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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION**

11 PACIFIC BELL INTERNET SERVICES,)
12)
13 Plaintiff,) CASE NO.: C-03-3560 (SI)
14 v.)
15)
16 RECORDING INDUSTRY) **DEFENDANT IO GROUP INC.'S NOTICE**
17 ASSOCIATION OF AMERICA, INC.) **OF MOTION AND MOTION TO DISMISS**
18 MEDIASENTRY, INC. dba)
19 MEDIAFORCE, and IO GROUP, INC.)
20 dba TITAN MEDIA,) Date: October 31, 2003
21 TITANMEDIA.COM, and) Time: 9:00 a.m.
22 TITANMEN.COM,) Place: Courtroom No. 10
23)
24 Defendants.)
25)
26)
27)
28)

29 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

30 PLEASE TAKE NOTICE that on October 31, 2003 at 9:00 a.m., or as soon thereafter as
31 the matter may be heard, in the Courtroom of the Honorable Susan Illston, United States District
32 Judge, in the United States Courthouse located at 450 Golden Gate Avenue, San Francisco,
33 California, defendant Recording Industry Association of America will, and hereby does, move the
34 Court to dismiss all claims against it for lack of subject matter jurisdiction and failure to state a
35 claim.

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1 **STATEMENT OF FACTS**

2 **A. Titan Media and Copyright Infringement**

3 Other than being named as a defendant in this lawsuit, Titan Media has no relationship to the
4 RIAA or MediaSentry. Sperlein Decl. ¶ 35.

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6 Titan Media is a San Francisco-based multimedia company primarily engaged in the
7 production of erotic films marketed to a gay audience. As a producer of films, Titan Media’s
8 intellectual property – its copyrights in its films – is its most valuable asset. Titan’s catalog of
9 films includes approximately forty-five copyrighted works. *Id.* at ¶ 2. Moreover, as one of the
10 most popular and highly awarded production companies of this genre, Titan Media has always
11 been subjected to an inordinate amount of copyright infringement of its works. In an effort to
12 reduce infringement, Titan Media registers all of its creative works with the United States
13 Copyright Office and employs evolving technology to prevent unauthorized duplication and
14 distribution of its creative works. *Id.* at ¶ 3.

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17 With the development of peer-2-peer (P2P) networks in the last several years,
18 infringement of Titan Media’s content skyrocketed to levels exceeding 10 times the actual units
19 sold, leaving Titan Media no alternative but to take measures to protect it’s property and deter
20 infringers from anonymously distributing its registered audiovisual works via P2P networks. *Id.* at
21 ¶ 4. Titan Media takes these measures because P2P technology allows for unauthorized
22 distribution of its material on a level that was never before imaginable. These efforts also help
23 Titan Media achieve one of its core values and a major tenet of its business – preventing any
24 exposure of its content to minors and adults not specifically wishing to view it. *Id.* at ¶5.
25 However, Titan Media has no way of preventing minors from viewing its adult materials when
26 infringers distribute unauthorized versions on P2P networks frequented by children. *Id.* at ¶6.
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2 **B. The Subpoena Issued to PBIS**

3 On July 9, 2003, Titan Media served on PBIS a subpoena authorized by the Digital
4 Millennium Copyright Act (DMCA), 17 U.S.C. § 512(h). *Id.* at ¶¶ 7, 15 and 16. Titan Media
5 sought the identity of subscribers who over the previous nine days had used fifty-eight PBIS-
6 controlled Internet Protocol (IP) addresses to distribute Titan Media’s copyright protected works
7 illegally on peer-2-peer networks. *Id.* at ¶7.

8 The subpoena requested “any and all information identifying the subscribers assigned the
9 IP addresses...including but not limited to names, addresses, phone numbers and e-mail
10 addresses.” *Id.* at Ex. A. This request was consistent with section 512(h)(1) of the DMCA, which
11 authorizes a copyright holder to request the clerk of a district court to issue a subpoena for the
12 “identification of an alleged infringer.” 17 U.S.C. § 512(h). As required by the DMCA, Titan
13 Media’s attorney swore under penalty of perjury that the requested information would only be
14 used to protect Titan Media’s rights under Title 17 of the United States Code. Sperlein Decl. ¶ 10
15 and Ex. B. In order to conserve judicial resources and to minimize the impact on PBIS, Titan
16 Media included fifty-eight IP addresses on a single subpoena and included a summary of the
17 violations. *Id.* at ¶ 8. Nothing in the DMCA prohibits such logical consolidation and such
18 consolidation does not affect the rights of the parties or the individuals whose identities are
19 sought. Indeed, consolidating the IP addresses conserves the resources of the requesting party, the
20 receiving party, and – if the receiving party moves to quash – the court. Titan Media requested the
21 subscribers’ e-mail addresses in order that it could quickly contact the infringers and resolve the
22 matters expeditiously. *Id.* at ¶ 9.
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1 Prior to filing or serving the subpoena, Counsel visited the website upon which the United
2 States Copyright Office posts the names and addresses of agents registered by each service
3 provider to receive DMCA notifications on the service provider's behalf. *Id.* at ¶ 11. PBIS's
4 registered agent for DMCA notices as registered with the U.S. Copyright Office, was at that time
5 (and is today): General Counsel, 1010 St. Mary's Street, 14th Floor, San Antonio, Texas, 78215,
6 telephone number (210) 246-8600. *Id.* at ¶ 12 and Ex. C. Counsel for Titan Media then contacted
7 PBIS at the listed telephone number and inquired where a subpoena should be served on PBIS. *Id.*
8 at ¶ 13. Counsel was referred to Rhonda Compton, who stated that the subpoena should be served
9 to her attention at 1010 Saint Mary's Street, Room 1304, San Antonio, Texas, 78215. *Id.* at ¶14.
10 On July 9, 2003 Titan Media served the subpoena on PBIS by sending it to Rhonda Compton at
11 the address she provided via UPS overnight delivery, signature required. *Id.* at ¶ 15. A PBIS
12 representative signed for the subpoena the next day, indicating that the subpoena was received. *Id.*
13 at ¶ 16 and Exhibit D.

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17 The compliance date on the subpoena was July 18, 2003. *Id.* at ¶ 17. Several days before
18 that date, PBIS contacted Titan Media and requested an extension of time until July 22, 2003 to
19 respond to the subpoena. *Id.* at ¶ 18. Titan Media freely granted the extension. *Id.* at ¶ 19. On
20 the date production was due, Tuesday, July 22, 2003, Counsel for Titan Media received a
21 telephone call from Michael Kwun, outside counsel for PBIS, stating that PBIS would be filing a
22 motion to quash the subpoena that afternoon and requesting that Titan Media stipulate to a page
23 extension. *Id.* at ¶ 25. This was the first time PBIS informed Titan Media that it objected to the
24 subpoena for any reason whatsoever. *Id.* at ¶26.
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1 **C. Titan Media’s Withdrawal of the Subpoena**

2 Wishing to avoid the expense of litigating a motion to quash without first attempting to
3 negotiate with PBIS, Counsel for Titan Media informed Mr. Kwun that Titan Media would
4 withdraw the subpoena. *Id.* at ¶ 27. Mr. Kwun indicated that PBIS would nonetheless file the
5 motion to quash and reiterated his request for a page extension. *Id.* at ¶ 28. Realizing at that point
6 that negotiation was not likely, but nonetheless believing the issue was moot, Counsel denied the
7 request. *Id.* at ¶ 29.

8 On that same day, Titan Media filed with this Court the Withdraw of Subpoena To Pacific
9 Bell Internet Services attached to Gill Sperlein’s Declaration as Exhibit E. *Id.* at ¶ 30 and Ex. E.
10 Titan Media immediately served the Withdraw by facsimile and overnight delivery to Rhonda
11 Compton and Mr. Kwun. *Id.* at ¶ 31. Six business days later, PBIS filed this action. Titan Media
12 has not served any additional subpoenas on PBIS, nor has it indicated any additional subpoenas
13 are imminent. *Id.* at ¶ 32.

14 PBIS never attempted to negotiate with Titan Media to resolve PBIS’s concerns about the
15 subpoena without resorting to litigation. PBIS never requested that Titan Media file and serve
16 individual subpoenas for each IP address in lieu of one subpoena for all the IP addresses, never
17 requested that Titan Media stipulate to modify the information requested in the subpoena to
18 exclude e-mail addresses of subscribers, and never requested payment to cover the cost of
19 complying with the subpoena. *Id.* at ¶¶ 20-23. The only request PBIS made regarding the
20 subpoena was that Titan Media extend the time to respond, which it did so freely. *Id.* at ¶ 24.

21 The first time Titan Media learned of PBIS’s arguments against the subpoena was when it
22 received PBIS’s Complaint in this action for declaratory relief. *Id.* at ¶ 26.
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2 **ARGUMENT**

3 **I. PBIS’S REQUEST FOR DECLARATORY JUDGMENT AGAINST TITAN MEDIA**
4 **SHOULD BE DISMISSED.**

5 This Court should dismiss all claims against Titan Media. As PBIS concedes in its
6 Complaint, Titan Media has withdrawn the subpoena it issued to PBIS. Complaint ¶ 33. Because
7 that subpoena was the sole basis for PBIS’s action against Titan Media, there is no actual
8 controversy between the parties and thus no jurisdiction under the Declaratory Judgment Act.¹
9 PBIS’s speculation that Titan Media might possibly issue another subpoena someday in the future
10 is insufficient to transform its request for an advisory opinion into a concrete controversy.

11 Complaint ¶ 33

12 In the alternative, this Court should exercise its discretion to dismiss PBIS’s Complaint for
13 lack of jurisdiction. In the absence of a pending subpoena or even the threat of a future subpoena,
14 and given that PBIS’s concerns regarding DMCA subpoenas have been raised and fully briefed in
15 ongoing litigation against the RIAA in the United States District Court for the District of
16 Columbia, there is no need for this Court to permit PBIS’s claims against Titan Media to go
17 forward.
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21 ¹ Although the PBIS complaint does not on its face seek relief against Titan Media with
22 regard to the delivery of take down notices, PBIS attached a Titan Media take down notice as
23 Exhibit 4 to its Complaint, apparently intended as evidence that Titan Media may in the future
24 request the Clerk of the Court to issue another subpoena. *See* Complaint ¶ 34 and Exhibit 4. As
25 discussed below, such assertions about possible future litigation are too speculative to establish
26 jurisdiction. Titan Media does not deny that has sent take down notices to PBIS, Sperlein Decl. ¶
27 34, and to the extent PBIS suggests that the notices themselves are somehow actionable, Titan
28 Media joins in the arguments raised by MediaSentry in its Motion to Dismiss. *See* Defendant
MediaSentry’s Motion to Dismiss.

1 **A. There is No Actual Controversy Involving Titan Media.**

2 It is a bedrock principle of law that under the Declaratory Judgment Act, a district court
3 cannot grant declaratory relief unless an “actual controversy” exists. 28 U.S.C. § 2201. *See*
4 *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 272 (1941). This “actual
5 controversy” requirement is identical to the “case or controversy” requirement under Article III of
6 the Constitution. *Societe de Conditionnement en Aluminium v. Hunter Eng. Co.*, 655 F.2d 938,
7 942 (9th Cir. 1981); *Xerox Corp. v. Apple Computer, Inc.*, 734 F. Supp. 1542, 1546 (N.D. Cal.
8 1990). “A case or controversy exists justifying declaratory relief only when [the challenged
9 action] . . . has not evaporated or disappeared, . . .” *Headwaters, Inc. v. Bureau of Land*
10 *Management*, 893 F.2d 1012, 1015 (9th Cir. 1990) (internal quotation omitted). The controversy
11 “must be definite and concrete,” *Societe*, 655 F.2d at 943 (quoting *Aetna Life Ins. Co. v. Haworth*,
12 300 U.S. 227, 240-41 (1937)), and must have “crystallized to the point that there is a specific need
13 for a declaratory judgment.” *Xerox Corp.*, 734 F. Supp. at 1546 (quotation and citation omitted).
14 *See also Hillblom v. United States*, 896 F.2d 426, 430 (9th Cir. 1990) (holding that controversy
15 must be definite and concrete).

16 As the “party seeking a declaratory judgment,” PBIS bears “the burden of establishing the
17 existence of an actual case or controversy.” *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S.
18 83, 94 (1993). Because “[f]ederal courts are courts of limited jurisdiction . . . it is to be presumed
19 that a cause lies outside this limited jurisdiction” unless the plaintiff can meet its burden.
20 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A plaintiff cannot proceed
21 absent a showing of “some threatened or actual injury.” *Burlington Northern R.R. Co. v. Crow*
22 *Tribal Council*, 940 F.2d 1239, 1243 (9th Cir. 1991) (quotation omitted).

1 It is plain from the face of PBIS’s Complaint that PBIS cannot meet its burden of
2 establishing the existence of an actual controversy. Indeed, PBIS’s Complaint against Titan
3 Media presents a quintessential example of a controversy that is *not* definite or concrete, and that
4 has “disappeared.” *See Headwaters*, 893 F.2d at 1015. As PBIS concedes, Titan Media has
5 withdrawn the only subpoena it has ever issued to PBIS. Complaint ¶ 33. Titan Media has not
6 served any additional subpoenas on PBIS and has not indicated that it plans to do so.² There
7 simply is no live dispute and no reason to believe a dispute is on the horizon. Under these
8 circumstances, “[t]his Court may not issue an advisory opinion on a claim that may never arise.”
9 *Shalaby v. Jacobowitz*, No. C 03-0227-CRB, 2003 WL 1907664, at *4 (N.D. Cal. April 11, 2003).
10 In the absence of a “present controversy,” PBIS’s claims against Titan Media must be dismissed
11 as moot. *See GTE California, Inc. v. FCC*, 39 F.3d 940, 946 (9th Cir. 1994).³

12 Indeed, courts routinely conclude that actions relating to subpoenas are moot once the
13 subpoena has been withdrawn. *See Stewart v. Mitchell Trans.*, 2002 WL 1558210, at *9 (D. Kan.
14 July 8, 2002) (holding that motion to quash subpoena was moot where subpoena had been
15 withdrawn); *Dornan v. Sanchez*, 955 F. Supp. 1210, (C.D. Cal. 1997) (holding that motion to
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20 ² Even if it were to serve future subpoenas on PBIS, those subpoenas might look very
21 different from that which it served on July 10, 2003 now that PBIS has informed Titan Media and
22 the world at large where its concerns lay and how it interprets the statutes involved.

23
24 ³ For similar reasons, PBIS’s claims against Titan Media should be dismissed as unripe for
25 review. “The ripeness doctrine demands that litigants state a claim on which relief can be granted
26 and that litigants’ asserted harm is ‘direct and immediate’ rather than speculative or hypothetical.”
27 *Hillblom v. United States*, 896 F.2d 426, 430 (9th Cir. 1990).
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1 quash subpoenas was moot where subpoena authorization orders were vacated and recalled);
2 *Application of Caldwell*, 311 F. Supp. 358, 361 (N.D. Cal. 1970) (stating that parties agreed that
3 motion to quash government subpoena was moot because government had withdrawn the
4 subpoena).

5
6 PBIS’s speculation that Titan Media might possibly issue another subpoena “in the future,”
7 *see* Complaint ¶ 33, is woefully insufficient to establish a concrete case or controversy. It is well
8 settled that there is no basis for declaratory relief where “the allegations reveal the controversy to
9 be conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from
10 the court.” *See Campana v. Allstate Ins. Co.*, No. C-01-1842 PJH, 2001 WL 1081595, at *3 (N.D.
11 Cal. 2001) (quotation and citation omitted). In *San Diego County Gun Rights Committee v. Reno*,
12 98 F.3d 1121 (9th Cir. 1996), for example, plaintiffs sought a pre-enforcement declaratory
13 judgment that a criminal law was unconstitutional. But the plaintiffs could not show that there
14 was an actual threat that the government would prosecute them. *Id.* at 1127. The district court
15 dismissed the action, and the Ninth Circuit affirmed, holding, *inter alia*, that the “possibility of
16 their eventual prosecution under the [statute at issue was] clearly insufficient to establish a ‘case or
17 controversy.’” *Id.* In the absence of a “very significant possibility for future harm,” plaintiffs’
18 case could not be sustained. *Id.* at 1126. The same principles hold true here. PBIS cannot show
19 that there is an actual threat that Titan Media will issue another subpoena.
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23 The hypothetical nature of PBIS’s Complaint against Titan Media is underscored by the
24 fact that the issues raised by PBIS’s Complaint are constantly changing. *See Societe*, 655 F.2d at
25 943 (citing *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937)). Facts as they appear
26 today may not be the same tomorrow.
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1 Nor is this a case in which the court should entertain the matter because the challenged
2 action is “capable of repetition, yet evading review.” *GTE California, Inc. v. FCC*, 39 F.3d 940,
3 945 (9th Cir. 1994). If Titan Media were ever to issue a subpoena in the future, PBIS could at that
4 time object to the subpoena. By doing so, PBIS would preserve its rights because Federal Rule of
5 Civil Procedure 45(c)(2)(B) provides that once a party objects to a subpoena, “the party serving
6 the subpoena shall not be entitled to inspect and copy the materials . . . except pursuant to an order
7 of the court by which the subpoena was issued.” PBIS therefore would be able to protect the
8 disclosure of the subpoenaed information until such time as a court ruled otherwise.
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11 Thus, requiring PBIS to wait until Titan Media actually issues a DMCA subpoena (if ever)
12 will not prejudice PBIS. Because PBIS would have “a direct opportunity to challenge” any such
13 subpoena, there is no basis for this Court to entertain this moot case. *GTE California*, 39 F.3d at
14 946. *See also Headwaters*, 893 F.2d at 1016 (holding that action did not evade review where
15 application for a stay pending appeal could preserve issue for appeal). A decision by this Court
16 dismissing the claims against Titan Media and waiting to take jurisdiction until there is an actual
17 subpoena and concrete controversy pending (if ever), would have the significant added benefit of
18 enabling a court to evaluate and resolve the issues in the context of a live, concrete controversy.
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21 **B. This Court Should Exercise Its Discretion under the Declaratory Judgment
22 Act to Dismiss PBIS’s Complaint Against Titan Media.**

23 The Supreme Court has made clear that under the Declaratory Judgment Act, a federal
24 court has “unique and substantial discretion in deciding whether to declare the rights of the
25 litigants.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). *See* 28 U.S.C. § 2201 (“In a case
26 of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the
27 rights and other legal relations of any interested party seeking such declaration.”) (emphasis
28 added). After a complaint is filed, if a district court determines that a declaratory judgment “will

1 serve no useful purpose,” it has the discretion to dismiss the action. *Wilton*, 515 U.S. at 288; *see*
2 also *Huth v. Hartford Ins. Co. of the Midwest*, 298 F.3d 800, 802 (9th Cir. 2002) (holding that
3 exercise of jurisdiction under the Declaratory Judgment act “is committed to the sound discretion
4 of the federal district courts,” and court may decline to hear case even if it has jurisdiction).
5

6 Here, even if this Court were to conclude that PBIS’s Complaint presents an actual
7 controversy with Titan Media (which it does not), this Court should exercise its discretion to
8 dismiss PBIS’s Complaint against Titan Media. *See Fresenius USA, Inc. v. Transonic Sys., Inc.*,
9 207 F. Supp. 2d 1009, 1012 (N.D. Cal. 2001) (holding that “even if an actual controversy existed,
10 the Court would decline to exercise jurisdiction” under the Declaratory Judgment Act).
11

12 As discussed above, there is no pending Titan Media subpoena issued to PBIS or even the
13 threat of a future subpoena. In addition, PBIS’s concerns regarding DMCA subpoenas have been
14 raised and fully briefed in ongoing litigation against the RIAA in the United States District Court
15 for the District of Columbia. The questions posed by PBIS can be fully resolved in those
16 proceedings, which present a live, concrete dispute – and one which Titan Media has nothing to do
17 with. Under these circumstances, a declaratory judgment relating to Titan Media “will serve no
18 useful purpose.” *Wilton*, 515 U.S. at 288.
19

20 Moreover, allowing PBIS’s claims against Titan Media to go forward would create a
21 strong disincentive for copyright holders and ISPs to resolve disputes surrounding DMCA
22 subpoenas through negotiation, and would undermine Titan Media’s ongoing efforts to work with
23 ISPs to find alternative ways to address infringement. This is a recognized basis for a court to
24 decline to exercise. In *Fresenius*, for example, a defendant patent holder sent a letter to the
25 plaintiff, raising the possibility that the plaintiff was infringing upon the defendant’s patent. In
26 response to the letter, the plaintiff filed a declaratory judgment action. But the court dismissed the
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1 plaintiff's suit, observing that the letter was the first communication from the defendant and that
2 "negotiations had not even begun, much less failed." 20 F. Supp. 2d at 1012. As the court
3 explained, "[e]xercising jurisdiction over declaratory-relief actions under such circumstances
4 would create a strong disincentive for patentees to communicate with potential infringers before
5 filing suit." *Id.* at 1012-13.

7 The court's analysis applies with equal force here. Before Titan Media withdrew its
8 subpoena, PBIS made no effort to negotiate a resolution of the issues. Sperlein Decl ¶¶ 20-26.
9 Rather, its first response was to file suit. If this Court allows the suit to proceed, it will create a
10 disincentive for parties to resolve disputes through negotiation instead of litigation. This result
11 will be particularly detrimental given Titan Media's efforts to resolve ISPs' concerns surrounding
12 DMCA subpoenas without resorting to litigation.

14 At bottom, there are only two reasons PBIS may have named Titan Media in this
15 declaratory action. The first is so that it might obtain jurisdiction in the Northern District of
16 California. *See* Complaint ¶ 14. The second is that it might keep alive the procedural questions
17 raised by the specific manner in which Titan Media executed and served a particular subpoena.
18 With the particular subpoena withdrawn, those procedural issues are moot. The broader
19 Constitutional and statutory construction issues that remain can be addressed in this action based
20 on the RIAA subpoenas or in the District of Columbia action. For all these reasons, this Court
21 should decline to exercise its jurisdiction over the claims against Titan Media.

24 **II. EVEN IF IT COULD ESTABLISH JURISDICTION, PBIS FAILS TO STATE A**
25 **COGNIZABLE CLAIM FOR DECLARATORY RELIEF.**

26 Because this Court should dismiss the Complaint against Titan Media for lack of
27 jurisdiction, there is no need for this Court to consider the substance of PBIS's Complaint against
28

1 Titan Media regarding the DMCA. Nonetheless, even if this Court were to consider those issues,
2 PBIS fails to state a cognizable claim.

3 All of the Constitutional and statutory interpretation issues upon which PBIS's Complaint
4 is based have been rejected by the District of Columbia Court in the *Verizon* litigation. *See In re*
5 *Verizon Internet Services, Inc.*, 240 F. Supp. 2d 24 (D.D.C. 2003) ("*Verizon P*") (resolving
6 statutory interpretation questions); *In re Verizon Internet Services, Inc.*, 257 F. Supp. 2d 244
7 (D.D.C. 2003) ("*Verizon IP*") (rejecting constitutional challenges).

8 Moreover, in the instant matter, the RIAA has thoroughly addressed the merits of PBIS's
9 claims in detail in its Motion to Dismiss. Rather than reiterate those arguments, Titan Media
10 refers the Court to the RIAA's Motion to Dismiss and joins the arguments therein. *See Defendant*
11 *Recording Industry Association of America's Motion to Dismiss.*

12 Dated: September 24, 2003

Respectfully submitted,

/s/ D. Gill Sperlein

GILL SPERLEIN
Attorney for Defendant IO GROUP, INC.

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- Bruce Lahey – majority shareholder of Io Group, Inc.
- Brian Ashby – minority shareholder of Io Group, Inc.

Dated: September 24, 2003

Respectfully submitted,
/s/ D. Gill Sperlein
GILL SPERLEIN
Attorney for Defendant IO GROUP, INC.

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7 Attorney for Defendant
8 IO GROUP, INC.

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION**

11 PACIFIC BELL INTERNET SERVICES,)
12 Plaintiff,) CASE NO.: C-03-3560 (SI)
13 v.)
14 RECORDING INDUSTRY) **[PROPOSED] ORDER RE: DEFENDANT IO**
15 ASSOCIATION OF AMERICA, INC.) **GROUP INC.'S MOTION TO DISMISS**
16 MEDIASENTRY, INC. dba)
17 MEDIAFORCE, and IO GROUP, INC.)
18 dba TITAN MEDIA,)
19 TITANMEDIA.COM, and)
20 TITANMEN.COM,)
21 Defendants.)
22 _____)

23 Upon consideration of Defendant Recording Industry Association of America's Motion to
24 Dismiss, the Motion is hereby GRANTED.

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27 _____
28 United States District Judge Susan Illston

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7 Attorney for Defendant
8 IO GROUP, INC.

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION**

11 PACIFIC BELL INTERNET SERVICES,)
12 Plaintiff,) CASE NO.: C-03-3560 (SI)
13 v.)
14 RECORDING INDUSTRY) **[PROPOSED] ORDER RE: DEFENDANT IO**
15 ASSOCIATION OF AMERICA, INC.) **GROUP INC.'S MOTION TO DISMISS**
16 MEDIASENTRY, INC. dba)
17 MEDIAFORCE, and IO GROUP, INC.)
18 dba TITAN MEDIA,)
19 TITANMEDIA.COM, and)
20 TITANMEN.COM,)
21 Defendants.)

22 Upon consideration of Defendant Io Group, Inc.'s Motion to Dismiss, the Motion is hereby
23 GRANTED.

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United States District Judge Susan Illston