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16 Counsel for *Amicus Curiae*
17 Time Warner Inc.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 PACIFIC BELL INTERNET SERVICES,

22 Plaintiff,

23 v.

24 RECORDING INDUSTRY ASSOCIATION
25 OF AMERICA, INC., MEDIA SENTRY,
26 INC., d/b/a MEDIAFORCE, and
27 IO GROUP, INC., d/b/a TITANMEDIA,
28 TITANMEDIA.COM, and
TITANMEN.COM,

Defendants.

Case No. C-03-3560 (SI)

**REPLY OF TIME WARNER
INC. TO PBIS's OPPOSITION
TO MOTION OF TIME
WARNER INC. FOR LEAVE
TO FILE A BRIEF AMICUS
CURIAE**

Date: November 21, 2003
Time: 9:00 a.m.
Dept.: 10, 19th Floor

29 PBIS has taken the unusual step of burdening the Court with a six-page
30 opposition — accompanied by another 50-plus pages of supporting materials — to Time
31 Warner's motion for leave to file a brief *amicus curiae*. Because we do not wish to
32 burden the Court any further, we will limit ourselves to three short responsive points.

33 *First*, PBIS is wrong in its basic argument — that, because Time Warner's
34 countervailing interests are represented by RIAA and PBIS, it cannot add a new

1 perspective to this litigation. *See* Opp. at 3 & n.2. PBIS ignores that a party that has
2 interests on both sides of a dispute can offer a particularly valuable perspective on how
3 those interests should be adjusted: such a party has no interest in pressing arguments
4 beyond the point where costs outweigh benefits. *See* Motion at 5. Indeed, if Time
5 Warner's perspectives were — as PBIS asserts (at 1, 2) — merely “duplicative” and
6 “redundant,” PBIS would not be harmed by Time Warner's participation, and the
7 vehemence with which PBIS opposes Time Warner's motion would be out of place.¹
8 Thus, PBIS's opposition is ultimately self-defeating: the more overheated PBIS's
9 rhetoric, the stronger the implication that PBIS fears Time Warner precisely for what it
10 has to say.

11 *Second*, PBIS is wrong in implying that, in this litigation, RIAA is acting as Time
12 Warner's “agent.” RIAA has acted as an agent for certain affiliates of Time Warner in
13 connection with specific DMCA subpoenas. But before the Court is not a motion to
14 quash any specific DMCA subpoena — before the Court is a declaratory judgment
15 complaint in which PBIS challenges the DMCA subpoena process in its entirety and
16 raises various questions about protection of ISPs' interests that are of broad general
17 interest. Even if, in other matters, RIAA had acted as an agent for Time Warner itself,
18 that plainly would not mean that it is acting in that capacity here. To the contrary, RIAA
19 has specifically indicated that it does *not* speak for Time Warner in this case.²

20 *Finally*, PBIS is wrong insofar as it suggests that only entities that are in a
21 “position of impartiality” may be granted *amicus curiae* status. Opp. at 4. In a case that
22 PBIS neglects to cite, the Ninth Circuit unequivocally rejected that mistaken notion. *See*

23 ¹ For example, PBIS calls Time Warner “disingenuous,” Opp. at 1 n.1; PBIS
24 makes the strained argument that a recent name change — on October 16, 2003, AOL
25 Time Warner Inc. changed its name to Time Warner Inc. — implies that the company no
26 longer has ISP interests, *see id.* at 3 n.2; and PBIS uses a clipped quote to make it appear
that Time Warner has characterized its *overall* position as “congruent with that of the
RIAA,” *id.* at 4.

27 ² *See* Defendant RIAA's Motion to Dismiss at 1 n.1; *see also* Defendant RIAA's
Certification of Interested Entities or Persons.

1 *Funbus Sys., Inc. v. California Pub. Utils. Comm'n*, 801 F.2d 1120, 1125 (9th Cir. 1986)
2 (“there is no rule that amici must be totally disinterested”). Likewise, PBIS’s selective
3 quotes from the *Sonoma Falls* case do not include the passage in which this Court
4 acknowledged the movant’s “involvement in the events leading to [the] case and its
5 interest in the contracts at issue.” *Sonoma Falls Developers, LLC v. Nevada Gold &*
6 *Casinos, Inc.*, 272 F. Supp.2d 919, 925 (N.D. Cal. 2003). Thus, PBIS’s suggestion that
7 only completely disinterested parties are proper *amici* is unsupported.

8 **CONCLUSION**

9 Time Warner’s motion should be granted.

10 Respectfully submitted,

11 /s/ Kerry Hopkins
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23 Dated: November 7, 2003

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1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. I am employed in the office of a member of the bar of this court at whose
4 direction the service was made. My business address is REED SMITH CROSBY HEAFEY LLP,
Two Embarcadero Center, Suite 2000, San Francisco, CA 94111. On November 7, 2003, I served
the following document(s) by the method indicated below:

5 **REPLY OF TIME WARNER INC. TO PBIS'S OPPOSITION**
6 **TO MOTION OF TIME WARNER INC. FOR LEAVE TO**
FILE A BRIEF AMICUS CURIAE

- 7 by transmitting via facsimile on this date the document(s) listed above to the fax
number(s) set forth below. The transmission was reported complete and without error.
- 8 by placing the document(s) listed above in a sealed envelope with postage thereon fully
9 prepaid, in the United States mail at San Francisco, California addressed as set forth
10 below. I am readily familiar with the firm's practice of collection and processing of
11 correspondence for mailing. Under that practice, it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid in the ordinary course
of business. I am aware that on motion of the party served, service is presumed invalid if
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deposit for mailing in this Declaration.
- 12 by placing the document(s) listed above in a sealed envelope(s) and by causing personal
13 delivery of the envelope(s) to the person(s) at the address(es) set forth below.
- 14 by personally delivering the document(s) listed above to the person(s) at the address(es)
set forth below.
- 15 by placing the document(s) listed above in a sealed envelope(s) and consigning it to
16 Federal Express for guaranteed delivery on the next business day following the date of
consignment to the address(es) set forth below.

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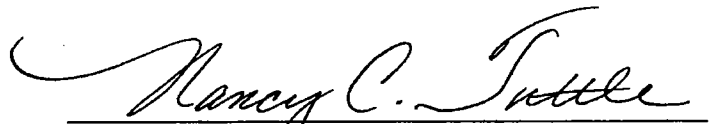
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I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on November 7, 2003, at San Francisco, California.



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