Exhibit B

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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., Plaintiff, v. Lime Wire LLC; Lime Group LLC; Mark Gorton; and M.J.G. Lime Wire Family Limited Partnership, Defendants.	CASE NO.: 10-9438 GW (PJW) Honorable Patrick J. Walsh **JOINT STIPULATION REGARDING CENTRAL DISTRICT NON-PARTY SUBPOENA TO MYSPACE, INC.** [Filed concurrently with the Declarations of Dan Kozusko and Jonathan Gottlieb; and Notice of Motion] (United States District Court For the Southern District Of New York, Civil Action No.: 06 CV 5936 (KMW), Honorable Kimba M. Wood, U.S.D.J.) Discovery Cutoff Date: Jan. 30, 2011 Pre-trial Conference Date: None Trial Date: Apr. 25, 2011

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Pursuant to Federal Rule of Civil Procedure 37 and in accordance with Local Rule 37-2 of the United States District Court, Central District of California ("Local Rule 37-2"), counsel for Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership (collectively, "Defendants") and counsel for non-party MySpace, Inc. ("MySpace") submit this Joint Stipulation for the Court's consideration in connection with Defendant's Petition to Enforce a Central District non-party subpoena (the "Subpoena") served on MySpace on September 23, 2010, which requested that MySpace produce documents and appear for a deposition in connection with the above action pending in the United States District for the Southern District of New York before the Honorable Kimba M. Wood.

The Request at issue is: **DEFENDANTS' CENTRAL DISTRICT NON-PARTY SUBPOENA TO MYSPACE REQUEST NOS. 2, 6.**

Defendants and MySpace, by and through their respective counsel, have met and conferred in good faith and attempted to resolve their differences, including MySpace's responses and objections to the Subpoena, dated October 1, 2010 (the "MySpace Objections"). Specifically, after the Honorable Debra Freeman, the Magistrate Judge appointed by Judge Wood to supervise discovery in the above action, denied a motion by Plaintiffs to quash the Subpoena and others that Defendants had served on MySpace and various non-parties, counsel for Defendants and MySpace exchanged correspondence relating to the Subpoena and

the MySpace Objections and held a telephonic "Meet & Confer" session on October 22, 2010 (lead counsel for Defendants is located in New York, New York, and counsel for MySpace is located in Beverly Hills, California). This session did not yield a resolution. Subsequently, Defendants and MySpace exchanged further correspondence and held a second telephonic Meet & Confer on December 17, 2010. Although Defendants and MySpace were able to resolve some issues during this second discussion, and despite their best efforts, they reached an impasse over two document requests, and were not able to resolve completely their differences regarding the Subpoena and the MySpace Objections. This Petition is being submitted as a result. (*See* Declaration of Dan C. Kozusko, dated December 20, 2010 ("Kozusko Decl.") ¶¶ 7-8, 10-13, 15-21.)

MySpace's Counterstatement Regarding Defendants'

Noncompliance with Local Rules

Local Rule 37-1 requires an adequate conference of counsel prior to filing any discovery motion. That Rule requires a "good faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the disputes as possible." It prescribes that the potential moving party must send a letter to the opposing party "identify[ing] each issue and/or discovery request in dispute . . . stat[ing] briefly with respect to each such issue/request the moving party's position (and provid[ing] any legal authority which the moving party believes is dispositive of the dispute as to that issue/request), and specify[ing] the terms of the discovery

order to be sought." The conference of the parties should take place within 10 days of the moving party's request for such conference, as made in the letter.

As the history in the exhibits to the Kozusko Declaration reveals, Defendants failed to follow the requirements of Local Rule 37-1. Defendants initially served their 426-page subpoena on September 23, purporting to require response and personal appearance within 10 days. Kozusko Decl. Ex. 1; *see also* Declaration of Jonathan Gottlieb in Support of Non-Party MySpace's Contentions in Joint Stipulation Opposing Enforcement of Subpoena ("Gottlieb Decl.") ¶ 3. MySpace objected, and the parties had preliminary conversations in October to clarify the scope of the documents requested. Gottlieb Decl. ¶¶ 4-7. Defendants' counsel then allowed one month to pass, from November 2 to December 10, without contact to MySpace's counsel. *Id.* ¶ 8. On December 10, Defendants' counsel forwarded a copy of Magistrate Judge Freeman's order regarding Vevo. *Id*; Kozusko Decl. Ex. 12. Less than two business days later, Defendants forwarded a draft of their Joint Stipulation, purporting to trigger Local Rule 37-2. Gottlieb Decl. ¶ 9; Kozusko Ex.13. When MySpace's counsel pointed out that Defendants had not followed Local Rules, specifically by failing to send the required letter and meet-and-confer in good faith, Defendants requested that their initial draft of a Joint Stipulation be deemed that letter. MySpace declined to accept that proposal. Gottlieb Decl. ¶ 9; Kozusko Decl. Ex.20. MySpace eventually produced documents satisfying two of the three categories of documents

that Defendants sought. Gottlieb Decl. ¶ 11, 12 & Exs. 23, 24.

The failure to follow procedure did not allow full ventilation and discussion of the issues raised in the subpoena. It forced counsel for MySpace to drop everything else he was doing to participate in an artificially constrained meet-and-confer window. Although it appears unlikely that a motion would have been avoided even if correct procedures were followed, Defendants should not be rewarded for their disregard for proper procedure by having their motion heard. Local Rule 37-4 ("The failure of any counsel to comply with or cooperate in the foregoing procedures may result in the imposition of sanctions.").

I. Introductory Statements

A. Defendants' Introductory Statement

The above action is scheduled for trial on April 25, 2011. That trial will determine the amount of statutory and common-law damages that Plaintiffs may recover from Defendants, following Judge Wood's grant of summary judgment finding Defendants liable for copyright infringement by individual users of the Lime Wire peer-to-peer file-sharing service. Plaintiffs have indicated that, at trial, they intend to seek damages in excess of $1 billion dollars.

MySpace 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. MySpace has agreements with some or all of the major record companies that allow MySpace users to listen to copyrighted music and to view

copyrighted music videos on the internet in exchange for a percentage of advertising and other revenue generated from those activities. Defendants seek discovery from MySpace 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 seeks from MySpace the same categories of information sought by Defendants' subpoena to VEVO, a digital music provider that also licenses content from the Plaintiff record labels. Defendants were forced to move to compel VEVO to comply with that subpoena, which motion was granted in part. In an order dated November 23, 2010, Judge Freeman 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 (namely, LimeWire, licens*, royalt*, agreement, contract, "label fees," or "revenue share").

Notwithstanding the VEVO Order and Defendants' good-faith efforts to meet and confer with MySpace's in order to minimize any burden imposed by the Subpoena, MySpace will not agree to produce any documents responsive to the VEVO order's third category (embodied in the Subpoena's document requests

under Defendants' Request for Production of Documents Nos. 2, 6).

All of the objections that MySpace has asserted to producing those documents are without merit. First, these documents are directly relevant to the damages issues to be tried before Judge Wood early next year. Indeed, Judge Freeman has already held that communications concerning Plaintiffs' licensing agreements with non-parties, such as MySpace, are directly relevant both to common-law damages for pre-1972 recordings and to statutory damages under the Copyright Act -- a determination that is entitled to deference here, in part to ensure the uniform treatment of discovery issues in the above action.

Second, MySpace's contention that it need not produce communications regarding LimeWire and its agreements with Plaintiffs because those documents are equally obtainable from Plaintiffs is wrong on the facts and the law. The Subpoena requests documents that could not be within Plaintiffs' possession, *e.g.*, purely internal MySpace communications regarding its licensing agreements with Plaintiffs and the value that Plaintiffs placed on their copyrighted works. In any event, nothing in the Federal Rules requires Defendants to rely exclusively on Plaintiffs' versions of documents in preparing their defense of an over $1 billion damages claim.

Third, the Subpoena does not impose an undue burden on MySpace. It is not overbroad because Defendants have limited the scope of communications to those concerning MySpace's agreements with only the 13 specific Plaintiffs in

this case, which the Court has already held directly relevant to the damages issues to be tried before Judge Wood. Moreover, Defendants have offered to work with MySpace to minimize any burden by using targeted search terms on the files of selected custodians in order to pinpoint documents most relevant to the issues to be tried. MySpace has rebuffed those offers and refused to produce any documents responsive to the Subpoena's Request for Production of Documents Nos. 2, 6.

MySpace's intransigence should not be permitted, especially where the Court that will try the above action has already ordered another non-party to produce the same types of documents as those sought from MySpace here. This Court, therefore, should compel MySpace to produce those documents promptly.

B. MySpace's Introductory Statement

By this motion, Defendants, operators of the notorious but recently enjoined "Limewire" peer-to-peer copyright infringement service, continue their campaign of imposing an inexplicable and unnecessary burden on the courts and on third parties with no interest in the underlying litigation. Proceeding on a relevance theory that the judge presiding over the underlying matter has ruled "tenuous," Defendants seek from MySpace discovery <u>that they have already obtained from Plaintiffs in the underlying litigation.</u> To be clear, except for purely internal (and completely irrelevant) MySpace documents, Defendants do not contest that the Plaintiffs in the underlying matter have already been ordered to produce the very same documents that they seek from MySpace in this motion.

MySpace is not alone in seeking to avoid the gross and unnecessary burden imposed by Defendants' demands. In addition to the Motion filed against MediaDefender in this Court (*see* Case No. 10-9438-GW (PJWx)), Defendants have also sought to enforce the same subpoena and compel the same documents from at least Amazon, Google, Yahoo! and Vevo. *See* Gottlieb Decl.¶¶ 14, 15; Kozusko Decl. Ex.13. Other than Vevo, none of these sophisticated parties have agreed to produce any "communications." *Id.* ¶ 14. The uniformity of these third parties' uncoordinated responses reveals that it is Defendants' tactics, and not these companies' supposed "intransigence," that transgress the understood norms of litigation. As explained further below, Defendants' abusive conduct warrants a stern rebuke and sanction, not an order compelling production of documents. Fed. R. Civ. P. 45(c).

On its merits, Defendants' Motion to Compel should be denied for at least four independent reasons.

- First, as catalogued above in MySpace's Counterstatement Regarding Defendants' Noncompliance with Local Rules (but not repeated below), Defendants failed to follow the requirements of Local Rule 37-1, which by itself warrants denial of their motion.

- Second, the documents requested are irrelevant to the underlying proceeding. In the absence of a theory of relevance, Defendants resort to misleading tactics. They repeatedly cite to Magistrate Judge Freeman's October

15, 2010 order for the proposition that the "Magistrate Judge supervising discovery has already held that such information is directly relevant." *Infra at 15.* Defendants neglect to mention, however, Judge Kimba Woods' order on appeal from that very ruling, in which she ruled that this evidence had a "*potentially tenuous* connection to the damages inquiry in this case" (emphasis added) and limited the scope of what could be sought, even directly from Plaintiffs. Kozusko Decl. Ex. 10 at 6. Similarly, although Defendants tout the VEVO order, arguing that it compels MySpace to produce the same categories of documents provided there, the Magistrate Judge merely entered an order on a compromise proposed by VEVO denying Defendants the broader discovery they sought. That order provides no authority to compel MySpace to produce documents here. After stripping away Defendants' attempts at sleight-of-hand, all that is left is their contention that MySpace should produce documents (if they exist) that reveal its own attitude of the value of Plaintiffs' works. This is a misapplication of governing law, but in any event, as this Court recently ruled, such material is "irrelevant," as MySpace is not a party to the underlying proceeding. Gottlieb Decl. Ex.25 at 2 (Order of The Honorable Patrick J. Walsh, *Arista Records LLC et al., v. Lime Wire LLC, et al.,* No. CV 10-9438-GW (PJWx), December 22, 2010); *see also Mattel Inc. v. Walking Mountain Productions,* 353 F.3d 792, 814 (9th Cir. 2003). (As to document request number 6, Defendants do not even argue why documents mentioning "Limewire" are relevant to the proceeding.)

- Third, Plaintiffs' rationales for seeking duplicative and cumulative discovery from MySpace fall flat. To the extent they are seeking third-party discovery as a "check" that the Plaintiffs' production is complete, Defendants have offered not even a suggestion, much less evidence, that Plaintiffs have failed to provide a complete production. To the extent that Defendants claim to be seeking "slightly different" versions of the same documents, any annotations would be MySpace's (and thus, irrelevant) and, in any event, annotations are unlikely because virtually all of the documents at issue are electronic documents.

- Fourth, and finally, production of the requested documents would impose an undue burden on MySpace. Whether a burden is undue is measured *inter alia* by reference to the relevance of the burden sought and the requesting party's need. Given the negligible relevance and non-existent need for these documents, any burden would be undue. But the case for denying to compel production is made all the stronger by the hundreds of hours of technical work and document review that would be required if Plaintiffs' requested motion were granted. Gottlieb Decl. ¶ 17-18. Defendants' arguments to the contrary lack merit and prove only that the burden they impose on others is of no consequence to them.

MySpace therefore respectfully submits that Defendants' Motion should be denied, and that sanctions should be ordered to compensate MySpace's counsel for his time in defending this matter and to punish Defendants for their malfeasance.

II. Discovery Requests at Issue

A. Request for Production of Documents No. 2

1. Defendants' Request

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.

2. MySpace's Responses and Objections

In addition to the general objections stated above and incorporated herein by reference, MySpace objects to this Category on the grounds that it is overbroad and unduly burdensome, including, without limitation, that it seeks all communications, regardless of whether such documents relate to the matters at issue in this case. MySpace further objects to this Category on the grounds that it fails to describe a category of documents with reasonable particularity. MySpace also objects to this Category to the extent that it seeks documents, communications, electronically stored information, and things that are protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. MySpace also objects to this Category to the extent that it calls for documents, communications, electronically stored information, and things that either are or contain trade secret, proprietary or otherwise confidential business

information of MySpace. MySpace further objects that the documents requested are by definition equally within the possession, custody, or control of one or more of Plaintiffs, and Defendants may not impose a burden on MySpace, a non-party, where such documents are discoverable, if at all, by requests to a party to the litigation.

B. Request for Production of Documents No. 6

1. Defendants' Request

All documents concerning Defendants and/or the LimeWire software application.

2. MySpace's Responses and Objections

In addition to the general objections stated above and incorporated herein by reference, MySpace objects to this Category on the grounds that it is overbroad and unduly burdensome, including, without limitation, that it seeks information irrelevant to the matters at issue in this case. MySpace further objects to this Category on the grounds that it fails to describe a category of documents with reasonable particularity. MySpace also objects to this Category to the extent that it seeks documents, communications, electronically stored information, and things that are protected by the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity. MySpace also objects to this Category to the extent that it calls for documents, communications,

electronically stored information, and things that either are or contain trade secret, proprietary or otherwise confidential business information of MySpace.

III. Issues Raised by MySpace's Objections and Responses to Defendants' Document Requests

A. Relevance

1. Defendants' Contentions and Points and Authorities

MySpace has objected to the production of communications relating to its agreements with Plaintiffs on the grounds that they do not "relate to the matters at issue in this case."[1] (Kozusko Decl., Ex. 2 at 5.) That, however, is not the law. Indeed, as demonstrated below, the Magistrate Judge supervising discovery has already held that such information is directly relevant to the issues to be tried before Judge Wood early next year. (*Id.*, Ex. 3 at 5-6.)

The documents whose production Defendants seek from MySpace, *i.e.*, communications relating to LimeWire and Plaintiffs' licensing agreements with MySpace, 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*

[1] MySpace initially objected to the Subpoena on the grounds that it sought discovery of confidential documents or those containing trade secrets. (Kozusko Decl., Ex. 2 at 8.) MySpace has not raised that objection since then. (See *id.* ¶¶ 11, 21, Exs. 5, 8, 14.) In any event, the protective order entered by the Court in the above action is sufficient to address any concerns that MySpace may have regarding confidentiality or trade secrets. *See, e.g., In re McKesson Corp.*, 264 F.R.D. 595, 602-03 (N.D. Cal. 2009); *Gomez v. J.R. Hycee Conveyor Co., Inc.*, No. CV 06-2827, 2008 U.S. Dist. LEXIS 570, at *3 (E.D.N.Y. Jan. 3, 2008).

Knitting Mills, Inc., No. 81 Civ. 3770, 1982 WL 1788, at *7 (S.D.N.Y. 1982). As the 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." (Kozusko Decl., Ex. 3 at 5.) Therefore, the documents requested by the Subpoena are relevant to showing the amount of profits, if any, that Plaintiffs would have made if their copyrighted works had been accessed through MySpace, *e.g.*, communications surrounding the negotiation between Plaintiffs and MySpace may indicate how much in license fees that Plaintiffs need to charge in order to make distribution of their copyrighted works through MySpace profitable or whether Plaintiffs make any profit at all from making those works available on MySpace.

Internal communications describing MySpace's negotiations with the record labels will be relevant in determining the conduct and attitude of the parties as well. *See Entral Grp. Int'l, LLC v. YHLC Vision Corp.*, No. 05-CV-1912, 2007 WL 4373257, at *3 (E.D.N.Y. Dec. 10, 2007) (holding that low statutory damage award was "justified by the attitude and conduct of plaintiff" which made unreasonable licensing fee demands) (emphasis added). 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. (Kozusko Decl., Ex. 11 at 1.)

Under Second Circuit law (which governs in this case), Plaintiffs' "lost revenues" and the "conduct and attitude of the parties" are relevant factors in the statutory damages analysis. *Bryant v. Media Right Prods., Inc.*, 603 F.3d 135, 144 (2d Cir. 2010). Communications concerning the terms of Plaintiffs' license agreements with MySpace, the revenues actually paid by MySpace pursuant to those contracts, and the negotiations surrounding those contracts are thus 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 MySpace, in exchange for allowing them to make those Songs available online as well as the negotiations that resulted in those terms and prices. Indeed, in that regard, the 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." (Kozusko Decl., Ex. 3 at 6.)

That is particularly true with regard to MySpace, which, like Defendants, has been sued by at least one Plaintiff here for copyright infringement on the basis of its allegedly making copyrighted works available to users without authorization from the record companies.[2] Thus, communications indicating how

[2] *See, e.g., UMG Recordings, Inc. v. MySpace, Inc.*, No. 206CV07361 (C.D. Cal.).

one or more Plaintiffs acted towards MySpace, on the one hand, which now enjoys Plaintiffs' express blessing to make their copyrighted works available over the internet, and, towards LimeWire, on the other hand, with whom Plaintiffs have refused to enter into any similar agreement, are directly relevant to the conduct and attitude of the record company Plaintiffs here. *See Warner Bros., Inc. v. Dae Rim Trading, Inc.*, 877 F.2d 1120, 1126 (2d Cir. 1989) (lower award of statutory damages is appropriate where the copyright holder has acted in bad faith). Judge Freeman's October 15 Order make this clear. (Kozusko Decl., Ex. 3 at 6 (documents "show[ing] how Plaintiffs conducted themselves in dealing with others in the Internet marketplace" are relevant to the conduct and attitude of the parties).

The foregoing determination of relevance by the Court that will try the above action is entitled to deference here. *Del Campo v. Am. Corrective Counseling Servs., Inc.*, No. C 01-21151, 2010 WL 3744436, at *2 (N.D. Cal. Sept. 20, 2010) ("Indeed, '[a] district court whose only connection with a case is supervision of discovery ancillary to an action in another district should be especially hesitant to pass judgment on what constitutes relevant evidence thereunder. Where relevance is in doubt ... The court should be permissive.'") (quoting *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 681 (N.D. Cal. 2006)); *Platinum Air Charters, LLC v. Aviation Ventures, Inc.*, No. 2:05-cv-01451, 2007 WL 121674, at *3 (D. Nev. Jan. 10, 2007) ("General discovery issues should

receive uniform treatment throughout the litigation, regardless of where the discovery is pursued.").

Accordingly, MySpace's refusal to produce the requested documents should be overruled. MySpace should be compelled to produce communications relating to LimeWire and the agreements MySpace entered into with Plaintiffs.[3]

2. MySpace's Contentions and Points and Authorities

Defendants argue that this Court should defer to the relevance determination of the court hearing this action. Assuming *arguendo* that proposition is correct, they lose this Motion. Plaintiffs cite Magistrate Judge Freeman's October 15, 2010 order, positing that the underlying court has already found the relevance of the requested documents. They do not cite the order entered on direct appeal from that ruling by Judge Kimba Wood – the judge who will preside over the trial of this matter. They do not mention that Judge Wood, presented with the same arguments here advanced, described the evidence sought as having "a potentially tenuous connection . . . to the damages inquiry at issue."[4] Kozusko Decl. Ex. 10 at 6 (Opinion and Order filed 11/19/10). If Judge Wood found the connection of the evidence "tenuous" and the effort to produce it

[3] Defendants intend to depose MySpace pursuant to the Subpoena, but cannot do so until MySpace has completed its document production.

[4] In discussing an earlier draft of this Joint Stipulation, Defendants' counsel was advised that the citation to only the Magistrate Judge's order was misleading. Gottlieb Decl. ¶ 10; *see also* Koszusko Decl. Ex. 16, at 1 ¶ 4 (E-mail from MySpace's Counsel to Defendants Counsel stating, *inter alia*, "there appear to be other distortions of the record in your Joint Stipulation, which we intend to point out to the Court if you proceed.")

"potentially burdensome" when sought directly from parties to the litigation who stand to be awarded a substantial judgment, surely the Orders of the Southern District of New York do not compel a ruling that the same, and even more tenuously related documents, be produced by third parties.

With regard to Document Request 2, which seeks "all communications," Defendants advance scattershot theories of relevance. All of these theories need to be viewed against the reality that Plaintiffs have already been ordered to produce their communications with MySpace. (Issues regarding the duplicative discovery requested are addressed more thoroughly *infra* Section III.B.2.) They argue that they need to know Plaintiffs' "lost revenues," arising from Defendants' massive infringement of Plaintiffs' works. But those "lost revenues" are shown only by the *agreements* that Plaintiffs have already produced (and MySpace has indexed). Communications related to those agreements would shed no further light.

Defendants next argue that communications may be relevant to the sixth statutory damages factor under *Bryant v. Media Rights Prods., Inc.*, 603 F.2d 135, 144 (2d Cir. 2010) – the "conduct and attitude of the parties." That factor calls for, at most, evaluation of the parties' (*i.e.*, the Plaintiffs' and Defendants') attitude and conduct, not the attitude and conduct of third parties. To the extent communications are relevant to show the Plaintiffs' attitude and conduct, Plaintiffs have been ordered to produce them. In light of their "tenuous" (at best) relevance

and the burden it would impose on MySpace, a non-party, MySpace should not be ordered to produce them again.

Plaintiffs do not seek to argue in this section that MySpace's internal communications are relevant, but they have made it clear elsewhere that they believe such communications are within the scope of their requests. *See infra* section III.B.1. ("the Subpoena requires production of documents that would not be in Plaintiffs' possession, such as internal MySpace communications regarding licensing agreements or negotiations with any Plaintiffs concerning agreements, including notes of meetings between representatives"). Plaintiffs' failure to offer a theory of relevance to support this request is sufficient to defeat their motion. In any event, as this Court has held, third parties' opinions of the value of Plaintiffs' works are irrelevant to any issue in the underlying case. Gottlieb Decl. Ex. 25 at 2 (Order of The Honorable Patrick J. Walsh, *Arista Records LLC et al., v. Lime Wire LLC, et al.,* No. CV 10-9438-GW (PJWx), December 22, 2010, at 2 ("Though the documents and deposition may provide insight into MediaDefender's attitude, MediaDefender is not a party to this action and its attitude is irrelevant."). This ruling is in line with Ninth Circuit precedent, which condemns service of third-party subpoenas to seek what is essentially opinion evidence. *Mattel Inc. v. Walking Mountain Productions,* 353 F.3d 792, 814 (9th Cir. 2003) (referring to 1991 amendment notes to Fed. R. Civ. P. 45, which identify "a growing problem [in the] use of subpoenas to compel the giving of evidence and information by

unretained experts."). Plaintiffs have no cognizable theory of relevance to justify MySpace producing any "communication," in response to Request Number 2, warranting denial of their Motion as to that Request.

With regard to Document Request 6, which seeks documents "concerning Defendants" or the LimeWire application, not a single word in Defendants' Motion explains the relevance of such documents. Nor did Defendants ever seek to explain the relevance of this request during their claimed "meet-and-confer" process. *See* Kozusko Decl. Ex. 6 (listing categories of documents sought, with no mention of documents containing "LimeWire"). To the extent such documents overlap with the "communications" sought in Request 2, they fail for the same reasons. Insofar as they include a different set of documents, Plaintiffs have waived the opportunity to obtain them in this Motion by failing to offer a theory of relevance.

Nor is the order regarding VEVO of any assistance to Plaintiffs. Despite Defendants' attempt to characterize it otherwise, Magistrate Judge Freeman entered an order ratifying a compromise proposed by VEVO itself, over Defendants' objection. Kozusko Decl. Exs.11, 18. Whatever reasons Vevo may have had for proposing its compromise, the burden it undertook in producing that material is not comparable to the burden the subpoena would impose on MySpace. Among other differences, VEVO has only been in existence for about a year, in contrast to the "four year plus" scope of the subpoena served on MySpace. In

ratifying the compromise proposed by VEVO, Magistrate Judge Freeman did not rule on any issue of relevance, cumulativeness, or burden raised by MySpace here.

In sum, Plaintiffs have not met their burden to show that the "tenuous" relevance of documents already produced and the nonexistent relevance of MySpace's internal documents justify requiring production pursuant to either Request at issue.

B. Scope Of Documents Obtainable From A Non-Party

1. Defendants' Contentions and Points and Authorities

MySpace has also objected to the Subpoena on the grounds that Defendants are "not entitled to obtain [from MySpace] documents equally obtainable from parties to the litigation." (Kozusko Decl., Ex. 5.) That objection is wrong on both the facts and the law.

Defendants served the Subpoena, in part, because Plaintiffs have failed to produce all documents concerning their relationship with MySpace, and, in part, to gain access to documents that, regardless, would not be in Plaintiffs' possession. Indeed, the Subpoena requires production of documents that would not be in Plaintiffs' possession, such as internal MySpace communications regarding licensing agreements or negotiations with any Plaintiffs concerning agreements, including notes of meetings between representatives of MySpace 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 MySpace's versions and collections of those documents at this juncture. Indeed, the argument advanced by MySpace here has been repeatedly rejected:

> Sony Electronics further alleges the documents sought by Plaintiff's Subpoena are duplicative in that these documents are readily attainable from the defendants in the underlying matter. The Court finds this argument unavailing, particularly in light of Plaintiff's desire to test the accuracy and completeness of the defendants' discovery responses and their denials that additional information exists. Thus, Sony Electronics shall produce all responsive documents even if they are duplicative.

LG Display Co., Ltd. v. Chi Mei Optroelectronics Corp., No. 08-cv-2408, 2009 WL 223585, at *3 (S.D. Cal. Jan. 28, 2009). *See also 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 motion to quash plaintiffs' non-party subpoena because although defendant had been ordered to produce the same documents, defendant failed to produce them and therefore "the information Plaintiffs requested cannot be more easily obtained from Defendant"

due to defendant's refusal to provide the documents).

In any event, as discussed in detail below (*see* Issue III.C., *infra*) Defendants have negotiated in good faith with MySpace's counsel to make the production of responsive documents as minimally burdensome as possible for MySpace, *e.g.*, by proposing the use of targeted search terms on the files of selected custodians in order to pinpoint potential responsive documents. (Kozusko Decl. ¶¶ 16, 21, Exs. 12, 18.) MySpace has neither agreed to do any of that nor proposed any alternatives for complying with its obligations under the Subpoena, leaving Defendants no option but to seek relief from this Court. (*See id.* ¶ 21.)

2. MySpace's Contentions and Points and Authorities

Defendants seek to justify their demand that MySpace produce duplicative documents on shifting grounds. The documents they seek are different ("internal MySpace communications"), they argue. Or perhaps the documents are the same (citing *LG Display Co., Ltd.*, 2009 WL 223585, at *3). Or perhaps they are slightly different (citing *In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. at 301 and *Composition Roofers Union Local 30 Welfare Trust Fund*, 160 F.R.D.at 71-72). None of these stabs reaches the mark.

At bottom, this Court possesses broad discretion to deny discovery if, as here, the material sought is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C); *see also, e.g., Bayer AG v. Betachem,*

Inc., 173 F.3d 188 (3d Cir. 1999). When combined with the mandate of Rule 45 that parties issuing subpoenas seek to avoid undue burden on third parties, it makes sense that Courts consistently hold that parties must seek discovery from the opposing party before seeking the same documents from non-parties. *See, e.g.*, *Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed Cir. 1993) (district court properly required defendant to seek discovery from plaintiff before burdening non-party); *Nidec Corp.*, 249 F.R.D. at 577 ("There is simply no reason to burden nonparties when the documents sought are in possession of the party defendant"); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637-38 (C.D. Cal. 2005) ("Weighing the burden to nonparty KSA against the value of the information to plaintiffs, the Court finds the subpoena imposes an 'undue burden' on nonparty KSA [because] . . . these requests all pertain to defendant, who is a party, and thus plaintiffs can more easily and inexpensively obtain the documents from defendant."); *Instituform Technologies, Inc. v. Cat Contracting, Inc.*, 914 F. Supp. 286, 297 (N.D. Ill. 1996) (plaintiffs not permitted to seek information from non-party obtainable from defendants).

Once discovery has been obtained from the party to the litigation, courts have recognized that otherwise cumulative discovery from third parties may be permissible in one of two situations: (1) where the proponent of discovery can demonstrate reason to believe that the discovery received from the party is incomplete (as in *LG Display Co.* and *Composition Roofing*); or (2) where the

variations of documents that might be in third parties' control have relevance to the litigation (as in *In re Honeywell Int'l)*. Here, neither of these categories applies. Defendants present no evidence or even argument that their adversaries in litigation – legitimate, longstanding companies represented by able counsel – have failed to produce the documents required under Judge Wood's order of November 19. *See generally* Kosuzko Declaration. And, as discussed *supra* , any documents uniquely in MySpace's possession (or annotated versions of documents) are irrelevant to the issues in the litigation.

To resolve this issue, the Court need not make any broad determinations regarding whether duplicative discovery is *ever* available from a third party. It need only hold that such duplicative discovery is inappropriate here, given the lack of relevance of such material, the substantial burden required to produce it, and the fact that evidence even "tenuously" relevant can be (and has been) obtained directly from Plaintiffs in the litigation. MySpace respectfully submits that denial of the motion for these reasons is the correct outcome on these facts.

C. Undue Burden

1. Defendants' Contentions and Points and Authorities

MySpace has objected to the Subpoena on the grounds that it is "unduly burdensome on its face." (Kozusko Decl., Ex. 5.) That objection is without merit, for the reasons that follow.

In order to evaluate undue burden -- which MySpace, as the objector here, bears the obligation of proving[5] -- courts weigh 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

[5] *See, e.g., Meeks v. Parsons*, No. 1:03-cv-6700, 2009 WL 3003718, at *8 (E.D. Cal. Sept. 18, 2009) ("[a] party that objects to a subpoena as overbroad or burdensome bears the burden of proving overbreadth or undue burden"); 9 James Wm. Moore, *et al.*, Moore's Federal Practice ¶ 45.51[4] (3d ed. 2009) ("A party objecting to a subpoena on the ground of undue burden generally must present an affidavit or other evidentiary proof of the time or expense involved in responding to the discovery request.").

transaction undertaken by [the party subject to the subpoena] for [the defendant] during the last ten years.'" *Bridgeport*, 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.[6] *Id*.

Similarly, in *Viacom Int'l, Inc. v. YouTube, Inc.*, No. C-08-80211, 2009 WL 102808 (N.D. Cal. Jan. 14, 2009), defendants in a copyright infringement action moved to compel non-party BayTSP to produce documents related to its work on behalf of plaintiffs in identifying examples of copyright infringement on defendants' website. *Id.* at *2. Defendants' subpoena had requested documents and communications concerning, among other things,

[6] Indeed, courts have upheld subpoenas covering time periods that were far more expansive than the four-plus years in the Subpoena. *LG Display Co.*, 2009 WL 223585, at *2 ("Although the time period covered by a subpoena is relevant in determining undue burden, the Court cannot say that eight years is burdensome.").

BayTSP's use and monitoring of YouTube and BayTSP's relationship with plaintiffs. *Id.* at *3. The court held that these requests were not unduly burdensome, despite BayTSP's complaints that initial searches yielded over one million documents and that it had "already expended over 1900 hours in the last six months searching and reviewing the documents." *Id.* at *5.

Under *Bridgeport* and *Viacom*, both of which involved document requests that were far more expansive than those propounded by Defendants here, the Subpoena is not overbroad or unduly burdensome. Here, the Subpoena requested communications concerning LimeWire or with the 13 specific Plaintiffs in this case on a limited number of topics (Kozusko Decl., Exs. 1, 4, 6, 12), and, as shown above, seeks documents that are clearly relevant to the factors applicable to statutory damages (*see* Issue III.A., *supra*). It is therefore not overbroad.

Further, Defendants have offered repeatedly to work with MySpace to minimize the burden on MySpace by pinpointing the types of communications that are most relevant to the issues to be tried, through the use of targeted search terms on the files of the custodians most likely to possess responsive documents. (*See, e.g.*, Kozusko Decl., Exs. 4-5, 12.) MySpace, however, would not agree to that offer and did not make any counter-proposal. (*See id.* ¶ 21.) That should not be permitted, especially where the Court presiding over the trial of the above action has already ordered another non-party to produce such documents. (*See id.*, Ex. 11.)

Indeed, MySpace has refused to produce documents under conditions involving a substantially lower burden than existed in either *Bridgeport or Viacom*. Specifically, MySpace's counsel claimed (without providing any facts to substantiate those claims) that the production of communications responsive to this Request of the Subpoena would require "dozens of hours" of his time, along with "days if not weeks" of time spent by MySpace's forensic information technology group. (Kozusko Decl. ¶ 21.) This relatively small time commitment -- certainly far less than the "weeks if not months" in *Bridgeport*, 2007 WL 4410405, at *2, or the "1900 hours" over "six months" in *Viacom*, 2009 WL 102808, at *5, neither of which the court held to be an undue burden -- is not sufficient to allow MySpace to escape its obligation under the Subpoena to produce documents that Judge Freeman has already deemed relevant to the underlying litigation (Kozusko Decl., Ex. 3 at 5-6). *See, e.g.*, *Platinum Air Charters*, 2007 WL 121674, at *6 (compelling non-party to comply with subpoena because "[t]he mere fact that discovery requires work and may be time consuming is not sufficient to establish undue burden.").

Moreover, MySpace's repeated protestations of undue burden ring especially hollow given that it is part of News Corp., a publicly traded multinational company with assets of more than $56 billion, including the Fox empire and the *Wall Street Journal*, and concededly has a forensic information technology department with the ability to search for and collect potentially

responsive documents (*see id.* ¶ 21, Ex. 2 at 1[7]). *See Meeks*, 2009 WL 3003718, at *4 ("[a] recipient that is a large or complex organization or that has received a lengthy or complex document request should be able to demonstrate a procedure for systematic compliance with the document request.").

2. MySpace's Contentions and Points and Authorities

Courts weigh whether a burden to produce under a subpoena is "undue" by reference to a six-factor balancing test: (1) the relevance of the information requested; (2) the need of the party for production; (3) the breadth of the request for production; (4) the time period covered by the subpoena; (5) the particularity with which the subpoena describes the requested production; and (6) the burden imposed. *Televisa, S.A. De C.V. v. Univision Communications, Inc.*, No. CV 05-3444 PSG (MANx), 2008 WL 4951213 (C.D. Cal. Nov. 17, 2008), at *2. These factors favors mandate that production be denied here.

First, as discussed above, the relevance of the documents that Defendants have already obtained is "tenuous." The relevance of any additional production from MySpace is nonexistent. The absence of relevance by itself is sufficient ground to deny production.

Second, Defendants do not "need" these documents from MySpace; Plaintiffs already have been ordered to produce anything deemed relevant. In cases such as those cited by Defendants, *Bridgeport Music* and *Viacom*, the

[7] *See also* http://www.newscorp.com/investor/index.html; http://www.newscorp.com/operations/publishing.html.

documents at issue related closely to the core issues in dispute, and the proponent of third-party discovery lacked other means to obtain that information. Here, where Defendants should already have any relevant material from their adversaries in litigation, they cannot claim to "need" these documents again from MySpace.

With regard to the third, fourth, and fifth factors: the breadth of Document requests 2 and 6 is staggering. Document Request 2 seeks "all communications" with record companies with no time limitation. MySpace's contractual relationships with the major labels go back to at least early 2008, at the launch of MySpace Music, *see* Gottlieb Decl. ¶ 16, and Plaintiffs have signaled their intention to delve into information even older than that. *See supra* note 6 at 29 (referencing a "four plus year" time period). Substantial parts of MySpace's business – predominantly MySpaceMusic.com, with approximately 70 employees – work frequently with representatives of the major labels. In addition, many other employees and agents of MySpace, from time-to-time, assist on projects involving one or more of the major record companies. Gottlieb Decl. ¶ 16. Defendants' demand that MySpace produce every "communication" with a representative of a record company is not a reasonably particularized request.

Finally, the burden that Plaintiffs seek to impose on MySpace is immense. As noted immediately above, MySpace Music has dozens of employees who may communicate regularly, if not daily, with representatives of the music companies. In addition, there are, conservatively, tens of other MySpace

employees or agents who have communicated with the major record companies. Gottlieb Decl. ¶ 16.

Capture and review of electronic documents is an involved process. It requires, first, imaging and upload of the custodian's repositories of electronically stored information. Depending on the nature of those repositories and their size, capture may take anywhere from one to five hours per custodian of specialized personnel's time. Once the data are captured, they are typically uploaded and processed into searchable format. This process, again depending on size of the data, may take another one to two hours of specialized personnel's time, plus additional hours of computer processing time, during which the computers are unavailable to perform other tasks. Once the data are loaded, it is possible to run search terms to cull down the data to documents that contain a term or terms. After search terms are run, manual review by an attorney or paralegal is necessary to determine whether the search terms "hit" responsive documents or whether they obtained false positives, as is common with general search terms. Manual review is also necessary to determine whether a document is protected by attorney-client privilege or other protections. Depending on the size of the data set, manual review of documents can take hundreds or thousands of work-hours. Gottlieb Decl. ¶ 17.

Defendants' request would have necessitated capture and review of dozens of custodians' electronically stored information. The capture, by itself,

would have taken hundreds of hours and prevented the specialized technical personnel from performing their other essential duties, which includes assisting in the defense of cases brought against MySpace as a party. Even after uploading these data and running search terms, MySpace's counsel would have to find time to manually review the search results, which could run into the hundreds of hours. Plaintiff's purported efforts to compromise, proposing the "use of targeted search terms on the files of specific custodians," is unconvincing. The generic search terms that Plaintiffs propose – including words like "license," "contract," and "agreement" are likely to generate thousands, if not tens or hundreds of thousands, of "hits." Gottlieb Decl. ¶ 18. More specific identification of custodians or search terms is not likely, as Defendants are in search of documents helpful to their case; they do not seem to know specifically what they are looking for in any particularized way. Gottlieb Decl. ¶ 10, 18. The burden Plaintiffs seek to impose on MySpace is far greater, and the relevance far less, than in cases in which this Court has quashed a subpoena. *E.g.*, *Televisa*, 2008 WL 4951213, at *3 (quashing subpoena where "[r]esponding to the document portion of the subpoena would require a substantial collection effort and would constitute thousands of pages of documents.").

Defendants' suggestion that MySpace should undertake this burden simply because it is part of a large corporation warrants little response. It is no justification to require a party to undertake a burden simply because it has

resources. Undertaking the burden that Defendants seek would impose massive costs on MySpace and detract essential personnel from their duties. In view of the nonexistent relevance of the material they seek, Plaintiffs have offered no justification to require MySpace to undertake that burden. In her November 19 order, Judge Wood recognized that the discovery Defendants sought was "potentially burdensome," but permitted it to go forward on a limited basis against Plaintiffs. Because the Federal Rules shield third parties from burden more carefully than parties to the litigation, Judge Wood's order suggests that imposing that burden is inappropriate here. Kozusko Decl. Ex. 10 at 6-7.

Rule 45(c) of the Federal Rules of Civil Procedure requires a proponent of a subpoena to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena" on pain of sanction. MySpace respectfully submits that Defendants' misconduct here justifies denial of their motion and imposition of a sufficient sanction to deter and punish.

IV. CONCLUSIONS.

A. Defendants' Conclusions.

In connection with preparing their defense at trial of copyright infringement claims for which Plaintiffs demand over $1 billion in damages, Defendants have sought the production of documents from MySpace, a non-party that provides digital music over the internet pursuant to contracts with Plaintiffs, including communications concerning both LimeWire and MySpace's agreements

with Plaintiffs. The Court that will try the above action has already ordered another non-party to produce such communications, holding them directly relevant to the issues to be tried early next year. MySpace, however, has refused to produce this category of documents, relying on objections that are deficient as a matter of law and unsubstantiated as a matter of fact. Indeed, MySpace has rebuffed Defendants' offer to use targeted search terms on the files of selected custodians in order to pinpoint documents most relevant to the issues to be tried and refused to make any counter-proposal at all.

MySpace's intransigence should not be permitted here, especially when it will deprive Defendants of documents directly relevant to their defense of damages claims that exceed $1 billion. Accordingly, this Court should enter an order compelling MySpace to produce promptly documents responsive to the Subpoena's Request for Production of Documents Nos. 2, 6.

B. MySpace's Conclusions.

Federal Rule of Civil Procedure 26 does not expand the scope of permissible discovery when substantial damages are at issue. Federal Rule of Civil Procedure 45 does not admit broader third-party discovery when Defendants' unlawful acts are egregious, widespread, long-term and wanton such as would give rise to the damages Defendants face in the underlying action. Rather, both rules impose reasonable and commonly accepted limits on third-party discovery. Such discovery must be relevant, it must not be unnecessarily cumulative, and it must

not impose an undue burden on a non-party.

Defendants' subpoena flunks each of these requirements. They have no cognizable theory of relevance to justify MySpace's production of internal documents, and no rationale why MySpace should have to produce the same documents that Defendants have already received from Plaintiffs. In lieu of such argument, Defendants resort to misinforming this Court of the record in the underlying proceeding, where the relevance of the documents they seek was deemed "potentially tenuous." For all its lack of relevance, Defendants' subpoena seeks to employ many individuals at MySpace working full-time for weeks to search through MySpace's documents in the hope that MySpace will find something to assist them in their defense. This is not how the drafters of Rule 45 intended it to work, and MySpace respectfully submits that this Court should deny Defendants' motion.

MySpace further requests that the Court issue a sanction against Defendants and/or their counsel in an amount not less than $12,500 pursuant to Rule 45(c) and Local Rule 37-4 to compensate MySpace for its counsel's time and to punish Defendants for their abusive tactics. Gottlieb Decl. ¶ 19-21. This request is based on –

1) Defendants' failure to follow the requirements of Local Rule 37-1; *see* Local Rule 37-4;

2) Defendants' treatment of Magistrate Judge Freeman's October 15

Order as law-of-the-case without citing Judge Wood's superseding 11/19/10 order;

3) Defendants' misleading presentation of Magistrate Judge Freeman's November 23, 2010 order regarding VEVO; and

4) Defendants' failure to undertake any meaningful effort to mitigate the burden on the recipients of its subpoenas, including MySpace and MediaDefender.

MySpace respectfully requests that, if the Court finds Defendants' conduct egregious, it order a sanction in a multiple of the amount requested above.

DATED: December 7, 2010

ROBERTS, RASPE & BLANTON LLP

By: /s/ Michael S. Blanton

Attorneys for Defendants Defendants Lime Wire LLC; Lime Group LLC; Mark Gorton; and M.J.G. Lime Wire Family Limited Partnership

DATED: January 5, 2010

FOX GROUP LEGAL

By: /s/ Jonathan Gottlieb

Attorneys for Non-Party MySpace, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
CITY AND COUNTY OF LOS ANGELES)

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Roberts, Raspe & Blanton LLP, Union Bank Plaza, 445 South Figueroa Street, Suite 3200, Los Angeles, California 90071.

On January 7, 2011, I caused the foregoing document(s) to be served:

JOINT STIPULATION REGARDING CENTRAL DISTRICT NON-PARTY SUBPOENA TO MYSPACE, INC.

on the interested parties, by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Jonathan Gottlieb, Esq.
Fox Group Legal
2121 Avenue of the Starts, Suite 700
Los Angeles, California 90067

Attorneys for Non-Party Respondent MySpace, Inc.

[X] **VIA PERSONAL DELIVERY:**
At the address listed above.

Glenn D. Pomerantz
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355 South Grand Avenue, 35th Floor
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Attorneys for Plaintiffs Arista Records LLC; Atlantic Recording Corp.; 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.

[X] **VIA OVERNIGHT MAIL:**
VIA Federal Express: By delivering such documents to an overnight mail service or an authorized courier in an envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 7, 2011, at Los Angeles, California.

/s/ Melissa L. Gonzalez