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8 Attorney for Plaintiff  
 9 IO GROUP, INC.

10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN JOSE DIVISION**

11		)	
12	IO GROUP, INC., a California corporation,	)	<b>CASE NO. C-06-3926 (HRL)</b>
13	Plaintiff,	)	<b>DECLARATION OF KEITH RUOFF IN</b>
14		)	<b>SUPPORT OF REPLY TO</b>
15	vs.	)	<b>DEFENDANT’S OPPOSITION TO</b>
16	VEOH NETWORKS, Inc., a California	)	<b>PLAINTIFF’S MOTION FOR</b>
17	Corporation,	)	<b>SUMMARY JUDGMENT</b>
18	Defendant.	)	DATE: September 4, 2007
19		)	TIME: 10:00 a.m.
20		)	COURTROOM: 2

21 I, KEITH RUOFF, declare:

22 1. I am Vice President of Io Group, Inc. a company that produces sexually explicit  
 23 audiovisual works under the trade name of Titan Media and Titan Men.

24 2. I have examined [www.veoh.com](http://www.veoh.com) and using the “Search Videos” function performed  
 25 searches for videos thereon. In response to a search [www.veoh.com](http://www.veoh.com) generates a list of responsive  
 26 titles and displays a “thumbnail” image next to each title. I have viewed the file properties for  
 27  
 28

1 these thumbnails by right clicking and the file properties indicate that the pixel resolution for the  
 2 thumbnails displayed is 96 x 72 pixels.

3  
 4 3. I have also viewed the “Screenscaps” images displayed on the video details page for  
 5 each video. I have viewed the file properties for the “Screenscaps” images which indicates the pixel  
 6 resolution for the video screen captures is 120 x 90 pixels.

7  
 8 4. “Screenscaps” on [www.veoh.com](http://www.veoh.com) are not right click protected and therefore users can  
 9 easily copy and save the screen captures to their personal computers.

10  
 11 5. I downloaded from [www.veoh.com](http://www.veoh.com) each of the video files on the disk produced to  
 12 Defendant with Plaintiff’s production number 200282. Io has lodged this disk with the Court with  
 13 Plaintiff’s Motion to File Under Seal.

14  
 15 6. Io Group has also provided to Defendant each of Io Group’s registered works that are  
 16 at issue in this matter.

17  
 18 7. I observed each of these videos streaming from [www.veoh.com](http://www.veoh.com) in Flash format.  
 19 During the streaming process I printed a document of what was represented on my computer  
 20 screen. Each of the documents was provided to the Court as Exhibits D and E to my Declaration in  
 21 Support of Plaintiff’s Motion Summary Judgment. The chart below indicates the file name  
 22 downloaded from [www.veoh.com](http://www.veoh.com), plaintiff’s production number of the document portraying the  
 23 Flash streaming and screen captures of the video file from [www.veoh.com](http://www.veoh.com) and the name of the  
 24 registered work from with the video file was taken.

<b>File downloaded from</b> <a href="http://www.veoh.com">www.veoh.com</a>	<b>Print out of Flash presentation</b> <b>streaming from <a href="http://www.veoh.com">www.veoh.com</a></b>	<b>Io Group</b> <b>Registered work</b>
boner.mpg, Falcon Boner.mpg	200114-200115	<i>Boner</i>

1 2	Gay Porn Dont Ask Dont Tell Mi.mpg	200145-200146	<i>Don't Ask, Don't Tell</i>
3 4 5 6 7 8	GWMSHORT Series-1.mpg, GWMSHORT Series-2.mpg, GWMSHORT Series-3.mpg, GWMSHORT Series-4.mpg, GWMSHORT Series-5.mpg, Piss31.mpg	200155-200156	<i>Heat</i>
9 10	Hot bear sex 2.mpg, Rough Sex.mpg	200139-200140	<i>Island Guardian</i>
11 12	Military Men 1.wmv, Military men.wmv	200108-200111	<i>River Patrol</i>
13 14 15 16	piss1.mpg, piss4.mpg, piss5.mpg, piss6.mpg, piss7.mpg, piss8.mpg, piss9.mpg	200122-200123	<i>Sea Men</i>
17 18	piss12.mpg	200136	<i>Detour</i>

19           8. Each of the above listed video files (as named by the submitting Veoh users) is  
20 entirely comprised of content taken from Plaintiff's corresponding registered works listed to the  
21 right.  
22

23           9. I observed each of the video files located in the Infringing Works folder on the disk  
24 produced to Defendant with Plaintiff's production number 200953. Defendant identified each of  
25 these video files as having previously been available through [www.veoh.com](http://www.veoh.com). Each of these video  
26 files is entirely comprised of content taken from the Plaintiff's corresponding registered works as  
27 listed on the right.  
28

File from <a href="http://www.veoh.com">www.veoh.com</a>	Io Group Registered work
5aadcef229ddd57e7c61cfac172ba2f0ef7b7a18.wmv	<i>First Crush</i>
bc9053cb0e71cdfb51e2a32a3b7529b369ccb132.wmv	<i>Carny</i>
bf56e04fdd294f65eb7c076f08a351df03593d33.mpg	<i>Sea Men</i>
e87bc79785d7bcac4b50e76d5b03d7e78967c2b4.wmv	<i>Laid Up</i>

10. Io Group has lodged all of the Plaintiff's works as listed in the right hand column of the above charts and the disk containing the files as they were made available through [www.veoh.com](http://www.veoh.com) with Plaintiff's Motion to File Under Seal to avoid exposing minors or individuals not wishing to be inadvertently exposed to sexually explicit content.

11. I have been in the adult business for almost 9 years. 18 U.S.C. §2257 is the most discussed and widely known regulation in the adult entertainment industry. A search on 2257 on the adult industries' online trade magazine, AVN.com (Adult Video News), returns 433 articles on the subject. The same search on the leading online adult industry business website, Xbiz.com, returns over 330 articles regarding 2257. Literally every adult industry discussion board or blog has an ongoing thread dedicated to 2257 regulations.

12. It is highly unusual for any adult business in the United States to disregard the labeling requirement under 18 U.S.C. §2257 which requires all sexually explicit material be labeled with the information as to where age verification records are maintained (which under the regulations must be the actual street address of the producer). The labeling requirements of 18 U.S.C. § 2257 has long been the industry standard. In fact, stores, online retailers and licensees will not accept sexually explicit goods for sale or distribution without the required §2257 labeling of the goods. The most cursory discussions with any adult industry owner, employee, or attorney would quickly reveal how to comply with this statute and the importance of doing so.

1 13. Io Group sells access to still images as part of the material available to customers who  
2 subscribe to Io Group's website at [www.titanmen.com](http://www.titanmen.com).

3  
4 14. When Io Group gives a free promotional copy of a DVD to a video reviewer, it is for  
5 the purpose of enabling the reviewer to write an article or review about the movie which provides  
6 great marketing value to Io Group, Inc.

7 15. Io Group allows users to view portions of some video clips on line. These clips are  
8 highly edited so that they pique the interest of the viewer. Moreover, users are not allowed to view  
9 these promotional clips until they supply a valid and verified e-mail address, verify their age and  
10 agree to accept promotional e-mails from Io Group in the future. These valid e-mail addresses for  
11 adults that are interested in Io Group product and have granted Io permission to send e-mail  
12 advertisements are of great value, especially since Io Group does not send any unsolicited e-mail  
13 advertising (SPAM).  
14

15  
16 16. Defendant has a licensing agreement to distribute its still images through cell phones  
17 and other mobile devices. Defendant's creation and display of screencaps could also have a  
18 negative impact on Io Group's ability to sell its content through these channels, especially since  
19 Defendant does not take measures to prevent the copying and downloading of the screencaps it  
20 creates.

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23 ///

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1 17. I have personally reviewed a majority of the gay sexually explicit video files that were  
2 available on [www.veoh.com](http://www.veoh.com) before Defendant changed its policy and I never witnessed a §2257  
3 label on any of those files.  
4

5  
6  
7 Pursuant to the laws of the United States, I declare under penalty of perjury the foregoing  
8 is true and correct.  
9

10  
11 Dated: *August 21, 2007*

/s/ Keith Ruoff

Keith Ruoff

12  
13  
14 I hereby attest that this is the declaration of Keith Ruoff and the original with Keith  
15 Ruoff's holographic signature is on file for production for the Court if so ordered, or for inspection  
16 upon request by any party. Pursuant to the laws of the United States, I declare under penalty of  
17 perjury the foregoing is true and correct.  
18

19  
20 Dated: *August 21, 2007*

/s/ Gill Sperlein

GILL SPERLEIN,

Counsel for Plaintiff Io Group, Inc.