

EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/18/2011

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ARISTA RECORDS LLS, et al.,

Plaintiffs,

-against-

LIME GROUP LLC, et al.,

Defendants.
-----X

06 Civ. 5936 (KMW)(DF)

ORDER

DEBRA FREEMAN, United States Magistrate Judge:

Following a conference with counsel for all parties on November 1, 2010, this Court issued a written Order dated November 2, 2010 (Dkt. 339), memorializing a series of discovery rulings made at the conference. Plaintiffs appealed seven of those rulings, and, by Order dated November 18, 2010 (Dkt. 363), the Honorable Kimba M. Wood, U.S.D.J., affirmed three of them (numbered by Judge Wood as “Orders 1, 5 and 6”), and held the remainder (so-called “Orders 2-4, and 7”) in abeyance. At this point, Defendants seek to compel Plaintiffs to produce further documents in connection with “Order 1,” and to reinstate two of the rulings that Judge Wood held in abeyance – “Orders 2 and 4.”

Order 1

Order 1, as summarized by Judge Wood, required Plaintiffs to produce “all communications, relating to licensing, between Defendants and the 15 third-party licensees recently subpoenaed by Defendants, except for draft license agreements, from the last point in time discovery was collected.” To comply with this Order, Plaintiffs have apparently searched the email records of a number of custodians and have produced a significant volume of responsive documents. Defendants, however, request that the Court compel Plaintiffs to search

the email records of additional custodians. Although Defendants have submitted evidence that the proposed additional custodians had some involvement in licensing negotiations, the Court is not persuaded that the additional documents that might be obtained from these individuals – who were largely high-level executives – is outweighed by the burden to Plaintiffs of broadening its initial search. Defendants’ request is therefore denied.

Defendants also request that the Court compel Plaintiffs to review all electronic communications between Plaintiffs and third-party VEVO, LLC (“VEVO”) for documents that would be responsive to Order 1, without first limiting the universe of potentially responsive emails through the use of particular search terms. Apparently, while Plaintiffs reviewed all email communications between their identified custodians and all other third-party licensees in question, they conducted a more limited electronic search for their relevant communications with VEVO. Defendants claim to have done so for two reasons: first, because of the particularly high volume of their email communications with VEVO (which is a joint-venture partner with two of the Plaintiffs) and, second, because, when an issue previously arose regarding the appropriate parameters for VEVO’s own search for similar documents pursuant to a third-party subpoena, this Court endorsed a search methodology that relied on specified search terms (*see* Order, dated Nov. 23, 2010 (Dkt. 367)). As Plaintiffs’ approach here appears reasonable, and as Defendants have not identified anything that persuades the Court to revisit the adequacy of the search terms accepted by the Court in its November 23 Order, Defendants’ request is denied.

Orders 2 and 4

Defendants request that the Court reinstate Order 2, which would require Plaintiffs to produce “all communications with other licensees referring or relating to LimeWire,” and Order 4, which would require Plaintiffs to produce “internal emails regarding LimeWire

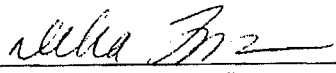
contained in the email accounts of those employees of Plaintiffs who have been primarily responsible for negotiating licensing agreements with the 15 third-party licensees recently subpoenaed by Defendants.” In holding these Orders in abeyance, Judge Wood held that, following Plaintiffs’ production of documents pursuant to Order 1, Defendants should have an opportunity to demonstrate that the produced documents had yielded relevant evidence and that further discovery was necessary.

Now, in support of reinstating these Orders, Defendants argue that discovery to date indicates that Plaintiffs were attempting to “blacklist” LimeWire, that certain employees of Plaintiffs expressed a desire to work with LimeWire, and that user downloads via the LimeWire system actually increased Plaintiffs’ revenues (or, in any event, that Plaintiffs’ believed this to be true). For their part, Plaintiffs contend that, even if they were “blacklisting” Defendants, the fact that a copyright holder may refuse (and may encourage its business partners to refuse) to work with an infringer would not be a legitimate basis to reduce a statutory damages award. With respect to any evidence that Plaintiffs’ employees were interested in working with LimeWire, Plaintiffs argue that the statements identified by Defendants were made by low-level employees who were not responsible for making decisions of behalf of Plaintiffs and, consequently, have nothing to do the “conduct and attitude of the parties,” as that factor relates to the appropriate amount of statutory damages. Finally, as to evidence regarding the impact of LimeWire on Plaintiffs’ revenue, Plaintiffs note that the Court has already ordered production of third-party research reports on this topic (*see, e.g.*, Order, dated Dec. 28, 2010 (Dkt. 397) (ordering production of “documents related to Plaintiffs’ engagement of outside parties concerning the use and impact of peer-to-peer networks, file sharing or digital music”)), and argue that additional production is not necessary.

Balancing the relevance of the requested documents with the burden to Plaintiffs, the Court finds that a compromise would be appropriate. Plaintiffs are therefore directed to produce internal communications referring to "LimeWire" from the files (including email) of 10 custodians, to be agreed by the parties after good faith conference. In all other respects, Defendants' request to reinstate Orders 2 and 4 of the 11/19/10 Order is denied.

Dated: New York, New York
January 18, 2011

SO ORDERED



DEBRA FREEMAN
United States Magistrate Judge

Copies to:

all parties (via ECF)

EXHIBIT 9

Ingber, Matthew D.

From: LeMoine, Melinda [Melinda.LeMoine@mto.com]
Sent: Wednesday, January 05, 2011 5:28 PM
To: Ingber, Matthew D.
Subject: RE: Arista Records LLC v. Lime Group LLC

Matt:

You're correct that Plaintiffs were ordered to produce communications between Plaintiffs and a list of third-parties relating to licensing. Google was one of the third parties on that list. so the Plaintiffs have included their communications with Google in the "related to licensing" production ordered on November 19. Plaintiffs have substantially completed that production of communications as of last week.

Regards,

Melinda

Melinda Eades LeMoine | Munger, Tolles & Olson LLP
(t) 213.683.9171 | (f) 213.683.4071 | melinda.lemoine@mto.com

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From: Ingber, Matthew D. [mailto:MIngber@mayerbrown.com]
Sent: Wednesday, January 05, 2011 2:22 PM
To: LeMoine, Melinda
Subject: RE: Arista Records LLC v. Lime Group LLC

Melinda – Following up on this request, I understand that on or about November 19, plaintiffs were ordered to produce to LimeWire communications between plaintiffs and certain third-party licensees, including Google/YouTube, relating to licensing. Can you let me know whether, since that Order was issued, plaintiffs have produced to LimeWire documents reflecting communications between them and Google/YouTube regarding licensing? Do you expect that more documents will be produced?

Thank you for your assistance.

Regards,

Matt

Matthew D. Ingber
Mayer Brown LLP
1675 Broadway
New York, New York 10019
Tel: (212) 506-2373
Fax: (212) 262-1910
mingber@mayerbrown.com

From: Ingber, Matthew D.
Sent: Monday, January 03, 2011 3:42 PM
To: melinda.lemoine@mto.com
Subject: FW: Arista Records LLC v. Lime Group LLC

Melinda – We represent Google in connection with the third-party subpoena issued by Defendants in the above matter. I wanted to follow up on Tammy's request below. Our response to Defendants' motion to compel is due Thursday; any information that you can provide would be appreciated.

Please feel free to call or email me with any questions. Thanks for your assistance.

Regards,

Matthew Ingber

Matthew D. Ingber
Mayer Brown LLP
1675 Broadway
New York, New York 10019
Tel: (212) 506-2373
Fax: (212) 262-1910
mingber@mayerbrown.com

From: Tamara Jih [mailto:tammyjih@google.com]
Sent: Friday, December 17, 2010 2:07 PM
To: Ingber, Matthew D.
Subject: Fwd: Arista Records LLC v. Lime Group LLC

----- Forwarded message -----

From: Tamara Jih <tammyjih@google.com>
Date: Tue, Dec 14, 2010 at 1:47 PM
Subject: Arista Records LLC v. Lime Group LLC
To: melinda.lemoine@mto.com

Melinda,

As you are aware, Lime Group moved to compel Google to produce documents responsive to the subpoena that Lime Group served on Google in October. I have attached a copy of the motion for you reference.

It is Google's position that the documents Lime Group seeks are equally available from the plaintiffs in this action.

If possible, can you identify for me what categories of documents plaintiffs intend to produce/have already produced that Lime Group also seeks to obtain from Google?

Best Regards,
Tammy Jih

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Tamara Jih
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650.618.1806 f

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EXHIBIT 10

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARISTA RECORDS LLC, et al.,

Plaintiffs,

v.

LIME GROUP LLC, et al.,

Defendants.

CASE NO. 2:10-CV-02074-MJP

ORDER ON MOTION TO COMPEL

This matter comes before the Court on Defendants' motion to compel. (Dkt. No. 1.) Having reviewed the motion, the response (Dkt. No. 5), the reply (Dkt. No. 8), the supplemental declaration of Paul W. Horan (Dkt. No. 9) and all related papers, the Court DENIES Defendants' motion.

Background

Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants") are engaged in a case (No. 06-cv-5936 (KMW)) pending in the Southern District of New York. (Decl. of Paul W. Horan (Dkt No. 1-2) at ¶ 3.) In that case, the amount of damages Defendants owe Plaintiffs (thirteen record labels)

1 for copyright infringement is at issue. (Id. at ¶ 3.) Defendants served a subpoena on non-party
2 Amazon.com, Inc. (“Amazon”) on September 24, 2010, in connection to that case. (Id. at ¶ 5.)
3 Defendants contend the subpoenaed records are relevant to evaluating Plaintiffs’ lost profits—
4 and thus damages owed by Defendants—in the Southern District of New York case.

5 On October 22, 2010, Amazon objected on grounds that the documents requested were
6 obtainable from Plaintiffs directly, and that the requests were overbroad, burdensome, and
7 irrelevant. (Id. at ¶ 9.) Amazon contends that seeking responsive documents from its more than
8 1,000 employees, and producing sales figures for more than 11,000 songs, would entail
9 significant expense. (Decl. of Andrew DeVore (Dkt. No.4) at ¶ 6–10.) Amazon had raised
10 similar objections in 2007, when Defendants previously subpoenaed them in connection to the
11 same case. (Id. at ¶ 8.) Though Defendants had not sought to enforce the 2007 subpoena, on
12 December 16, 2010, they filed this motion to compel. (Dkt. No. 1.) The court in the underlying
13 action ordered VEVO, LLC (“VEVO”), a non-party, to comply with a subpoena similar to the
14 one at issue.

15 Analysis

16 The Federal Rules of Civil Procedure require this Court to limit discovery it determines is
17 “unreasonably cumulative or duplicative, or can be obtained from some other source that is more
18 convenient, less burdensome, or less expensive,” or when “the burden or expense of the
19 proposed discovery outweighs its likely benefits.” Fed. R. Civ. P. 26(b)(2)(C)(i), (iii).
20 Restrictions may be broader when discovery burdens a non-party. See Dart Indus. Co. v.
21 Westwood Chemical Co., 649 F.2d 646, 649 (9th Cir. 1980). A party should not be permitted to
22 seek information from a non-party that they can obtain or have obtained from the opposing party,
23 and that is not relevant to the underlying case. Instituform Technologies, Inc. v. Cat.

1 Contracting, Inc., 914 F. Supp. 286, 287 (N.D. Ill. 1996). Because the documents requested
2 from Amazon can better be obtained from Plaintiffs or have little relevance to the Southern
3 District of New York case, Defendants' need to enforce the subpoena is outweighed by the
4 burden to Amazon.

5 A. Necessity of Obtaining Documents from Amazon

6 Defendants seek documents including (1) licenses and agreements between Amazon and
7 Plaintiffs, (2) communications regarding those documents, and (3) documents regarding payment
8 by Amazon to Plaintiffs pursuant to those licenses. Defendants argue that licensing agreements
9 and communications between Amazon and Plaintiffs will be probative of lost revenue, and that
10 Amazon internal communications will be probative of Plaintiffs' conduct and attitude. "Lost
11 revenues" and "the conduct and attitude of the parties" will be two factors used in determining
12 Plaintiffs' damages in the Southern District of New York case. Bryant v. Media Rights Prods.,
13 Inc., 603 F.2d 135, 144 (2d Cir. 2010) (citing N.A.S. Import, Corp. v. Chenson Enter., Inc., 968
14 F.2d 250, 250-53 (2d Cir. 1992)).

15 1. Agreements and communications between Amazon and Plaintiffs

16 Documents requested from Amazon are obtainable from Plaintiffs. When an opposing
17 party and non-party both possess documents, the documents should be sought from the party to
18 the case. Nidec Corp. v. Victor Co. of Japan, 249 F.R.D. 575, 577 (N.D. Cal. 2007) ("There is
19 simply no reason to burden nonparties when the documents sought are in possession of the party
20 defendant."); Moon v. SCP Pool Corp., 232 F.R.D. 633, 637-38 (C.D. Cal. 2005). (documents
21 pertaining to defendant could more easily and inexpensively be obtained from defendant than
22 non-party).

1 Here, documents requested from Amazon regarding agreements or communications with
2 Plaintiffs are also obtainable from Plaintiffs directly. See Instituform Techs. at 287 (information
3 about license between party and non-party equally obtainable from party). Indeed, Plaintiffs
4 have already provided or been ordered to provide to Defendants much of the information
5 requested from Amazon. (Powers Decl. at ¶ 6.) Defendants rely on In re Honeywell Int'l, Inc.
6 Sec. Litig., 230 F.R.D. 293, 301 (S.D.N.Y. 2003) and the November 3 VEVO order in this case
7 to argue that non-parties may be subpoenaed for documents obtainable from parties. Both are
8 distinguishable. The subpoenaed non-party in the Honeywell was defendant's financial auditor
9 during portions of that case's class period. 230 F.R.D. at 296. VEVO, though a non-party, is a
10 joint venture of two Plaintiffs, and actually volunteered to produce documents. (Ex. 2 to Decl. of
11 Vanessa Powers (Dkt. No. 6).) Thus, both those non-parties possessed greater ties to the litigants
12 than does Amazon to these litigants. Because information contained in the licensing agreements
13 and associated communications are available from Plaintiffs directly, the requests to Amazon are
14 duplicative.

15 2. Amazon internal documents

16 Requested internal Amazon documents have little relevance to the underlying case.
17 Defendant argues that the Southern District of New York court determined internal non-party
18 communications are probative of parties conduct and attitude, relying on the VEVO order. But,
19 again, because VEVO is a joint venture between Plaintiffs, it cannot be wholly deemed a non-
20 party. The probative value of VEVO's internal communications to Plaintiffs' attitude and
21 conduct is much greater than that of Amazon's. Accordingly, requests for Amazon's internal
22 communications are not relevant to the case.

23 \\
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1 B. Undue Burden on Amazon

2 “An evaluation of undue burden requires the court to weigh the burden to the subpoenaed
3 party against the value of the information to the serving party.” Moon at 637 (quoting Travellers
4 Indem. Co. v. Metropolitan Life Ins. Co., 228 F.R.D. 111, 113 (D.Conn. 2005)). The need of the
5 serving party, breadth of the request, and the time period covered by it, are also factors. See
6 Bridgeport Music, Inc. v. UMG Recordings, Inc., No. 05 Civ. 6430, 2007 WL 4410405, at *2
7 (S.D.N.Y. Dec. 17, 2007). In Bridgeport, the court held a subpoena which might require going
8 through “hundreds” of files generated over two years not unduly burdensome. Bridgeport at *2,
9 4. The court distinguished the subpoena from that considered in Concord Boat Corp. v.
10 Brunswick Corp., 169 F.R.D. 44 (S.D.N.Y. 1996). Bridgeport at *2. The subpoena in Concord
11 Boat Corp. “effectively encompass[ed] documents relating to every transaction undertaken by
12 [the party subject to the subpoena] for [the defendant] during the last ten years.” Bridgeport at
13 *2 (quoting Concord Boat Corp. at 50).

14 Here, the subpoena among other things requests daily sales information for 11,000
15 individual songs over a five year period, and essentially all documents or communications
16 concerning dealings between Amazon and the thirteen Plaintiffs. The burden is similar to the
17 burden imposed by the broad subpoena in Concord Boat Corp. Balanced against this burden,
18 Defendants’ need for duplicative or irrelevant documents from Amazon weighs very little.
19 Because the hardship to Amazon in producing the requested documents outweighs their benefit
20 to Defendants, the subpoena is unduly burdensome.

21 **Conclusion**

22 The Court DENIES Defendants’ motion to compel. The Court is not bound by
23 Magistrate Judge Freeman’s January 31, 2011 Order relating to the obligations of others to
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1 produce documents relating to their licenses. Defendants should seek relevant documents from
2 Plaintiffs before burdening non-party Amazon. Because documents related to Amazon's internal
3 communications are irrelevant, the significant burden placed on Amazon in complying with
4 Defendants' subpoena outweighs the value of the documents to Defendants. Defendants' motion
5 to compel is hereby DENIED.

6 The clerk is ordered to provide copies of this order to all counsel.

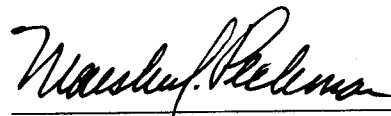
7 Dated this 9th day of February, 2011.

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Marsha J. Pechman
United States District Judge

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