Exhibit G

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December 15, 2010

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BY HAND

The Honorable Debra Freeman
United States District Court
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: ***Arista Records LLC, et al. v. Lime Wire LLC, et al.*, No. 06-CV-5936**

Dear Magistrate Judge Freeman:

I write regarding the letter brief, submitted at 4:56 p.m. on Friday, December 10, 2010, in support of Defendants Lime Group LLC, Lime Wire LLC, Mark Gorton, and M.J.G. Lime Wire Family Limited Partnership's (collectively, "Defendants") motion to compel production of certain documents from Yahoo! Inc. ("Yahoo!"), a subpoenaed non-party. Contrary to Defendants' various contentions, Yahoo! has been in regular contact with Defendants' counsel and has indicated its willingness to substantially comply with Defendants' requests for production, despite the obvious over-breadth of Defendants' subpoena. Indeed, Yahoo! has agreed to provide copies of license agreements between itself and the entirety of the record company Plaintiffs, as well as highly sensitive usage and payment data compiled as a result of these license agreements. Yahoo! agreed to produce license agreements and certain reporting data, which it contends is the relevant universe of documents in light of the issues remaining in the action, on October 28, 2010. Yahoo! vehemently disagrees with Defendants' contention that correspondence of any kind is remotely relevant to the damages portion of this action. Neither of this Court's prior discovery orders mandate a finding that correspondence involving Yahoo! is sufficiently relevant to outweigh the enormous burden that a search, review, and production of such correspondence would impose on Yahoo!.

As Defendants are well aware, Yahoo! is, and has at all times been, willing to produce certain responsive documents only after an appropriately modified protective order has been filed with the Court. As currently operative, the protective order would allow in-house counsel for the

various Plaintiffs access to highly confidential documents negotiated between Yahoo! and the individual Plaintiffs. Yahoo! has properly objected to this provision and has discussed with counsel for Plaintiffs a potential amendment to the protective order that is acceptable to Yahoo!. As Yahoo! has clearly informed Defendants, until such time as this new protective order is entered by the Court, Yahoo! is unwilling to produce either license agreements or reporting data. Defendants have been well aware of Yahoo!'s position for over a month and have at no time demanded that Yahoo! produce documents in spite of the currently insufficient protective order. Indeed, Defendants' counsel has expressly agreed that the protection proposed by Yahoo! was reasonable and should precede Yahoo!'s production. (Exh. A).

Defendants provided Yahoo! with a copy of this Court's November 23, 2010 order regarding VEVO, LLC (the "VEVO Order") on December 1, 2010. While Yahoo! was in the process of discussing the ramifications, if any, of the Court's VEVO Order, Defendants summarily moved to compel production from Yahoo!. At no point have Defendants provided any notice that such a motion would be filed. To the contrary, Defendants' counsel has consistently indicated that motion practice would be avoided, if possible. Nevertheless, Defendants have submitted a motion to overrule Yahoo!'s proper objections and compel production of certain email communications from Yahoo!. There is simply no basis for Defendants' motion, and this Court should deny Defendants' attempt to compel an onerous and costly production, of limited probative value, from Yahoo!.

I. This Court's Prior Orders Regarding Document Production Are Inapplicable to Yahoo!

Defendants ask this Court to make much of two prior discovery orders: the October 15, 2010 order denying Plaintiffs' motion to quash non-party subpoenas (the "October Order"), and the VEVO Order. From the outset, Defendants have attempted to cast the October Order as a broad discovery ruling legitimizing Defendants' non-party subpoenas in their entirety. (Exh. B [excluding attachment]). In reality, this Court denied Plaintiffs' motion to quash non-party subpoenas because *Plaintiffs* lacked standing to challenge the subpoenas. (October Order at 2-4). The Court did not rule, and has not ruled, that the categories of documents included in Defendants' non-party subpoenas are relevant to, and subject to production in, this action. In fact, in the October Order the Court found only that Plaintiffs must update their production of license agreements and communications with third parties, in part because Plaintiffs had *already* produced similar documents in this action. (*Id.* at 6). However Defendants attempt to stretch the Court's October Order, it simply has no bearing on Yahoo!'s compliance with the subpoena, but rather is limited to Plaintiffs own compliance with damages-related discovery.

The VEVO Order is also inapplicable to the Yahoo! subpoena. The Court's VEVO Order simply cements a discovery plan negotiated between VEVO and Defendants. Indeed, the Court properly ruled that the negotiated discovery plan "[struck] an appropriate balance between Defendants' need to obtain relevant documents and the burden to VEVO." (VEVO Order at 1).

Intrinsic to the Court's order is the understanding that any non-party production must take into account not only whether the subpoenaed documents may be relevant to Defendants' defenses but also the burden that such a production creates for the non-party. *See, e.g., Fears v. Wilhelmina Model Agency, Inc.*, No. 02 Civ. 4911, 2004 WL 719185, at *1 (S.D.N.Y. Apr. 1, 2004) ("[T]he Court should be particularly sensitive to weighing the probative value of the information sought against the burden of production on [a] non-party."). Any weighing of relevance and burden necessarily requires individual inquiry. The potential burden that production of email communications would impose on VEVO is almost certainly far less than the burden of an equivalent production by Yahoo!. VEVO is a new business that has only been operable for approximately a year. Yahoo!, on the other hand, has been continuously operating for over fifteen years. For much of that time, and for the vast majority of the nearly *six years* at issue in Defendants' overbroad subpoena, Yahoo! has operated a wide range of music-related sites and services. Therefore, the scope of production – and attendant burden of searching for, reviewing, and producing documents – from VEVO is undoubtedly far more limited than any similar production from Yahoo!.

Moreover, VEVO is, in actuality, a joint venture operated by two of the Plaintiffs in this action, Universal Music Group ("UMG") and Sony Music Entertainment ("Sony"). Yahoo! is, and always has been, an independent company unaffiliated with any Plaintiff. Documents produced by VEVO are thus far less likely to contain confidential or commercially sensitive information, at least with respect to the UMG and Sony Plaintiffs. Yahoo! and VEVO are so dissimilarly situated as to render the VEVO Order wholly inapplicable to Yahoo!.

II. The Court Should Not Compel Production of Yahoo!'s Correspondence Related to Licensing Agreements with Plaintiffs

Independent of this Court's prior Orders, Yahoo! should not be compelled to produce correspondence, whether external or internal, regarding the license agreements that Yahoo! has previously agreed to produce. Defendants have failed to provide sufficient basis for imposing what will be a significant discovery burden on a non-party. In addition, Plaintiffs themselves will likely produce the vast majority of the correspondence demanded by Defendants.

a. Defendants Have Failed to Articulate a Legitimate Basis for the Relevance of Yahoo!'s Correspondence

As an initial matter, Defendants' position regarding the contents of its own subpoena is contradictory. Defendants themselves claim that the Yahoo! subpoena seeks, as one of its "three principal types of documents . . . communications between Yahoo and any Plaintiff regarding those licenses or agreements . . . ." (Defs.' Br. at 2). Despite this clear limitation, Defendants argue that "internal communications describing negotiations with the record labels will be relevant in determining the conduct and attitude of the parties . . . ." (*Id.* at 4). Yahoo! does not believe that such internal communications are sufficiently relevant to outweigh the immense

burden of production. Defendants are seeking non-party discovery for the purposes of determining Plaintiffs' valuation of their content, not Yahoo!'s interpretation of licensing terms, the content of internal meetings, or Yahoo! employees' opinion of Plaintiffs' conduct. Indeed, it is notable that the communications compelled in the VEVO Order *do not* comprise "internal communications" regarding licensing, but only internal communications that expressly reference "Lime Wire." (VEVO Order at 2) (compelling "communications with the following individuals [listing Plaintiffs' personnel] . . . *and containing* any of the following terms [listing search terms]."). The Court should not allow Defendants to suggest both that the VEVO Order applies to Yahoo!, and that Yahoo! be required to produce entire categories of documents not even referenced therein.

Aside from the argument that Yahoo!'s correspondence will demonstrate the parties' "conduct and attitude," Defendants have provided no further basis for subpoenaing Yahoo!'s correspondence with Plaintiffs or moving to compel production from Yahoo!. It is Defendants' burden to show the relevance of the documents requested, and Defendants have simply not met this burden. *See, e.g., Copantitla v. Fiskardo Estiatorio, Inc.*, No. 09 Civ. 1608, 2010 WL 1327921, at * 10 (S.D.N.Y. Apr. 5, 2010) (granting motion to quash subpoena as overbroad and seeking insufficiently relevant information); *In re Ex Parte Application of Apotex Inc.*, Misc. No. M12-160, 2009 WL 618243, at *3 (Mar. 9, 2009) (denying discovery request where it was costly, time consuming, overbroad, and the documents requested were not relevant); *In re Biovail Corp. Secs. Litig.*, 247 F.R.D. 72, 74 (S.D.N.Y. 2007) (finding non-party discovery unduly burdensome due to minimal relevance and excessive cost). Indeed, even were the costs of complying with the correspondence aspect of Defendants' subpoena not onerous, which they are, a subpoena seeking material with little apparent relevance is *still* "likely to be quashed." *Kirschner v. Klemons*, No. 99 Civ. 4828, 2005 WL 1214330, at *2 (S.D.N.Y. May 19, 2005) (quoting *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 50 (S.D.N.Y. 1996)). Pursuant to the Court's prior Orders, Plaintiffs' correspondence regarding licensing agreements and correspondence between a small group of VEVO employees and Plaintiffs have been deemed relevant for the determination of damages. Considering the increased burden that the production of correspondence will impose upon Yahoo!, relevance should be weighed in favor of the non-party, and Yahoo! should not be compelled to produce enormous amounts of discovery material that will be of limited, or no, evidentiary value for the determination of Defendants' damages.

b. The Subpoenaed Documents Are Largely Available from Plaintiffs

Defendants' motion to compel the production of correspondence between Yahoo! and Plaintiffs should also be denied as unreasonably duplicative in light of this Court's October Order. The October Order already requires Plaintiffs to produce correspondence related to licensing agreements with third parties, including Yahoo!. (October Order at 5-6). Defendants' contention that Yahoo!, a wholly unaffiliated non-party, is required to produce documents as a means of "confirm[ing] that the agreements produced by Plaintiffs represent all such agreements" is simply astounding. If Defendants believe that Plaintiffs have failed to comply

with any discovery obligations, it is Plaintiffs', not Yahoo!'s, responsibility to attest to the completeness of their production. Notably, Defendants offer no legitimate basis for their claim that production from Yahoo! may be compelled as a check on Plaintiffs' compliance with the Court's October Order. Indeed, using non-party discovery as a means of determining whether party discovery is complete is not a legitimate basis for a non-party subpoena. *See Cohen v. City of New York*, No. 05 Civ. 6780, 2010 WL 1837782, at *6 (S.D.N.Y. May 6, 2010). The fact of the matter is that Defendants' contention is as groundless as it is a galling misuse of the discovery process.[1]

To the extent that any documents produced by Yahoo! may be "slightly different" from versions produced by Plaintiffs, Yahoo! contends that the documents remain duplicative of any production from Plaintiffs. It is within this Court's discretion to determine the scope of non-party productions, if any. *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 68-70 (2d Cir. 2003) (discovery may be limited as overbroad, duplicative, or unduly burdensome upon a determination by the Court). Non-party discovery need not be compelled simply because the requested documents may be relevant to a party's claims or defenses. *Kingsway Fin. Servs., Inc. v. PriceWaterhouse-Coopers LLP*, No. 03 Civ. 5560, 2008 WL 4452134, at *4 (S.D.N.Y. Oct. 2, 2008) ("Once the party issuing the subpoena has demonstrated the relevance of the requested documents, the party seeking to quash the subpoena bears the burden of demonstrating that the subpoena is overbroad, duplicative, or unduly burdensome."). Here, Yahoo! has already agreed (pending entry of an amended protective order) to produce license agreements involving Plaintiffs and certain data related to these agreements. Yahoo! has been informed by Plaintiffs that a large number of agreements involving Yahoo! have already been produced.

Plaintiffs are also likely in possession of reporting data that is similar, if not identical, to that which Yahoo! has agreed to produce. The production of email communications between Yahoo! and Plaintiffs would add yet another set of duplicative documents to this action. Moreover, with respect to Defendants contention that Yahoo!'s documents may "differ slightly" from Plaintiffs' production, this concern is limited with respect to emails. (Defs.' Br. at 6). Emails are unlikely to contain hand-written notes or slight alterations as they are typically confined to digital format.[2] To the extent that Yahoo!'s correspondence is relevant and not duplicative, to which Yahoo! strenuously disagrees, any such correspondence must be confined to correspondence between Yahoo! and Plaintiffs regarding produced license agreements.

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[1] Defendants have not asserted that Plaintiffs have thus far failed to produce documents pursuant to the October Order. The ruling in *Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enters., Inc.*, by the Eastern District of Pennsylvania, no less, is therefore inapplicable. 160 F.R.D. 70, 71-72 (E.D. Pa. 1995).

[2] As a result, the ruling in *In re Honeywell Int'l, Inc. Sec. Litig.* is also inapplicable. 230 F.R.D. 293, 301 (S.D.N.Y 2003).

III. The Production of Correspondence as Requested by Defendants Is Exceptionally Burdensome

Finally, Defendants' contention that the production of correspondence related to Yahoo!'s license agreements with Plaintiffs is not burdensome is wholly without merit. Yahoo! is a multi-national corporation with thousands of employees worldwide. As a non-party, special weight should be given to the burden that Defendants' subpoena imposes on Yahoo!. *Cohen*, 2010 WL 1837782, at *2; *see also Copantitla*, 2010 WL 1327921, at *10. Even were Yahoo! to confine any email search to individuals involved in its various music businesses, the list of potentially related individuals would far exceed the number of persons identified by the VEVO Order. Indeed, many of the employees involved in music licensing at Yahoo! are no longer with the company. Any search of emails related to license agreements with Plaintiffs would thus require a time-consuming and costly search of archived data that may, or may not, be able to be retrieved forensically.

It is particularly notable that Yahoo! has largely exited the music business during the past several years. Many of Yahoo!'s core music-related pursuits, including LAUNCHcast Internet radio and its Yahoo! Music Unlimited subscription-based music service, are no longer operated by Yahoo!. As such, Yahoo!'s documents and files related to these business pursuits are no longer readily accessible.[3] Michael C. Silberberg, Civil Practice in the S.D.N.Y. § 22:15. Moreover, the scope of the documents Yahoo! will be required to review is immense. In contrast to the "hundreds of files" at issue in *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, Yahoo! would be required to search through vastly more data for that related to years-old license agreements with Plaintiffs. No. 05 Civ. 6430, 2007 WL 4410405, at *2 (S.D.N.Y. Dec. 17, 2007).

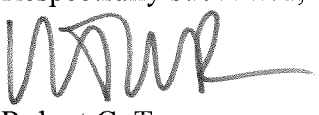
Defendants unconvincingly suggest that any search of emails would be targeted and thus not burdensome to Yahoo!. Defendants, however, fail to account for not only the incredible six year scope of their subpoena, but also the considerable costs, in both money and time, related to the retrieval of responsive documents. For example, internal correspondence related to Yahoo!'s license agreements with Plaintiffs will frequently implicate attorney-client communications. In order to ensure that privileged documents are not produced, Yahoo! will be forced to engage in a time-consuming and expensive privilege review that is likely to cost tens of thousands of dollars. The burden of searching for, reviewing, and producing emails related to Yahoo!'s licensing of Plaintiffs' content is simply too burdensome to justify such a broad, and minimally relevant, production obligation on a non-party that has no stake in the outcome of this action.

[3] Indeed, should the Court compel production of emails that are not readily accessible by Yahoo!, a shifting of the costs of production may be appropriate. *See, e.g., Quinby v. WestLB AG*, 245 F.R.D. 94, 101-02 (S.D.N.Y. 2006) (discussing the basis for cost-shifting where emails are not readily accessible or are contained on backup tapes).

Yahoo! has already agreed to produce license agreements and certain related data in response to Defendants' unreasonably overbroad subpoena. As Defendants are aware, and have made no objection, Yahoo! seeks to defer production of the agreed upon documents and information until an appropriate amendment to the protective order is entered by the Court. At such time, Yahoo! will begin production of responsive documents. Yahoo! has thus far engaged in good faith negotiations with Defendants, but it is not Yahoo!'s responsibility to confirm the comprehensiveness of Plaintiffs' production. In addition, the cost and time associated with a large-scale search and review of email correspondence, involving numerous current and former Yahoo! employees, simply to determine what Yahoo! thought about its agreements with Plaintiffs, far outweighs what little probative value, if any, such information may have.

For the foregoing reasons, Yahoo! respectfully requests that the Court deny Defendants' motion to overrule Yahoo!'s objections and compel production of email communications pursuant to the Yahoo! subpoena. While Yahoo! does not believe that a hearing on Defendants' motion is necessary, counsel for Yahoo! will be available at the Court's convenience.

Respectfully submitted,



Robert C. Turner

cc: Mary Eaton, Esq.
Glenn D. Pomerantz, Esq.

EXHIBIT A

Turner, Robert C.

From: Kozusko, Dan [dkozusko@willkie.com]
Sent: Friday, November 05, 2010 6:51 PM
To: Glenn.Pomerantz@mto.com; Turner, Robert C.
Cc: Eaton, Mary
Subject: Arista v. LimeWire

Dear Glenn:

Counsel for Yahoo! Inc., one of the non-parties that Defendants subpoenaed, raised an issue with regard to the protective order in this case. Specifically, Rob Turner of Winston & Strawn (copied on this e-mail) expressed concern that the protective order allows documents designated as "Confidential" or "Attorneys' eyes only" to be disclosed to in-house counsel for the parties. Yahoo! is ready to produce agreements between it and Plaintiffs that are responsive to Defendants' Subpoena, but does not want copies of its agreements with one Plaintiff, *e.g.*, Sony, being shared with in-house counsel for other Plaintiffs not affiliated with Sony.

In our view, that is a legitimate concern. To ameliorate that concern and enable Yahoo! to produce documents pursuant to the Subpoena, we wanted to see if you would be willing to enter into a Stipulation stating that you will not share copies of agreements between Yahoo! and any plaintiff with in-house counsel for other plaintiffs. We can work on exact language later, but I wanted to check first whether that concept were acceptable to you and your clients? Please let us know your views as quickly as possible so that we may facilitate the production of documents by Yahoo! here. Many thanks.

Rob: please chime in if I have misstated your client's position in any way.

Regards,
Dan

Dan C. Kozusko
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New York, New York 10019
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EXHIBIT B

Turner, Robert C.

From: Kozusko, Dan [dkozusko@willkie.com]
Sent: Sunday, October 17, 2010 7:07 PM
To: Turner, Robert C.
Cc: Eaton, Mary
Subject: Arista Records LLC v. Lime Group LLC, et al.
Attachments: Discovery Order.pdf

Dear Mr. Turner:

I write concerning the subpoena that defendants recently served on Yahoo! Inc. in connection with the above-captioned matter. By letter, dated October 1, 2010, to my colleague, Mary Eaton, you set forth certain objections to that subpoena on behalf of Yahoo! Inc. Attached is a decision issued by the Court on Friday afternoon upholding the subpoenas in their entirety, including the one to your client. Accordingly, we would like to discuss with you as soon as possible the timing of your document production. Of course, we are willing to discuss the scope of that production so as to minimize any undue burden on your client, while ensuring that defendants receive the requested documents and information expeditiously, so that we can avoid any costly motion practice.

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

Very truly yours,
Dan Kozusko

<<Discovery Order.pdf>>

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