



Insight

Commercial Dispute Resolution

March 2010

iiNet defeats the film industry in a landmark internet piracy case

The case against the Internet Service Provider, iiNet, was dismissed by the Federal Court on 4 February 2010. The Court found that iiNet was not responsible for any copyright infringements by its users and that the law imposes no obligation on any person to protect the copyright of another.

The facts

iiNet is a Perth-based Internet Service Provider (ISP), which supports over 800,000 broadband, telephone and dial-up services making it the third largest ISP in Australia.

Thirty-four major motion picture studios in Australia and the United States of America, including Paramount Pictures, Disney, Twentieth Century Fox, Warner Bros and Universal Studios to name a few, commenced a Federal Court claim against iiNet for copyright infringements.

The Australian Federation Against Copyright Theft (AFACT) also played a prominent role in the proceedings.

The alleged infringement involved the use of a peer to peer system known as the BitTorrent protocol (BitTorrent).

BitTorrent has been used by iiNet users and subscribers to access, through iiNet internet facilities, film and television shows, which were then downloaded in a manner which infringed copyright.

The case was of great interest both here in Australia and internationally and it was the first Australian trial that was allowed to be tweeted on the social internet website Twitter.

The decision

Justice Cowdroy of the Federal Court stated that the key question in these proceedings was whether iiNet authorised the copyright infringement. The simple answer to that question, according to Justice Cowdroy, was no.

In a lengthy 200 page judgment, Justice Cowdroy found in iiNet's favour for three principle reasons:

1. the copyright infringements occurred directly as a result of the use of the BitTorrent system, not the use of the internet;
2. iiNet did not have the power to prevent those infringements occurring; and
3. iiNet did not sanction, approve or countenance copyright infringement.

The Court found that even though iiNet users had infringed copyright, that iiNet had knowledge of such infringements and that iiNet took no action to stop the infringements, this was not enough to show that iiNet had authorised the copyright infringements.

Justice Cowdroy stated that BitTorrent was the means by which users were infringing copyright and iiNet had no control over the BitTorrent system.

The law does not recognise any positive obligation on any person to protect the copyright of another and, according to the Court, iiNet had done no more than provide an internet service to its users.



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Where to from here?

The evidence in the iiNet case made it clear that copyright infringement of the applicants' films is occurring on a global scale.

Justice Cowdroy concluded however, that just because something should be done to prevent continuing infringements, doesn't mean the Court should find in the film industry's favour in this case.

Despite the Court's decision, there is a possibility that the film industry will appeal.

In response, iiNet have stated that even if the film industry is successful in any appeal, it will not stop illegal downloading.

Until any appeal by the film industry is successful, the Federal Court decision means that ISP's across the world can breathe a sigh of relief.

As for the individual internet user, the decision does highlight that it is the internet users who are infringing copyright and the fact that the film industry has lodged this attack against an ISP should put all individual internet users on notice that the film industry is taking a tougher stance against the illegal downloading of films and television shows.

In any case, it doesn't appear the battle of illegal downloading is over and it seems it will only be a matter of time before the major motion picture studios make another attempt to sink the copyright pirates.

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