EXHIBIT G

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December 21, 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, New York 10007-1312

Re: ***Arista Records, LLC, et al. v. Lime Group LLC, et al.,***
Index No. 06 Civ. 05936 (KMW) (DCF)

Dear Judge Freeman:

We represent non-parties iMesh, Inc. and MusicLab, LLC (iMesh, Inc.'s wholly owned subsidiary) (collectively referred to herein as "iMesh"). We submit this letter brief in opposition to an application by Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants"), made by letter to Your Honor dated December 13, 2010 ("Defendants' Letter"), for an order overruling iMesh's objections to Defendants' Subpoenas to Testify at a Deposition in a Civil Action dated September 21 and September 22, 2010 served on iMesh (the "Subpoenas"), and in support of iMesh's application to quash the Subpoenas and for an award of sanctions.[1]

As discussed more fully below, prior to receiving the Subpoenas, iMesh had already been subpoenaed *twice* by the Defendants *in this case* (in 2007 and 2008), and had previously complied with its obligations in connection with those subpoenas, by duly interposing objections, and by providing certain documents and deposition testimony.[2]

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[1] The Subpoenas served on iMesh, Inc. and MusicLab, LLC are attached to Defendants' Letter as Exhibits 1 and 2, respectively.

[2] iMesh previously was served with two subpoenas issued in this case by Defendants, dated September 14, 2007 and March 25, 2008, and, after timely interposing objections, produced over 630 pages of documents in

In fact, iMesh duly and timely objected in 2007 to the document demands in Defendants' first subpoena, which basically sought the same documents as demanded in the recent Subpoenas. The Defendants never pursued such discovery and never moved to compel production of such documents. Therefore, the Defendants have waived any rights they may have had to compel production pursuant to both the previous subpoenas and the present Subpoenas, and Defendants' motion is therefore improper and made without valid standing.

By serving yet another round of document and deposition subpoenas on iMesh *in this case*, Defendants have flouted the applicable prohibitions against overburdening a non-party through duplicative, unreasonable and burdensome document demands and multiple depositions. Further, Defendants and their counsel have engaged in sanctionable behavior by improperly issuing, and refusing to withdraw, the Subpoenas, and through their failure to meet and confer in good faith with iMesh's undersigned counsel prior to making the instant motion to compel.

In light of the foregoing, iMesh respectfully requests that this Court deny the Defendants' motion in all respects, quash the subpoenas, and impose appropriate sanctions on Defendants, including an award of iMesh's attorneys' fees incurred in connection with responding to the Subpoenas and submitting this opposition.

Background

As the above-referenced case has dragged on over the years, the Defendants have seen fit to periodically demand documents and deposition testimony from iMesh. Defendants' improper service of the Subpoenas on iMesh on or about September 22, 2010 through its newly substituted counsel represents only the most recent volley of such demands.

iMesh timely interposed objections, and subject to such objections, complied with Defendants' previous subpoenas (served by previous counsel) by producing more than 600 pages of license agreement documents and appearing and giving testimony at a deposition on April 14, 2008. Nevertheless, the current Subpoenas improperly sought the production of documents on October 1, 2010 – including categories of documents which Defendants previously sought and to which iMesh objected – as well as another deposition of an iMesh representative on October 7, 2010.

Even though iMesh's response was not yet due, in an abundance of caution, on October 1, 2010, iMesh served its Response of Non-Party iMesh, Inc. to Subpoena and Accompanying Demand for the Production of Documents ("Response to Subpoenas").[3]

By its Response to Subpoenas, iMesh objected to the Subpoenas, based on the grounds that, *inter alia*, (i) the Defendants had previously served two subpoenas on iMesh, taken the

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response. iMesh also appeared at a deposition and gave testimony on April 14, 2008 pursuant to Defendants' prior subpoenas.

[3] iMesh's Response to Subpoenas is attached to Defendants' Letter as Exhibit 4. iMesh's Response to Subpoenas, by agreement with Defendants, is also a response to the subpoena served on MusicLab, LLC.

deposition of iMesh principal Talmon Marco, and received some 630 pages of documents from iMesh in response to those prior subpoenas; (ii) in light of such prior production and the heavy burden already shouldered by non-party iMesh in connection therewith, Defendants are not entitled to continue pursuing iMesh for additional documents and deposition testimony; (iii) the Subpoenas seek documents and tangible things already in the possession, custody or control of the parties in this action (the "Parties"), or which can be obtained more readily from a source other than iMesh; (iv) the document requests in the Subpoenas are overly broad, unduly burdensome, or seek documents not relevant and/or not reasonably calculated to lead to the discovery of admissible evidence – (e.g. the Subpoenas seek extensive, detailed information over a period of nearly six years with respect to 11,602 sound recordings listed in a spreadsheet which itself runs some 414 pages); and (v) the discovery sought by the Requests are irrelevant to the sole remaining issue of damages in the case. iMesh also attached to its Responses to Subpoenas its responses to the September 14, 2007 subpoena, explicitly incorporating by reference all objections asserted therein.

On Friday, October 15, 2010, the Court issued an order in response to Plaintiffs' motion to quash the subpoenas Defendants had served on iMesh and various other non-parties (Dkt. 329) (the "10/15 Order"). The Order held that (i) Plaintiffs did not have standing to quash the non-party subpoenas, including the Subpoenas, and (ii) Plaintiffs should "update their prior production" to Defendants of license agreements and communications with non-party licensees or potential licensees.

On Saturday, October 16, 2010, Defendants' counsel Mary Eaton sent an email to iMesh's undersigned counsel invoking the 10/15 Order and indicating that she would discuss the timing of iMesh's document production. In her email, Ms. Eaton failed to note that the 10/15 Order did not address the Subpoenas in substantive terms, at least with respect to non-parties, and was based largely on a finding that the Plaintiffs did not have standing to challenge the validity of the Subpoenas. Nonetheless, the very next business day, on Monday, October 18, 2010, iMesh's undersigned counsel sent an email to Defendants' counsel for the purpose of scheduling a telephone call to discuss Ms. Eaton's request.

After trading voicemail messages, iMesh's undersigned counsel and Defendants' counsel conferred on Wednesday, October 20, 2010 following Defendants receipt of a letter that iMesh's undersigned counsel emailed to Defendants' counsel earlier in the day on October 20, 2010 (the "iMesh Letter").[4]

In the iMesh Letter, iMesh demanded that Defendants withdraw the Subpoenas, citing Defendants' flagrant violation of FRCP 30(a)(2) by seeking a second deposition of a non-party without first seeking court permission to do so. The iMesh Letter further noted that iMesh obviously had standing to quash the Subpoenas, and that the October 15, 2010 Order clearly contemplated that Defendants would obtain the discovery sought in the Subpoenas from Plaintiffs directly, rather than from non-parties to the action. The iMesh Letter also invoked

[4] A copy of the iMesh Letter from the undersigned dated October 20, 2010 to Defendants' counsel is attached to Defendants' Letter as Exhibit 3.

FRCP 26(b)(2)(c), providing that discovery should be limited where discovery sought is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." During the foregoing October 20th phone conversation, Defendants' counsel agreed that Defendants would provide a proposal to limit the scope of the Subpoenas.

Despite Defendants' claim of exigent circumstances, Defendants's counsel failed to follow up with iMesh's counsel for over six weeks, finally making contact in an email dated December 2, 2010 (the "December 2nd E-mail").[5] Defendants' counsel attached to the December 2nd E-mail a copy of an order of the Court directed to VEVO LLC ("VEVO") dated November 23, 2010 (the "VEVO Consent Order"). Defendants requested that iMesh use the VEVO Consent Order as a template for producing documents pursuant to the Subpoenas.[6]

What Defendants failed to mention in the December 2nd E-mail was that VEVO is actually a joint venture created by at least two of the Plaintiffs in this case (or their affiliates) – Sony Music Entertainment and Universal Music Group, which is affiliated with plaintiff UMG Recordings, Inc.[7] Thus, VEVO, while technically a non-party, is actually closely affiliated with the Plaintiffs, and it was therefore not surprising that VEVO's proposed production of documents pursuant to Defendants' subpoena, as memorialized in the VEVO Consent Order, was not unlike the scope of production imposed on the Plaintiffs in the Court's 10/15 Order. Plaintiffs' position with respect to VEVO is in sharp contrast to the situation of iMesh, in which Plaintiffs do not have an ownership interest, and thus, unlike VEVO, should be treated like a true non-party to the current lawsuit.[8]

Thereafter, late in the afternoon on December 9, 2010, Defendants' counsel advised the undersigned by email that unless iMesh and the Defendants came to an agreement on production *that day*, Defendants would be moving to compel disclosure. iMesh's counsel promptly responded, taking issue with Defendants' sudden and blatant pressure tactic following six weeks of silence. iMesh's counsel suggested that a call be scheduled for the next morning, Friday, December 10, 2010, to discuss Defendants' proposal and that iMesh's counsel would need the weekend to confer with his clients in Israel because of the time difference. During the December 10th call, Defendants' counsel clarified its position, and then confirmed in a follow-up email that he would speak to iMesh's counsel on Monday, December 13, 2010.

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5 A copy of the December 2nd E-mail is attached to the Defendants' Letter as Exhibit 5. Contrary to the allegation in Defendants' Letter, iMesh's undersigned counsel has no record of a telephone message from Defendants' counsel on October 27, 2010 and denies that any phone message regarding the Subpoenas was not returned.

6 In Defendants' Letter, they state that they are willing to narrow their overbroad and unduly burdensome Subpoenas to those categories stated in the VEVO Consent Order. iMesh, therefore, focuses herein on those limited categories, but reserves its right to object to the extent that Defendants later seek to enforce all demands contained in the Subpoenas.

7 A printout from VEVO's website "About" section is attached hereto as Exhibit A.

8 In the December 2nd E-mail, Defendants' counsel also mischaracterized iMesh's position regarding the demanded depositions. That is, iMesh never confirmed that it would accept a stipulation under which the Defendants reserved their rights to seek court permission to depose iMesh for a second time.

Despite the parties' discussion of earlier that morning, not five hours later that same day, at 4:18 p.m. on Friday, December 10th, Defendants' counsel emailed to "alert" iMesh that Defendants would be proceeding with its motion to compel, without any explanation and despite iMesh counsel's effort to come to a resolution and agreement to discuss iMesh's response after contacting iMesh representatives over the weekend.

In response to Defendants' notification regarding its intent to make the instant motion, by email dated Sunday, December 12, 2010, the undersigned informed Defendants' counsel that the discussion of December 10th had clearly been undertaken by Defendants' counsel in bad faith, that the Defendants had not complied with their obligation to meet and confer in an effort to avoid unnecessary motion practice, and that if the Defendants proceeded with their motion, such wrongful behavior would be brought to the Court's attention and iMesh would seek all available sanctions.[9]

The following day, on Monday, December 13, 2010, Defendants' counsel telephoned the undersigned to again discuss his clients' proposal for an agreed upon scope of document production. Once again, the undersigned agreed to take Defendants' proposal back to representatives of iMesh to consider and thereafter respond. However, once again, later that same day, on Monday, December 13th, before iMesh's counsel had had an opportunity to confer with iMesh representatives located in Israel, Defendants' counsel sent another email, stating that "Further to our call today, we are going to proceed with the motion. Thanks."[10]

In response to the December 13th email from Defendants' counsel, the undersigned reiterated in an email later that afternoon that he had been prepared to review Defendants' proposal with iMesh, but that Defendants' counsel's email had once again mooted any such further discussion.[11]

Based on the foregoing and as discussed further below, the Defendants respectfully request that the Court deny the Defendants' motion to compel, and grant iMesh's cross-motion to quash the Subpoenas and for award of applicable sanctions, including recovery of iMesh's attorneys' fees expended in connection with responding to the Subpoenas and engaging in the instant motion practice.

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9 A copy of the December 12, 2010 email to Defendants' counsel is annexed as Exhibit B hereto.

10 A copy of the Defendants' counsel's email dated December 13, 2010 is attached as Exhibit C hereto.

11 A copy of the undersigned's email to Defendants' counsel dated December 13, 2010 is attached as Exhibit D hereto.

I. THE COURT HAS ALREADY DIRECTED PLAINTIFFS TO PRODUCE THE DISCOVERY THAT DEFENDANTS NOW SEEK FROM iMESH

According to Defendants' Letter, Defendants seek four categories of documents from iMesh: (i) licenses or agreements between iMesh and Plaintiffs; (ii) communications between Plaintiffs and iMesh regarding licenses or negotiations thereof; (iii) revenue information pursuant to those licenses; and (iv) documents concerning LimeWire. However, the Court has already directed Plaintiffs to produce all license agreements (specifically excepting drafts)[12] and all communications with iMesh relating to licensing and/or LimeWire, among others.[13] Therefore, the Plaintiffs are already presumably producing the first two categories of documents sought by Defendants and a portion of those falling into the fourth category. The Court has "held in abeyance" Defendants' discovery from Plaintiffs of revenue information and internal communications regarding LimeWire until Defendants can prove that such discovery is necessary. *See* 11/2 Order; 11/19 Order (holding that certain discovery, previously ordered to be produced in the 11/2 Order, to be "held in abeyance... to give Defendants the opportunity to make a presentation of evidence to Judge Freeman to demonstrate that ... [such] further discovery ... is necessary".). Therefore, the Court has held in abeyance the third category and the balance of the fourth category sought by Defendants herein. In light of such facts, iMesh, a *non-party*, should not be directed to duplicate Plaintiffs' production or subject itself to discovery beyond that which the Court has determined Defendants are entitled from *Plaintiffs*.

The Federal Rules of Civil Procedure limit the breadth of discovery to protect parties and non-parties alike from abuse of the subpoena power. Fed.R.Civ.P. 26(b)(2)(C) provides that a party is not entitled to discovery that is:

> (i) unreasonably cumulative or **duplicative**, or can be **obtained from some other source** that is more convenient, **less burdensome**, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(emphasis supplied).

Defendants' position, that they are entitled to documents "that would not be in Plaintiffs' possession," is contradicted by the facts and the law. Defendants allege that they are entitled to internal iMesh communications "regarding license agreements or negotiations with any Plaintiffs concerning agreements, including notes of meetings, between representatives of iMesh... and

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[12] The fact that the Court has determined that Plaintiffs need *not* produce draft agreements negates any need that Defendants might have for iMesh's "versions" of identical agreements that will be produced by Plaintiffs. *See* 11/2/10 Order.

[13] *See* 10/15 Order; *see also* Order of the Court dated November 2, 2010 (Dkt. 339) ("11/2 Order") (narrowing scope of 10/15 Order); Opinion and Order of the Court dated November 19, 2010 (Dkt. 363) ("11/19 Order") (holding in abeyance portions of discovery directed in the 10/15 Order).

Plaintiffs." However, the Court's 11/2 Order (confirmed and modified by the 11/19 Order) limited discovery of Plaintiffs' communications pertaining to licensing and LimeWire to *external* communications ("From the date of Plaintiffs' last production of such materials to the present, Plaintiffs shall produce to Defendants... (ii) all communications, relating to licensing, *between* Defendants and the 15 third-party licensees recently subpoenaed by Defendants, except for draft license agreements, and (iii) all communications *with other licensees* referring or relating to LimeWire") (emphasis supplied).[14] There is no basis for Defendants' argument that iMesh, a non-party, should be held to a *higher* standard of production than Plaintiffs by being required to produce internal iMesh communications. Further, any external communications between iMesh and the Plaintiffs, as opposed to internal iMesh communications, would necessarily be in the possession of Plaintiffs and could presumably be produced by Plaintiffs without further burdening iMesh.

Thus, Defendants will obtain all of the discovery to which they are entitled as determined by the Court without any further production from iMesh and the Subpoenas should therefore be quashed.

II. DEFENDANTS' REQUESTS ARE OVERLY BROAD, UNDULY BURDENSOME, AND SEEK DOCUMENTS NOT RELEVANT NOR REASONABLY CALCULATED TO LEAD TO ADMISSABLE EVIDENCE

Whether 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, the time period covered by it, the particularity with which the documents are described and the burden imposed." *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 49 (S.D.N.Y. 1996) (*quoting United States v. IBM Corp.*, 83 F.R.D. 97, 104 (S.D.N.Y. 1979)); *see also* Fed.R.Civ.P. 26(b)(2)(C)(iii). The party issuing the subpoena must demonstrate that the information sought is relevant and material to the allegations and claims at issue in the proceedings. *E.g., Salvatore Studios Int'l v. Mako's Inc.*, No. 01 Civ. 4430, 2001 WL 913945, at *1 (S.D.N.Y. Aug.14, 2001) ("Rule 26(b)(1) of the Federal Rules of Civil Procedure restricts discovery to matters relevant to the claims and defenses of the parties. Here, the burden is on Mako's [who issued the subpoena] to demonstrate relevance.").

The Subpoenas, as drafted, are overly broad, unduly burdensome and seek documents not relevant nor reasonably calculated to lead to the discovery of admissible evidence. This is especially so when considering that the only issue remaining in this action is damages, not liability.

By way of example only, document request number 6 annexed to the Subpoenas seeks "[a]ll documents concerning Defendants and/or the LimeWire software application." The same request was made in document request number 1 to the September 14, 2007 subpoena.[15] In

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[14] While the 11/2 Order permitted discovery of internal communications relating to LimeWire, the 11/19 Order held such discovery "in abeyance" pending Defendants' showing of necessity.

[15] The September 14, 2007 subpoena is attached hereto as Exhibit E.

October of 2007, iMesh objected to this document request, as well as to all others repeated in the current Subpoenas, as being overly broad, unduly burdensome and not reasonably calculated to lead to admissible evidence.[16] Defendants never pursued such discovery relative to the September 14, 2007 subpoena, or any other discovery relative to that subpoena served on iMesh. Apparently ceding to iMesh's objections to the 2007 document subpoena, Defendants followed up with a much more narrow subpoena dated March 25, 2008, seeking copies of license agreements, in response to which iMesh produced over 630 pages of documents.[17]

Now, over three years later, Defendants bring the same inappropriate requests to which iMesh has, for the second time, timely objected. Moreover, Defendants have failed to meet and confer in good faith relative to iMesh's substantive and legitimate objections – and still cannot articulate any sound basis to pursue the discovery sought in the Subpoenas. Having failed to move in 2007 to compel iMesh to produce the documents they now seek, Defendants have waived the right to pursue such disclosure now.

The Subpoenas, even as narrowed by the categories delineated in the "VEVO Consent Order," are overly broad, unduly burdensome and are not reasonably calculated to lead to the discovery of admissible evidence. For example, Defendants seek internal iMesh documents and communications referring or relating to Defendants or to LimeWire or the LimeWire application. Such discovery is simply not relevant to the sole remaining issue in this action – damages. Defendants counsel, in phone conversations with iMesh's counsel, was unable to articulate any valid basis on which discovery of internal iMesh communications relative to Defendants, LimeWire, or the LimeWire application could be deemed relevant to damages. Further, Defendants fail to establish any basis for discovery of internal iMesh communications in Defendants' Letter. Indeed, the Court has recognized that discovery of internal communications (as well as revenue reports), is inappropriate and has held such discovery "in abeyance" pending a showing of evidence by Defendants that such discovery, even as to named parties in the action, is "necessary." *See* 11/19 Order.

Further, the VEVO Consent Order, which Defendants seek to impose upon iMesh, requires that VEVO produce draft license agreement with Plaintiffs. However, draft agreements were explicitly excluded from Plaintiffs' production in the 11/2 Order. iMesh should not be held to the terms negotiated and consented to by VEVO where the Court has already made determinations that documents sought therein are *not relevant* at this juncture absent an additional showing of necessity by Defendants.

Defendants' reliance on *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, No. 05 CV 6430 (VM) (JCF), 2007 WL 4410405 (S.D.N.Y. Dec. 17, 2007) is misplaced. Defendants correctly observe that the *Bridgeport* court based its decision on the fact that the request was "relatively narrow." *Id.* at *2. The *Bridgeport* court specifically distinguished its facts with those in *Concord* where the subpoena sought all documents between the non-party and the party for every transaction between the two during the preceding ten years. *Bridgeport*, at *2. By arguing

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16 iMesh's October 19, 2007 response to the September 14, 2007 subpoena is attached hereto as Exhibit F.

17 The March 25, 2008 subpoena is attached hereto as Exhibit G.

that the facts herein are more like *Bridgeport* than *Concord*, Defendants urge that this Court overlook the fact that the Subpoenas seek agreements, communications, and documents reflecting amounts, if any, paid by iMesh with respect to **13** specific Plaintiffs and *all* documents concerning LimeWire.[18]

The discovery Defendants seek herein, which includes all communications as to **13** different Plaintiffs and "all documents concerning Defendants," including internal communications, is far from "narrow," as Defendants allege, and, in light of the substantial discovery to which iMesh has already been subjected, iMesh's objections should be sustained and the Subpoenas quashed.

Additionally, "the status of a witness as a non-party to the underlying litigation 'entitles [the witness] to consideration regarding expense and inconvenience.'" *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 49 (S.D.N.Y. 1996) (quoting Fed.R.Civ.P. 45(c)(2)(B)). iMesh, having been served with three subpoenas, having appeared at a deposition, and having been served with the latest Subpoenas to take deposition in violation of the Federal Rules of Civil Procedure,has been "inconvenienced" to say the least. The substantial expense that iMesh would have to incur by responding – in collecting responsive documents and paying for attorney review – weighs heavily in favor of quashing the subpoenas and limiting Defendants' discovery to either the Parties, or non-parties who have not already been so subjected to such extensive and burdensome discovery.[19]

III. THE SUBPOENAS SHOULD BE QUASHED AND SANCTIONS IMPOSED

The Subpoenas at issue herein represent Defendants' third instance of abuse of the Court's subpoena power to harass iMesh with overly broad, burdensome and inappropriate discovery demands, including a second attempt to depose iMesh in violation of Fed.R.Civ.P. 30(a)(2). iMesh, as a non-party to the action, has already had to shoulder the heavy burden of locating and selecting documents and producing a witness for deposition. Given that history, Defendants are not entitled to continue pursuing iMesh, at literally the 11th hour in this case and after liability has already been determined, for further documents and testimony to which they are not entitled through yet another overbroad and unduly burdensome subpoena.

The language of Fed.R.Civ.P. 45(c)(1) makes clear Defendants' obligation in this regard, stating: "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

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[18] Further, Defendants' effort to equate iMesh's responsibilities as a non-party in this action to the responsibilities of a *party's attorney*, as in the *Bridgeport* action, is misguided.

[19] As stated in the iMesh Response to Subpoenas, iMesh has previously had to absorb substantial costs and attorneys' fees in connection with complying with Defendants' previous two subpoenas in this action. Further, compliance with the Subpoenas would require iMesh to expend still more substantial costs and attorneys' fees. Therefore, in the event that iMesh is directed to produce documents responsive to the Subpoenas, iMesh respectfully requests that the Court issue an order directing Defendants to first pay all of iMesh's associated actual and anticipated costs, including, without limitation, iMesh's reasonable attorneys' fees related to such production. *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309, 321 (S.D.N.Y. 2003).

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."

By issuing the overly broad and burdensome Subpoenas, imposing duplicative document demands to which iMesh objected three years ago, seeking a second deposition without leave of Court in knowing violation of FRCP 30(a)(2), and then by bringing this motion over iMesh's meritorious objections, Defendants have repeatedly violated FRCP 45(c)(1). The court should therefore quash the Subpoenas and award iMesh its attorneys' fees expended in responding to the Subpoenas and engaging in the current motion practice.

FRCP 30(a)(2) provides that leave of Court is required *before* a party seeks a second deposition of a witness in the same case: "A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2): if ... the deponent has already been deposed in the case...." While Defendants state, in a footnote, that they "are not seeking to depose iMesh now," they state that they "reserve their right to do so after iMesh produces its documents." Defendants are well aware that they are in violation of FRCP 30(a)(2) amounting to sanctionable conduct pursuant to FRCP 45(c)(1).

Sanctions are properly imposed and attorneys' fees are awarded where, as here, the party improperly issuing the subpoena refused to withdraw it, requiring the non-party to institute a motion to quash. *See American Int'l Life Assurance Co. v. Vasquez*, No. 02 Civ. 141, 2003 WL 548736, at *2-3 (S.D.N.Y. Feb. 25, 2003) (imposing sanctions for lost wages and awarding attorneys' fees incurred in bringing motion to quash after attorney issuing subpoena refused to comply with non-party's request to voluntarily withdraw subpoena that sought privileged information). iMesh advised Defendants of the above, in detail, in the iMesh Letter.

Defendants have committed further bad faith conduct, making sanctions even more appropriate herein, by failing to (i) meet and confer in good faith on the issues herein, and (ii) by seeking discovery contrary to the 11/2 and 11/19 Orders of the Court.

The Federal Rules of Civil Procedure require that a party moving to compel certify that the party has "in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." FRCP 37(a)(1), *see also* FRCP 26(c); *see also Concord*, 169 F.R.D. at 48. As more fully stated above in the Background section, Defendants have not "in good faith conferred or attempted to confer" with iMesh relative to the Subpoenas. Thus, Defendants' counsel has not provided the requisite certification because they cannot.

Therefore, the Subpoenas should be quashed and Defendants should be made to pay iMesh's attorneys' fees incurred relative to responding to the Subpoenas and opposing Defendants' motion to compel.

CONCLUSION

For all the reasons set forth above, iMesh respectfully requests that the Court sustain iMesh's objections to the Subpoenas, deny Defendants' motion to compel production, quash the Subpoenas, award iMesh its attorneys' fees expended in responding to the Subpoenas and opposing Defendants' instant motion, and grant iMesh such other and further relief as the Court deems just and proper.

Respectfully submitted,

Jeffrey Weingart

cc: Mary Eaton, Esq. (via email)
Glenn D. Pomerantz, Esq. (via email)
Jeffrey A. Kimmel, Esq. (via email)

EXHIBIT A

About VEVO
Our Team
Media Quotes
FAQ
Careers

Media Room
Press Releases
Screen Shots
Logos

Advertising

About VEVO

VEVO is the leading premium music video and entertainment service with 1.7 billion worldwide streams and nearly 60 million unique visitors in the U.S. and Canada each month. VEVO's programming is made available across the VEVO platform, which includes VEVO.com (the service's marquee destination site), VEVO Mobile (iPhone, iPod touch), VEVO connected devices (Google TV, Boxee) and a VEVO-branded embedded player. VEVO also syndicates its programming to additional internet destination sites, including AOL, BET, CBS Interactive Music Group (including Last.fm), Univision and, through a special partnership, VEVO on YouTube, expanding the platform's reach across the worldwide web.

Ranked by comScore as the #1 Music platform on the web, VEVO was named by *Billboard* as one of the top startups of 2010 and received the prestigious Advertising Age Media Vanguard Award for Online Video Platform Launch of the Year. Turning online music programming on its heels just one year into launch, VEVO's "meteoric rise" (*Mediapost*) has been applauded by the *Associated Press* as a "striking example of the music video's dramatic comeback" while its mobile launch was called "stellar" by *Mashable*.

VEVO was created in partnership by Universal Music Group (UMG), Sony Music Entertainment (SME) and the Abu Dhabi Media Company. It is operated independently by a dedicated management team with offices in New York, Los Angeles, Chicago, Detroit and San Francisco. VEVO features the most extensive catalog of premium music content found anywhere on the web thanks to deals with such leading music companies as Universal Music Group, Sony Music Entertainment, EMI Music, ABKCO, Beggars Group, Big Machine Records, CBS Interactive Music Group, Concord Music Group, Hollywood Records, Lyric Street Records, Razor & Tie Entertainment, Ultra Records, Walt Disney Records, Wind-up Records, Caroline Distribution, Entertainment One Distribution, Fontana Distribution, INgrooves, IODA, RED, SAAVN and The Orchard, among many others. Explore VEVO at www.vevo.com.

EXHIBIT B

From: Jeffrey P. Weingart
Sent: Sunday, December 12, 2010 11:32 PM
To: Horan, Paul
Cc: Jeffrey Kimmel; Eaton, Mary
Subject: RE: Arista Records v. Lime Wire

Paul:

As you know, your statement below that you intend to move to compel the production of documents is completely contrary to the discussion that we had on Friday morning, and it demonstrates a lack of good faith on your part. Your email reveals that, contrary to our discussion, you and your clients had no intention of attempting to enter into an agreed upon stipulation with respect to the scope of iMesh, Inc.'s production of documents pursuant to your subpoena. As I told you, I had intended to discuss your proposed scope of production with my clients over the weekend, taking into account time differences in Israel, and respond to you tomorrow, i.e., Monday. Your email below late on Friday afternoon, following our discussion earlier in the day, obviously made that exercise pointless.

I remind you that as it stands, your firm has previously adjourned *sine die* the dates for production of documents and for the deposition called for under the subpoena, as well as iMesh's time to move to quash the subpoena (see attached emails from Dan Kozusko and Mary Eaton of your firm). As such, even if iMesh had an obligation under the subpoena to produce documents or appear at a deposition, which it clearly does not as spelled out in the attached letter sent to Mary Eaton almost two months ago, on October 20, 2010, there have been no dates set for such production or deposition. In fact, we have heard virtually nothing from your firm since October 20th, and there has been no substantive response to my letter. Further, any argument that exigent circumstances exist is belied by the fact that your side has done next to nothing with respect to this matter, at least as it relates to iMesh, since the date of the subpoena, i.e., September 22, 2010.

If you insist on proceeding with your motion under the circumstances, please be advised that I intend advise the court of your failure to meet and confer in good faith as required by the rules in an attempt to address iMesh's objections (see attached objections dated October 1, 2010) and avoid needless motion practice. In such event, iMesh will pursue all available sanctions, including the recovery of attorneys' fees and costs incurred in connection with responding to your misguided motion.

Sincerely,

Jeff Weingart

Meister Seelig & Fein LLP
(212) 655-3516

From: Horan, Paul [mailto:phoran@willkie.com]
Sent: Friday, December 10, 2010 4:18 PM
To: Jeffrey P. Weingart
Subject: Arista Records v. Lime Wire

Jeff:

I wanted to alert you that we will be making a motion to compel the production of the documents described in my email of last week and that we discussed this morning. Thanks.

Paul W. Horan
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York NY 10019
(212) 728-8614 (phone)
(212) 728-8111 (fax)

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EXHIBIT C

From: Horan, Paul [mailto:phoran@willkie.com]
Sent: Monday, December 13, 2010 4:08 PM
To: Jeffrey P. Weingart
Subject: Arista Records LLC v. Lime Group LLC

Jeff:

Further to our call today, we are going to proceed with the motion. Thanks.

Paul W. Horan
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York NY 10019
(212) 728-8614 (phone)
(212) 728-8111 (fax)

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EXHIBIT D

From: Jeffrey P. Weingart
Sent: Monday, December 13, 2010 4:20 PM
To: Horan, Paul
Subject: RE: Arista Records LLC v. Lime Group LLC

Paul:

For the avoidance of doubt, the position I articulated in my email to you of last night stands. I confirm that, pursuant to our discussion this morning, I was again prepared to take your proposal regarding production of documents back to my clients for their consideration. However, your email below, like your email on Friday subsequent to our Friday morning conversation, obviously moots any such discussion.

Jeff

Jeff Weingart
Meister Seelig & Fein LLP
(212) 655-3516

From: Horan, Paul [mailto:phoran@willkie.com]
Sent: Monday, December 13, 2010 4:08 PM
To: Jeffrey P. Weingart
Subject: Arista Records LLC v. Lime Group LLC

Jeff:

Further to our call today, we are going to proceed with the motion. Thanks.

Paul W. Horan
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787 Seventh Avenue
New York NY 10019
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EXHIBIT E

See 2/16/2011

Jeffrey P. Weingart

Declaration Exhibit D

EXHIBIT F

See 2/16/2011

Jeffrey P. Weingart

Declaration Exhibit F

EXHIBIT G

See 2/16/2011

Jeffrey P. Weingart

Declaration Exhibit E