCTION OF DOCUMENTS THAT THIS COURT HAS REPEATEDLY HELD TO BE RELEVANT TO THE DAMAGES ISSUES TO BE TRIED BEFORE JUDGE WOOD.*

Plaintiffs' licensing agreements with non-parties and related communications and financial information are directly relevant both to common-law damages for pre-1972 recordings and to statutory damages under the Copyright Act. For common-law copyright infringement, the required showing of actual damages can be measured by lost profits. *See Pret-A-Printee, Ltd. v. Allton Knitting Mills, Inc.*, No. 81 Civ. 3770, 1982 WL 1788, at \*7 (S.D.N.Y. 1982). As this Court noted in its October 15, 2010 Order, "Plaintiffs' actual and potential licensing arrangements might shed light on the amount of profits that Plaintiffs would have made, had Defendants' customers downloaded Plaintiffs' copyrighted works from a source authorized by Plaintiffs." (10/15/10 Order, Dkt. 329, at 5.) Therefore, the Documents requested by the Subpoena are relevant to showing the amount, if any, of profits Plaintiffs would have made if Plaintiffs' copyrighted works had been accessed through YouTube, Google's wholly-owned subsidiary. Internal communications describing the negotiations with the record labels will be relevant in determining the conduct and attitude of the parties as well. The Court reiterated its finding that the documents in question are relevant to the damages issues to be tried when it ordered VEVO to produce its documents on November 23, 2010.

Under *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 144 (2d. Cir. 2010), Plaintiffs' lost revenues and the conduct and attitude of the parties are relevant factors in the statutory damages analysis. Documents showing the terms of plaintiffs' license agreements with Google or YouTube, the revenues actually paid by Google or YouTube pursuant to those contracts, and the negotiations surrounding those contracts are relevant to the amount of revenues allegedly lost by Plaintiffs here.

In order to determine how the Plaintiffs truly valued the Songs at issue, it is crucial to know the terms and prices the Plaintiffs agreed to with other companies, such as Google or YouTube, in exchange for allowing them to make those Songs available online. Indeed, in that regard, this Court has already recognized explicitly the relevance of those documents: "it is not difficult to see how communications with licensees or potential licensee[s] might illuminate Plaintiffs' attitudes regarding the value of its copyrights and show how Plaintiffs conducted themselves in dealing with others in the Internet marketplace." (10/15/10 Order, Dkt. 329, at 6.)

Google's refusal to produce anything but their agreements with Plaintiffs should therefore be overruled. Google should be compelled to complete its production of those agreements and to produce any additional documents, including documents concerning the negotiations of those agreements, documents reflecting payments made under those agreements, and documents reflecting the bases for those payments (i.e., reports required by the agreements showing the number of instances individual songs were accessed through YouTube).

II. *GOOGLE'S OBJECTION THAT THE SUBPOENA SEEKS DOCUMENTS THAT DEFENDANTS CAN OBTAIN FROM PLAINTIFFS IS WITHOUT MERIT.*

Google has also objected to the Subpoena on the grounds that “the information sought can be obtained through less burdensome means, including from the parties to the case.” (See Ex. 3, General Objection No. 9.) That objection is wrong on both the facts and the law.

Defendants served the Subpoena, in part, because Plaintiffs have failed to produce documents concerning their relationship with Google or YouTube, and in part to gain access to documents that, regardless, would not be in Plaintiffs' possession. For one thing, Defendants have no way to confirm that the agreements produced by Plaintiffs represent all such agreements. For another, the Subpoena requires production of documents that would not be in Plaintiffs' possession, such as internal Google or YouTube communications regarding licensing agreements or negotiations with any Plaintiffs concerning agreements, including notes of meetings between representatives of Google or YouTube and Plaintiffs.

Even if the Plaintiffs ultimately did provide Defendants with their versions of certain documents requested by the Subpoena, there is nothing in the Federal Rules of Civil Procedure preventing Defendants from seeking Google's versions and collections of those documents at this juncture. See *In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. 293, 301 (S.D.N.Y. 2003) (holding a non-party must produce documents in response to a subpoena even though they were seemingly duplicative of discovery requests served on the other party because “[t]he documents in [the non-party's] possession may differ slightly from [the other party's] copies” and the non-party's “copies could include handwritten notes, and the fact that [the non-party] has copies of documents itself can be relevant.”); *Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enters., Inc.*, 160 F.R.D. 70, 71-72 (E.D. Pa. 1995) (denying a motion to quash a non-party subpoena from the Plaintiffs because although the Defendant had been ordered to produce the same documents, the Defendant failed to produce them and therefore “the information Plaintiffs requested cannot be more easily obtained from Defendant” due to the defendant's refusal to provide the documents).

III. *THE SUBPOENA IS NOT UNDULY BURDENSOME TO GOOGLE.*

In order to evaluate undue burden, courts conduct a weighing of the burden to the subpoenaed party against the value of the information to the serving party. *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, No. 05 Civ. 6430, 2007 WL 4410405, at \*2 (S.D.N.Y. Dec. 17, 2007). *Bridgeport* explains that “[w]hether a subpoena imposes an ‘undue burden’ depends upon ‘such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.’” *Id.* (quoting *Travelers Indem. Co. v. Metro. Life Ins. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005)).

In *Bridgeport*, plaintiffs alleged copyright infringement of musical compositions by defendants, and defendants served plaintiffs' former attorney, a non-party, with a subpoena for documents, including various licensing agreements he had drafted. *Id.* at \*1. The court held that the request did not impose an undue burden on the non-party attorney because the request was “relatively narrow.” *Id.* at \*2. The

court contrasted this request with a subpoena issued in *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 50 (S.D.N.Y. 1996), “in which the subpoena at issue ‘effectively encompass[ed] documents relating to every transaction undertaken by [the party subject to the subpoena] for [the defendant] during the last ten years.’” *Bridgeport Music, Inc.*, No. 05 Civ. 6430, 2007 WL 4410405, at \*2 (quoting *Concord Boat Corp.*, 169 F.R.D. at 50).

In *Bridgeport*, the plaintiffs contended that because the non-party lawyer’s files were not indexed by date, and because he did not recall which files contained relevant agreements, the subpoena would “require him to go through ‘hundreds of files’ that are now in storage to determine which might contain relevant information” and “then require additional review to determine whether he had drafted or negotiated the agreement in question and whether the material was privileged,” which could take “weeks[,] if not months.” *Id.* The court was not persuaded that this qualified as an undue burden, however, when the subpoenaed documents were relevant and the request was “relatively narrow,” with a limited time frame. *Id.*

Here, the Subpoena requested agreements (and documents and financial information relating to those agreements) with only the 13 specific Plaintiffs in this case and, as shown above, seeks Documents that are clearly relevant to the factors applicable to statutory damages. It is therefore not overbroad. Further, Defendants have offered to work with Google to minimize the burden on Google by pinpointing the documents that are most relevant to the issues to be tried. Google, however, rebuffed those offers and refused to produce any documents in response to the Subpoena other than the agreements themselves. That should not be permitted, especially where the Court has already ordered another non-party to produce such documents.

#### IV. THE SUBPOENA IS ENFORCEABLE AGAINST GOOGLE.

A foreign corporation doing business in a district is subject to subpoena in the district. Fed. R. Civ. P. 45(b)(2); see also *Elder-Beerman Stores Corp. v. Federated Dep’t Stores, Inc.*, 45 F.R.D. 515, 516 (S.D.N.Y. 1968) (“A foreign corporation doing business in a district is subject to all process, including subpoena, in the district....”). Google clearly does business in New York, since it is registered with the New York Secretary of State (see ex. 4), and has two office locations in Manhattan.<sup>3</sup> Accordingly, Google’s assertion that it is somehow outside the jurisdiction of the Court merely because it is headquartered in California has no merit.

\* \* \*

<sup>3</sup> According to Google’s web site, its New York addresses are 76 Ninth Avenue, and at Chelsea Market Space, 75 Ninth Avenue. (Ex. 5.) Last week, the *Wall Street Journal* reported that Google had signed a contract to buy the building at 111 Eighth Avenue (a/k/a 76 Ninth Avenue) for \$1.9 billion in the largest purchase of a single building in the U.S. this year. (Ex. 6.) The *Journal* also reported that Google currently occupies 500,000 square feet of space in the building. (*Id.*)

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For all of the foregoing reasons, Defendants respectfully request that this Court issue an order pursuant to Federal Rule of Civil Procedure 45(c)(2)(B)(i), compelling Google to produce the Documents, as required by the Subpoena, and grant Defendants such further relief as the Court deems just and proper.

We are available at Your Honor's convenience for a hearing on this application.

Respectfully submitted,

*M. Eaton*

Mary Eaton

cc: Glenn D. Pomerantz, Esq. (via email)  
Tamara Jih, Esq. (via email)



# **EXHIBIT 1**

# UNITED STATES DISTRICT COURT

for the

Southern District of New York

Arista Records LLC, et al.

*Plaintiff*

v.

Lime Group LLC, et al.

*Defendant*

Civil Action No. 06 CV 5936 (KMW)

(If the action is pending in another district, state where: )

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Google, Inc.  
76 Ninth Avenue, 4th Floor, New York, NY 10011

**Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019

Date and Time:

10/07/2010 9:30 am

The deposition will be recorded by this method: Stenographic and videographic

**Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

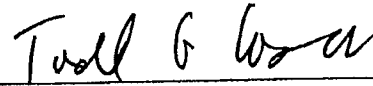
See Schedule A; Documents must be produced by 10/01/2010, 9:30 a.m.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: \_\_\_\_\_

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family L.P., who issues or requests this subpoena, are:

Mary Eaton, Todd G. Cosenza  
Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019  
(212) 728-8000, meaton@willkie.com, tcosenza@willkie.com

Civil Action No. 06 CV 5936 (KMW)

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* Google, Inc.  
was received by me on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ 45.00.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**

**(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## **SCHEDULE A**

Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership ("Defendants") hereby request that Google, Inc. produce the following documents in its possession, custody or control, in accordance with terms of the attached subpoena.

### **DEFINITIONS**

1. The term "document" shall be accorded its broadest possible meaning and includes, but is not limited to, all paper, film, tape or other material upon which appears any verbal, graphic or pictorial information or image that is written, printed, typed, drawn, punched, produced or reproduced in any fashion, including but not limited to all correspondence, memoranda, interoffice and intra-office communications and notes, agreements, contracts, charts, quotations, accounting records, audit work papers, work sheets, cost sheets, ledgers, price quotations, proposals, bids, receipts, manuals, lists, tables, financial analyses, spreadsheets, diagrams, leases, sales records, requisitions, vouchers, envelopes, acknowledgements, purchase orders, invoices, canceled or uncanceled checks or drafts, studies, records, minutes, photographs, drawings, sketches, brochures, schedules, calendars, diaries, video or audio tape recordings, photocopies and computer-sorted or computer-retrievable information, computer print-outs, discs of any kind (including hard discs, optical discs and CDs), tapes of any kind (including audio, video or data tapes), electronic mail and programs or other data compilations from which information can be obtained or translated into usable form. This definition encompasses not only the original version but also any copy containing or having attached thereto any alterations, notes, comments or other material not appearing on the original, and shall also include drafts, revisions of drafts and any other preliminary or preparatory materials, from whatever source, underlying, supporting or used in preparation of any document. This definition

also includes any removable "post-it" notes or other attachments or exhibits affixed to any of the foregoing.

2. The term "identify" means: (a) in the case of a natural person, to state the full name, current or last known job title and position, current or last known full address, and current or last known work telephone numbers of the individual; (b) in the case of an entity other than a natural person, to state its full name, address, principal place of business, and, if applicable, place of incorporation; (c) in the case of a document, to identify the author(s), addressees and copyees, and to state the title, subject matter, date, and source of the document and the locations where the document can presently be found; and (d) in the case of an oral communication, to give a complete description of such communication by (i) identifying the speaker(s) and actual and intended recipient(s) of the communication, (ii) stating the date of the communication and (iii) fully describing the substance of the communication.

3. "Person" or "persons" mean any individual, firm, corporation, partnership, unincorporated association, organization, trust, natural person or any business, legal or governmental entity or association.

4. "Concerning" means relating to, discussing, referring to, describing, evidencing, constituting, supporting or containing a reference to.

5. "And" and "or" shall be construed either disjunctively or constructively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

6. "Any" means any and all.

7. "You" means Google, Inc., and its predecessors, subsidiaries, parents, affiliates, directors, officers, agents, representatives, attorneys, investigators, consultants, employees and shareholders, whether past or present, including but not limited to YouTube,

LLC, and its predecessors, subsidiaries, parents, affiliates, directors, officers, agents, representatives, attorneys, investigators, consultants, employees and shareholders, whether past or present.

8. "Plaintiffs" shall mean Arista Records LLC, Atlantic Recording Corporation, BMG Music, Capitol Records, Inc., Elektra Entertainment Group Inc., Interscope Records, LaFace Records LLC, Motown Record Company, L.P., Priority Records LLC, Sony BMG Music Entertainment, UMG Recordings, Inc., Virgin Records America, Inc., and Warner Bros. Records Inc. and each of their respective predecessors, subsidiaries, parents, affiliates, directors, officers, agents, representatives, attorneys, investigators, consultants, employees and shareholders, whether past or present.

9. "Defendants" shall mean Lime Wire LLC, Lime Group LLC, Mark Gorton, Greg Bildson and M.J.G. Lime Wire Family Limited Partnership and each of their respective predecessors, subsidiaries, parents, affiliates, directors, officers, agents, representatives, attorneys, investigators, consultants, employees and shareholders, whether past or present.

10. The "Grokster Litigation" shall mean the lawsuit captioned *MGM Studios, Inc., et al. v. Grokster, Ltd., et al.*, Case Nos. CV 01-08541 SVW, 01-9923 SVW, in the United States District Court, Central District of California.

11. "Songs" means the sound recordings identified on Exhibit 1 hereto.

#### **INSTRUCTIONS**

1. In responding to this request, the responding party shall produce all documents in its possession, custody or control, including documents and materials in the possession of its employees, agents, servants and/or representatives. This request shall not call for documents that may already have been produced in this litigation.

2. If a document responsive to a request has been transferred to the possession, custody or control of another entity, the name, address and principal officer or officers of such other entity should be provided.
3. Each request for a document or documents shall be deemed to call for the production of the original document or documents. In addition, each request should be considered to include all copies and, to the extent applicable, preliminary drafts of documents which, as to content, differ in any respect from the original or final draft, or from each other (for example, by reason of handwritten notes or comments having been added to one copy of a document but not on the original or other copies thereto.)
4. Documents shall be produced as they are kept in the usual course of business.
5. Documents shall be produced in their original state, for example, in their original file folders in the exact order as found, without removal or rearrangement of anything contained therein.
6. If copies of documents are produced, they shall be produced together with a photocopy of the file, binder, box or other container in which the original document was found, so as to disclose the title or label of such container.
7. Whenever a document has not been produced in its entirety, fully state the reason or reasons it has not been produced in its entirety and describe to the best of your knowledge, information and belief, and with as much particularity as possible, those portions of the document that have not been produced.
8. Whenever a document has been withheld because the request is objected to on grounds of privilege, work product or confidentiality or any other grounds: (a) identify the



document; (b) describe the nature of the document (for example, letter, chart or memorandum); (c) identify the privilege and any statute, rule or decision upon which you rely in withholding the document, and state the factual basis supporting the privilege claimed; (d) set forth each request to which each such document is responsive; (e) state the date of the document; (f) describe the subject matter of the document; (g) identify the authors(s), the recipient(s) and all person(s) who received copies of the document; and (h) identify all persons who participated in its preparation, and all persons to whom it was disclosed and, where not apparent, their relationships to one another.

9. Each demand herein is continuing and requires prompt supplementary responses if further responsive documents are subsequently obtained or discovered or otherwise come into your possession, custody or control.

10. Whenever necessary to bring within the scope of these requests documents or information which might otherwise be construed to be outside the scope of these requests: (a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within it use the plural form as well; and (c) the use of a word in its plural form shall be deemed to include within its use the singular form as well.

11. Unless otherwise specified, all requests constitute a request for any document which refers to or was created during the period from January 1, 2005 through present.

12. All terms defined in paragraphs 1 through 11 above shall have the meanings set forth therein, whether capitalized in the requests or not.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. All contracts, licenses, or other agreements (including all drafts thereof and any supplements or modifications thereto) between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any such Plaintiff owns, holds, claims, or otherwise maintains a copyright.
2. All communications (including emails) concerning any contract, license, or agreement between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.
3. All documents concerning any contract, license, or agreement between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.
4. Documents sufficient to show the amounts paid by You to any Plaintiff pursuant to any contract, license, or agreement between and among You, on the one hand, and any Plaintiff, on the other hand, concerning the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.
5. All documents sufficient to show the amounts paid by You annually to any Plaintiff for any Song on Exhibit 1.
6. All documents concerning any warrants, shares, options, or other securities in YouTube, LLC, granted to any Plaintiff.
7. All documents concerning any Plaintiff's exercise of any warrant or option in You Tube, LLC or any other sale or purchase of any security in YouTube, LLC.

8. All documents concerning Defendants and/or the LimeWire software application.
9. All documents concerning any communication (including emails) between You and any person regarding any actual or potential license for the use, publication, display, or broadcast of any material to which any Plaintiff owns, holds, claims, or otherwise maintains a copyright.
10. All documents produced in the Grokster Litigation.
11. All documents concerning any claims, suits, actions, complaints, or other legal proceedings (whether commenced or threatened to be commenced) against, or any cease and desist letters issued to, You by any Plaintiff concerning the use, publication, display, or broadcast of any material to which any such Plaintiff owns, holds, claims, or otherwise maintains a copyright.
12. All documents You produced, provided or made available to, or otherwise shared with, any Plaintiff in connection with any claims, suits, actions, complaints, or other legal proceedings (whether commenced or threatened to be commenced) against You by any Plaintiff concerning the use, publication, display, or broadcast of any material to which any such Plaintiff owns, holds, claims, or otherwise maintains a copyright.
13. For each of the Songs, documents sufficient to show the total aggregate number of upload views since the Song was made available for upload viewing by You, as well as the total aggregate number of upload views on a daily, weekly, monthly, and yearly basis.

**AFFIDAVIT OF SERVICE**

**UNITED STATES DISTRICT COURT  
Southern District of New York**

Index Number: 06 CV 5936 (KMW)

Date Filed: \_\_\_\_\_

Plaintiff:

**Arista Records LLC, et. al.,**

vs.

Defendant:

**Lime Group LLC, et. al.,**

**State of New York, County of Albany)ss.:**

Received by Target Research LLC to be served on **Google, Inc.**

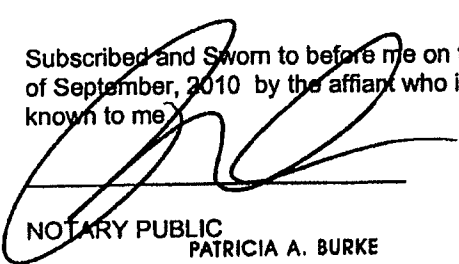
I, J.R. O'Rourke, being duly sworn, depose and say that on the **23rd day of September, 2010 at 2:30 pm, I:**

Served the within named **CORPORATION** by delivering two true copies of the **Subpoena to Testify at a Deposition in a Civil Action pursuant to section 306 BCL together with statutory service fee in the amount of \$40.00** to Donna Christie as Business Document Specialist I of The New York State Department of State, 99 Washington Avenue, Albany, NY 12207, the New York State Department of State being the **Registered Agent of record** of the within named corporation, in compliance with state statutes.

**Description of Person Served:** Age: 46, Sex: F, Race/Skin Color: White, Height: 5' 4", Weight: 160, Hair: Brown, Glasses: Y

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server in good standing in the jurisdiction in which the process was served.

Subscribed and Sworn to before me on the 24th day of September, 2010 by the affiant who is personally known to me.



NOTARY PUBLIC

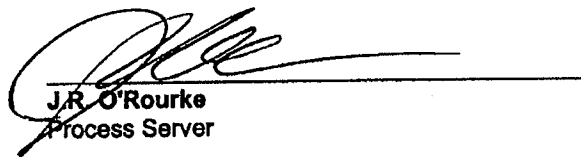
PATRICIA A. BURKE

NOTARY PUBLIC-STATE OF NEW YORK

No. 01BU4922372

Qualified in Albany County

My Commission Expires February 28, 2014



J.R. O'Rourke  
Process Server

**Target Research LLC**  
20 Vesey Street  
Ph  
New York, NY 10007  
(212) 227-9600  
Our Job Serial Number: 2010002682

# **EXHIBIT 2**

## Horan, Paul

---

**From:** Horan, Paul  
**Sent:** Monday, October 18, 2010 12:33 PM  
**To:** 'legal-compliance@google.com'  
**Subject:** Arista Records v. Lime Group LLC, et al.

Dear Sir or Madam:

I write in response to the letter of Suzanne Abbott to my colleague, Todd Cosenza, dated October 5, 2010. As I stated in my voice message to Ms. Abbott today, I write concerning two matters. First, a portion of the fax transmittal of the letter is illegible. Please resend it, either to my email address or the fax number below. Second, attached is a decision issued by the Court on Friday afternoon upholding in their entirety the subpoenas defendants have issued in the above-captioned matter, including the subpoena issued to your client. Accordingly, we would like to discuss with you as soon as possible your responses to the subpoena in light of the decision. Of course, we are willing to discuss the scope of that production so as to minimize any undue burden on your client, while ensuring that defendants receive the requested documents and information expeditiously, so that we can avoid any costly motion practice.

Please let us know when you are available to discuss this issue. Thank you.

Paul W. Horan  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York NY 10019  
(212) 728-8614 (phone)  
(212) 728-9614 (fax)



Discovery  
Order.pdf (79 KB)

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED 10/15/10

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLS, et al.,

Plaintiffs,

06 Civ. 5936 (KMW)(DF)

-against-

ORDER

LIME GROUP LLC, et al.,

Defendants.

X

**DEBRA FREEMAN, United States Magistrate Judge:**

Currently pending before the Court is Plaintiffs' motion to quash a number of third-party document subpoenas recently served by Defendants. (See Letter to the Court from Glenn D. Pomerantz, Esq., dated Sept. 27, 2010 ("9/27/10 Pomerantz Ltr.") (Dkt. 327).) In addition, during a telephone conference with the Court on September 29, 2010, the parties raised an issue as to whether the types of documents in question would be a proper subject of party discovery at this juncture.

For the reasons set forth below, Plaintiffs' motion to quash the subpoenas is denied. As to the appropriate scope of party discovery, the Court finds that Defendants' requests to Plaintiffs for the documents being sought – *i.e.*, Plaintiffs' recent license agreements and communications regarding licensing – were reasonably made during this phase of discovery, that the requested discovery is relevant to Plaintiffs' damages claims, and that Plaintiffs should update their prior production of such information so as to make that production current.

## DISCUSSION

During the initial phase of fact discovery in this litigation (a phase which closed on April 18, 2008 (*see* Order, dated Dec. 10, 2007 (Dkt. 52); Order, dated April 1, 2008 (Dkt. 69))), Defendants requested and received from Plaintiffs copies of Plaintiffs' license agreements and related communications with third parties. (9/27/10 Pomerantz Ltr. at 4-5.) Defendants have now served similar discovery requests, directed both to Plaintiffs and third parties, seeking primarily to supplement Plaintiffs' earlier production with information generated after the initial production date. Plaintiffs have moved to quash the third-party subpoenas, on the principal ground that the Court has already purportedly ruled that the types of documents requested need not be produced at this time. (*Id.*) More specifically, Plaintiffs appear to argue that the Court has already determined that these types of documents would not be relevant to any matters (including aspects of Plaintiffs' claimed damages) that are the subject of the current phase of discovery. For the same reason, Plaintiffs appear to argue that they should not be required to update their own prior production of license agreements and related materials.

### A. Standing To Challenge the Subpoenas

As a threshold matter, Plaintiffs have not demonstrated that they have standing to challenge the subpoenas in question. Generally, a party will not have standing to object to a subpoena directed to a third-party in the absence of a claim of privilege. *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir.1975); *see also* 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2459 (3d ed. 2008) ("Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action, unless the



objecting party claims some personal right or privilege with regard to the documents sought.”)  
(footnote omitted).

Here, Plaintiffs do not assert any privilege or personal right with regard to the documents sought by Defendants’ subpoenas. Rather, in the September 29, 2010 telephonic conference before the Court, Plaintiffs argued that they have standing to move to quash the subpoenas because, in their view, Defendants’ service of those subpoenas effectively violated the Court’s prior Order of August 9, 2010 (“8/9/10 Order”) (Dkt. 302). According to Plaintiffs, the Court held, in that Order, that Defendants were not entitled to discovery of license agreements and related communications during the current phase of discovery.

Yet even assuming that Plaintiffs are correct that a party may have standing to quash a third-party subpoena when it exceeds limits on discovery set by the Court in a prior order (a proposition for which Plaintiffs have cited no authority), they appear to be incorrect that such a situation exists in this case, as the Court has never actually addressed the right of Defendants to seek license agreements and related documents, to the extent those documents might be relevant to Plaintiffs’ damages claims.

In the Court’s August 9, 2010 Order, the type of documents now at issue were addressed by the Court – to the extent they were addressed at all – only in the context of whether Defendants would be permitted to “obtain further discovery related to the copyright misuse defense.” (8/9/10 Order, at 2.) Finding that “Defendants’ assertion of a copyright misuse defense [did] not bar any remedy in favor of Plaintiffs in this litigation” (*id.* at 7), the Court merely held that Defendants were “not entitled to discovery that relates *exclusively* to the asserted copyright misuse defense” (*id.* (emphasis added)). The parties did not brief, and the

Court did not address, the relevance of any of Defendants' specific document requests to other issues, including damages. Indeed, in its August 9 Order, the Court held that it was, at that time, "premature" to address "[w]hether Defendants may obtain discovery related to 'actual damages' suffered by Plaintiffs as a result of Defendants' infringing conduct." (*Id.* at 2, 5; *but see also id.* at 5 n.5 (noting that Defendants would at least be entitled to "some discovery" relating Plaintiffs' claimed actual and statutory damages).) Thus, the Court did not actually decide whether Defendants should be permitted to obtain Plaintiffs' license agreements and related communications during this discovery period, and this Court cannot find that Defendants' service of the subpoenas was violative of a Court order.

Consequently, Plaintiffs have offered no viable argument as to why they have standing to challenge the subpoenas. On that basis, their motion to quash the subpoenas is denied.

**B. Potential Party Discovery of Plaintiffs' Licenses and Related Communications**

On the question of whether Plaintiffs should be required to update their own prior production of their license agreements and communications with third-party licensees or potential licensees, Plaintiffs first argue that this type of discovery should have been – and was – properly conducted during the initial phase of discovery, which ended in April 2008. Yet, to the extent that Plaintiffs seek damages for alleged infringements occurring after that April 2008 date, it is fair and reasonable for Defendants to seek current information related to those claimed damages. Indeed, Plaintiffs seek substantial damages for Defendants' conduct over the past two years, and Defendants cannot be faulted for failing to demand information at a previous time, when that information did not yet exist. Thus, provided the license information is relevant to Plaintiffs' asserted damages, Plaintiffs should update their prior production.

On the issue of relevance, Defendants argue persuasively that Plaintiffs' actual or potential licensing arrangements would be relevant to their claim for common law damages. Lost profits are an appropriate measure of actual damages for common law copyright infringement. See *Pret-A-Printee, Ltd. v. Allton Knitting Mills, Inc.*, No. 81 Civ. 3770, 1982 WL 1788, at \*7 (S.D.N.Y. Sept. 16, 1982). Here, Plaintiffs' actual and potential licensing arrangements might shed light on the amount of profits that Plaintiffs would have made, had Defendants' customers downloaded Plaintiffs' copyrighted works from a source authorized by Plaintiffs.

Further, with respect to the relevance of the license information to Plaintiffs' claim of statutory damages, Defendants appropriately cite to *Bryant v. Media Rights Prods., Inc.*, 603 F.3d 135, 144 (2d Cir. 2010), in which the Second Circuit noted that,

[w]hen determining the amount of statutory damages to award for copyright infringement, courts consider: (1) the infringer's state of mind; (2) the expenses saved, and profits earned, by the infringer; (3) the revenue lost by the copyright holder; (4) the deterrent effect on the infringer and third parties; (5) the infringer's cooperation in providing evidence concerning the value of the infringing material; and (6) the conduct and attitude of the parties.

*Id.* In this case, Defendants argue that Plaintiffs' various licensing arrangements would be directly relevant to the third factor set out in *Bryant* – *i.e.*, the revenue Plaintiffs may have lost as a result of the claimed infringements. (See Letter to the Court from Mary Eaton, Esq., dated Sept. 29, 2010 (Dkt. 328) at 3.) Defendants also argue that both the licenses themselves and Plaintiffs' communications with licensees and potential licensees on the subject of licensing would be relevant to understanding Plaintiffs' "conduct and attitude" (the sixth factor enumerated in *Bryant*) regarding licensing, including their attitude toward Internet companies

which, for various reasons, may have sought to deviate from seemingly standard licensing rates and terms. *Bryant* itself provides little guidance as to the meaning or scope of the “attitude and conduct of the parties” factor, *see Bryant*, 603 F.3d at 144, and the parties have not elaborated on this point. Nonetheless, it is not difficult to see how communications with licensees or potential licensee might illuminate Plaintiffs’ attitudes regarding the value of its copyrights and show how Plaintiffs conducted themselves in dealing with others in the Internet marketplace.

Finally, in considering whether the requested discovery should be produced by Plaintiffs, the Court takes two other facts into account: (1) that Plaintiffs did produce the same type of material earlier, and thus are hard-pressed to argue that such material bears no relevance to their claims, and (2) that, as noted above, the amount of damages being sought by Plaintiff – including damages for alleged acts of infringement over the last two years – is *substantial*, which weighs in favor of requiring Plaintiffs to make full production of evidence related to damages, even if burdensome.

#### CONCLUSION

For the foregoing reasons, Plaintiffs’ motion to quash the third-party subpoenas (Dkt. 327) is denied, and, in addition, Plaintiffs are directed to produce in discovery their license agreements and related communications with third-party licensees, for the period from April 18, 2008 to the present.

To the extent that, after good faith conference, the parties still need judicial resolution of any other discovery disputes, they are directed to submit a joint letter to the Court, no later than one week from the date of this Order, identifying each dispute that remains extant.

Dated: New York, New York  
October 15, 2010

SO ORDERED

  
\_\_\_\_\_  
DEBRA FREEMAN  
United States Magistrate Judge

Copies to:

all parties (via ECF)

# **EXHIBIT 3**

---

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043



Tel: 650.253.3425  
Fax: 650.249.3429  
www.google.com

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**FACSIMILE TRANSMITTAL SHEET**

---

**TO:**  
Todd G. Cosenza

**FROM:**  
Suzanne Abbott  
Google

**COMPANY:**  
Willkie Farr & Gallagher LLP

**DATE:**  
October 5, 2010

**FAX NUMBER:**  
(212)728-8111

**TOTAL NO. OF PAGES INCLUDING COVER:** 4

**PHONE NUMBER:**  
(212)728-8000

**SENDER'S FAX NUMBER**  
650-249-3429

**RE:**  
Your subpoena

**SENDER'S TELEPHONE NUMBER:**  
650-253-5210

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

---

---

NOTES/COMMENTS:

Internal Ref. No. 115073

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043



Tel: 650.253.3425  
Fax: 650.249.3429  
www.google.com

October 5, 2010

*Via Facsimile and Express Courier*  
**(212)728-8111**

Todd G. Cosenza  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019  
(212)728-8000

**Re: Arista Records LLC, et al. v. Lime Group LLC, et al. United States District Court, Southern District of New York. (Internal Ref. No. 63115-115073)**

Dear Todd G. Cosenza:

We have received your subpoena for documents and testimony in the above-referenced matter. As we understand it, you are seeking documents and testimony related to Arista Records.

Please be aware that because Google is a California resident and the vast majority of documents and information regarding its business is retrievable and will be produced only from its headquarters in Mountain View, California, USA, Google believes it is under no obligation to respond to a subpoena not issued from a Court in this jurisdiction. Google accepts subpoenas issued from the Northern District of California Federal Court via personal service on the Google Custodian of Records for Google, Inc. at 1600 Amphitheatre Parkway, Mountain View, California, 94043. See F.R.C.P. 45(b).

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, and all analogous rules under any applicable state law, Google Inc. ("Google"), which is not a party to the underlying action, responds and objects to the subpoena for deposition testimony and the deposition topics (the "Topics") for at least the following reasons.

1. Google objects to the subpoena to appear for a deposition on the grounds that it imposes an undue burden on Google, a non-party, to appear as a witness. Google also objects to the subpoena to appear for a deposition on the grounds that the information sought can be obtained through less burdensome means, including from the parties to the case.
2. Google objects to the subpoena to appear for a deposition on the grounds it is vague, overbroad, duplicative, cumulative, unduly burdensome, and oppressive. Google objects to the subpoena to appear for a deposition to the extent that the subpoena is abusively drawn and served for the purpose of annoying and harassing Google, a non-party.
3. Google objects to the Topics to the extent they seek testimony that has been, or could be, obtained from any of the parties to the underlying litigation or by less burdensome means.



Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043



Tel: 650.253.3425  
Fax: 650.249.3429  
www.google.com

4. Google objects to the Topics on the grounds that they impose an undue burden and demand that Google, a non-party, appear as a witness at its own expense. To the extent that Google appears as a witness pursuant to the subpoena, Google shall only do so upon compensation for costs, including attorney fees, related to the deposition.
5. Google objects to the Topics to the extent they seek testimony that contains, or may contain, trade secrets, or other confidential business or commercial information entitled to protection under applicable common law, statutes or rules. Google objects to the extent that any Stipulated Protective Order entered in the case does not provide sufficient protection for the information sought from Google.
6. Google objects to the Topics to the extent they seek testimony protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. To the extent that Google testifies in response to the Topics, Google will not testify as to anything protected by such privileges or immunities, and any inadvertent disclosure shall not be deemed to constitute a waiver of any such privilege or immunity.
7. Google objects to the Topics to the extent they seek information that is not within Google's knowledge.
8. Google objects to the Topics to the extent that they are vague, overbroad or unduly burdensome.
9. Google objects to the Topics to the extent that they call for testimony that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.
10. Google objects to the Topics to the extent that it seek testimony or impose obligations beyond what is permissible under the Federal Rules of Civil Procedure or any applicable local rules.
11. Google objects to the Topics to the extent they seek testimony concerning a large range of topics in only a short time frame for providing the testimony. To the extent that Google appears as a witness pursuant to the subpoena, Google shall do so at a mutually agreeable time and place.

Google requests the opportunity to meet and confer to determine the scope and applicability of the above objections.

Google objects to the requests in the document subpoena to the extent they seek information already in Plaintiff's possession or available to Plaintiff from some other source that is more convenient, less burdensome or less expensive, including information available to Plaintiff from public sources. This means that if you are seeking account or other information from Google that is equally available from a party in the litigation, Google objects to that request on that basis. Google also objects to the requests to the extent they seek information containing confidential financial, proprietary or trade secret information, or any information subject to a confidentiality agreement or protective order. While Google does not require a protective order for production of its non-confidential information, Google will only produce information it deems confidential pursuant to a confidentiality agreement or protective order that it deems suitable for the protection of its confidential information. Please provide a confidentiality agreement or protective order if you intend to seek confidential documents of Google in your requests, as we will not produce confidential information without entry of a protective order that we deem suitable to protect the confidentiality of our documents.

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043



Tel: 650.253.3425  
Fax: 650.249.3429  
www.google.com

Google further objects to the requests to the extent they seek information protected by any privilege, including the attorney-client privilege, work product immunity doctrine, common interest privilege, or any other applicable privilege, immunity, or restriction on discovery. We also object to the requests to the extent that they are irrelevant, overly broad, vague, ambiguous, unlimited in time or scope, fail to identify the information sought with reasonable particularity, or impose an undue burden on Google. Google objects to the requests to the extent that they seek information that is not relevant or reasonably likely to lead to the discovery of admissible evidence.

If you have any questions, please feel free to contact the Legal Investigations Support Department at [LEGAL-COMPLIANCE@GOOGLE.COM](mailto:LEGAL-COMPLIANCE@GOOGLE.COM). Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Suzanne Abbott", is positioned above the typed name.

Suzanne Abbott  
Legal Investigations Support

# **EXHIBIT 4**

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through December 9, 2010.

---

Selected Entity Name: GOOGLE, INC.

Selected Entity Status Information

**Current Entity Name:** GOOGLE, INC.  
**Initial DOS Filing Date:** SEPTEMBER 18, 2000  
**County:** NEW YORK  
**Jurisdiction:** NEW YORK  
**Entity Type:** DOMESTIC BUSINESS CORPORATION  
**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

GOOGLE, INC.  
80 STATE STREET  
ALBANY, NEW YORK, 12207

**Chairman or Chief Executive Officer**

ERIC SCHMIDT  
1600 AMPHITHEATRE PARKWAY  
MOUNTAIN VIEW, CALIFORNIA, 94043

**Principal Executive Office**

GOOGLE, INC.  
1600 AMPHITHEATRE PARKWAY  
MOUNTAIN VIEW, CALIFORNIA, 94043

**Registered Agent**

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not

recorded and only available by viewing the certificate.

**\*Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

\*Stock information is applicable to domestic business corporations.

**Name History**

Filing Date	Name Type	Entity Name
OCT 13, 2000	Actual	GOOGLE, INC.
SEP 18, 2000	Actual	SUSAN VENTURA, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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# **EXHIBIT 5**



[Home](#) › [About](#) › [Corporate information](#) › [Offices](#)

## Google offices

Map data ©2010 Geocentre Consulting, MapLink, Tele Atlas -

Interested in working in one of these locations? We're always looking for great people.

### United States

#### Google Inc.

1600 Amphitheatre Parkway  
Mountain View, CA 94043  
Phone: +1 650-253-0000  
Fax: +1 650-253-0001

#### Google Ann Arbor

201 S. Division St.  
Suite 500  
Ann Arbor, MI 48104  
Phone: +1 734-332-6500  
Fax: +1 734-332-6501

#### Google Atlanta

Millennium at Midtown  
10 10th Street NE  
Suite 600  
Atlanta, GA 30309  
Phone: +1 404-487-9000  
Fax: +1 404-487-9001

#### Google Austin

9606 North MoPac Expressway  
Suite 400  
Austin, TX 78759

**Google Boulder**

2590 Pearl Street  
Suite 100  
Boulder, CO 80302  
Phone: +1 303-245-0086  
Fax: +1 303-535-5592

**Google Cambridge**

5 Cambridge Center, Floors 3-6  
Cambridge, MA 02142  
Phone: +1 617-575-1300  
Fax: +1 617-575-1301

**Google Chapel Hill**

410 Market St  
Suite 415  
Chapel Hill, NC 27516

**Google Chicago**

20 West Kinzie St.  
Chicago, IL 60654  
Phone: +1 312-840-4100  
Fax: +1 312-840-4101

**Google Detroit**

114 Willits Street  
Birmingham, MI 48009  
Phone: +1 248-593-4000  
Fax: +1 248-593-4001

**Google Irvine**

19540 Jamboree Road  
2nd Floor  
Irvine, CA 92612  
Phone: +1 949-794-1600  
Fax: +1 949-794-1601

**Google Kirkland**

747 6th Street South,  
Kirkland, WA 98033  
Phone: +1 425-739-5600  
Fax: +1 425-968-9399

**Google Madison**

301 S. Blount St.



Suite 301

Madison, WI 53703

Phone: +1 608-669-9600

Fax: +1 608-669-9601

**Google New York**

76 Ninth Avenue

4th Floor

New York, NY 10011

Phone: +1 212-565-0000

Fax: +1 212-565-0001

**Google New York**

Chelsea Market Space

(mail cannot be received at this address)

75 Ninth Avenue

2nd and 4th Floors

New York, NY 10011

Phone: +1 212-565-0000

Fax: +1 212-565-0001

**Google Pittsburgh**

6425 Penn Ave.

Suite 700

Pittsburgh, PA 15206

Phone: +1 412-345-6700

Fax: +1 412-345-6699

**Google Reston**

1818 Library Street

Suite 400

Reston, VA 20190

Phone: +1 202-370-5600

Fax: +1 202-370-5601

**Google San Francisco**

345 Spear Street

Floors 2-4

San Francisco, CA 94105

Phone: +1 415-736-0000

**Google Santa Monica**

604 Arizona Avenue

Santa Monica, CA 90401

Phone: +1 310-460-4000

Fax: +1 310-309-6840

**Google Seattle**

651 N. 34th St.

Seattle, WA 98103

Phone: +1 206-876-1800

Fax: +1 206-876-1701

**Google Washington DC**

1101 New York Avenue, N.W.

Second Floor

Washington, DC 20005

Phone: +1 202-346-1100

## **Asia Pacific**

### **Australia**

**Google Sydney**

Google Australia Pty Ltd.

Level 5, 48 Pirrama Road,

Pyrmont, NSW 2009

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# **EXHIBIT 6**

<p>An Executive Conference from <b>THE WALL STREET JOURNAL</b></p> <h1>ECO:nomics</h1> <p>■ ■ CREATING ENVIRONMENTAL CAPITAL</p>	<p><b>PARTICIPANTS INCLUDE</b></p> <p><b>WILLIAM CLAY FORD, JR.</b> Executive Chairman, Ford Motor Company</p>	<p><b>Request an Invitation</b> <b>ECO:nomics.wsj.com</b></p>
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**THE WALL STREET JOURNAL**

[WSJ.com](http://WSJ.com)

NY REAL ESTATE COMMERCIAL | DECEMBER 3, 2010, 11:43 A.M. ET

## Google to Buy New York Office Building

By PETER GRANT

Google Inc. has signed a contract to buy the building that houses its New York City offices, in a deal that values the property at close to \$1.9 billion, according to people familiar with the matter.

The deal for the massive 2.9-million-square-foot property at 111 Eighth Avenue is the biggest for a single building in the U.S. this year.

While the building is located in Manhattan's Chelsea neighborhood—and not one of the city's tony office districts—it is popular with tenants like Nike Inc., the Lifetime cable channel and WebMD, the Web publisher. About one-third of its space is occupied by telecommunication companies.

Google occupies about 500,000 square feet in the building and earlier this fall was reported to be a front-runner in the bidding for the property. The company won partly because it knew the building well and was willing to close the deal before the end of the year, according to people familiar with the matter. While the deal could still fall apart, that is unlikely because the contract is binding and Google has put down a large deposit, these people said.

A spokesman for Google declined to comment.

The seller of the property is a group that includes the New York State Common Retirement Fund, real-estate investment company Jamestown and Taconic Investment Partners LLC.

The building, which once housed the headquarters of the Port Authority of New York and New Jersey, was being marketed by Douglas Harmon, a senior managing director at Eastdil Secured.

The commercial real-estate industry in most parts of the country has been struggling with the aftermath of the recession. But property values have been increasing and interest has been keen in such major cities as New York, Washington and Boston.

While rents and occupancy levels continue to stagnate in those cities as well, well-leased properties have become appealing to investors because their returns are attractive compared with bonds and other investments. Values still are below the peak values hit during the boom years.

At a value of \$1.9 billion, the building at 111 Eighth Avenue produces an initial yield of about 5%, the people familiar with the matter said.

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