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Attorneys for Defendants Warner/Chappell Music, Inc.  
 5 Word Music, LLC, Dayspring Music, LLC, Wordspring Music,  
 LLC, Unichappell Music, Inc., Chappell & Co., Inc., Cotillion  
 6 Music, Inc., Rightsong Music, Inc., Walden Music, Inc.,  
 Warner/Tamerlane Publishing Corp., and WB Music Corp.  
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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 MEDIOSTREAM, INC.,

12 Plaintiff,

13 v.

14 PRIDDIS MUSIC, INC. AND  
 WARNER/CHAPPELL MUSIC, INC., et al.,

15 Defendants.  
 16

CASE NO. C 07 2127 PJH

**AMENDED NOTICE OF MOTION OF  
 THE WARNER PUBLISHERS TO  
 DISMISS AMENDED COMPLAINT OR,  
 ALTERNATIVELY, TO TRANSFER OR  
 STAY THE ACTION**

[Fed. R. Civ. P. 12(b)(3); 28 U.S.C. § 1404]

Hon. Phyllis J. Hamilton

Date: *September 26, 2007*

Time: 9:00 a.m.

Ctrm: 3, 17th Floor

20 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:**

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 22 **PLEASE TAKE NOTICE** that, on *September 26, 2007*, in the courtroom of The  
 23 Honorable Phyllis J. Hamilton of the United States District Court for the Northern District of  
 24 California, 450 Golden Gate Avenue, San Francisco, California, 94102, at 9:00 a.m. or as soon  
 25 thereafter as the matter may be heard, Defendants Warner/Chappell Music, Inc., Word Music,  
 26 LLC, Dayspring Music, LLC, Wordspring Music, LLC, Unichappell Music, Inc., Chappell & Co.,  
 27 Inc., Cotillion Music, Inc., Rightsong Music, Inc., Walden Music, Inc., Warner/Tamerlane  
 28 Publishing Corp., and WB Music Corp. (the "Warner Publishers") shall, and hereby do, move the

1 Court pursuant to Federal Rule of Civil Procedure 12(b)(3), 28 U.S.C. § 1404, and the Court’s  
2 inherent authority, to dismiss this action, or alternatively to transfer the action to the United States  
3 District Court for the Middle District of Tennessee or to stay the action pending the resolution of a  
4 related, parallel action in the Middle District of Tennessee, Word Music LLC et. al. v. Priddis  
5 Music, Inc. et. al., Case No. 3:07-0502 (M.D. Tenn.) (the “Nashville Action”), which was filed on  
6 May 8, 2007.

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8 This Motion is made on the following grounds:

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10 (1) This action is subject to dismissal or transfer in deference to the parallel Nashville  
11 Action. In the Nashville Action, the Warner Publishers (with the exception of Warner/Chappell  
12 Music, Inc., which does not own any of the copyrights at issue) have asserted claims for copyright  
13 infringement against Mediostream, Inc. and others, including co-defendant Priddis Music, Inc.  
14 (“Priddis”) and various related companies. In this action, Mediostream seeks merely a declaration  
15 of non-infringement of the Warner Publishers’ copyrights. Thus, it is the mirror image of the  
16 Nashville Action, but this action does not contain all of the parties to or claims asserted in the  
17 Nashville Action. Proceedings in Tennessee have proceeded much further than proceedings in this  
18 Court. Considerations of efficiency, equity, and wise judicial administration mandate dismissal.

19  
20 (2) The surrounding facts, including the timing of the filing of this action and the  
21 course of dealings between the parties, lead to the inescapable conclusion that this action was filed  
22 in a “race to the courthouse” and in an effort to preempt the Warner Publishers’ parallel  
23 affirmative lawsuit. Further, this action was filed after Mediostream deliberately, and in bad faith,  
24 purported to engage the Warner Publishers in discussions concerning its acceptance of a Waiver of  
25 Service – knowing that such discussions would delay the filing of the Warner Publishers’ lawsuit  
26 while it prepared and filed its own anticipatory complaint for “Declaratory Judgment.”

1 (3) Alternatively, this action should be transferred to the United States District Court  
2 for the Middle District of Tennessee, pursuant to 28 U.S.C. § 1404 in the interests of justice and  
3 for the convenience of the parties. In light of the fact that Mediostream has appeared in the  
4 Nashville Action and that the case is proceeding apace in Middle District of Tennessee, interests in  
5 judicial economy and efficiency, as well as in avoiding inconsistent rulings, mandate that this  
6 action be heard by that Court. Additionally, none of the “private” or “public” “convenience”  
7 factors justify upsetting the Warner Publishers’ choice of forum as a copyright plaintiff. To the  
8 contrary, all of these considerations support transfer of this action to the Middle District of  
9 Tennessee, to be consolidated with the Nashville Action.

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11 (4) At a minimum, in the event the Court elects not to dismiss or transfer this action,  
12 the Court, in the exercise of its discretion, should stay this action pending the resolution of the  
13 Nashville Action. Such a stay would further interests of judicial economy and efficiency and is  
14 necessary to avoid the risk of inconsistent district court (and/or appellate court) rulings. See  
15 Wilton v. Seven Falls Co., 515 U.S. 277, 288 (1995).

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17 This motion is based on this Notice of Motion and Motion, the attached Memorandum of  
18 Points and Authorities, the accompanying Declarations of Paul Harrison Stacey and Kelly  
19 Isenberg, all pleadings and papers on file in this action, any facts of which the Court may take  
20 judicial notice, and any oral argument that the Court may entertain.

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22 This Amended Notice of Motion is being filed in order to reschedule the previously  
23 noticed hearing date of September 19, 2007, to the new date of September 26, 2007 (one week  
24 later). Following the filing of Defendants’ prior Notice of Motion, Defendants were informed by  
25 the Court Clerk that the Court will not be hearing any motions on September 19, 2007.  
26 Accordingly, Defendants have amended the hearing date to September 26, 2007.

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DATED: August 9, 2007

MARC E. MAYER  
MITCHELL SILBERBERG & KNUPP LLP

By: /s/ Marc E. Mayer  
Marc E. Mayer  
Attorneys for Defendants