

LegalTalk Alert

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Insolvency and Commercial Disputes Alert

Film studios unsuccessful in claim against ISP

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A number of major motion picture studios both in Australia and United States have failed in their claim against iiNet, the third largest Internet Service Provider (ISP) in Australia, for authorising copyright infringement.

Claims

The motion picture studios claimed that iiNet had failed to take any steps to stop certain of their customers from infringing their copyright in various films and television shows using the BitTorrent peer to peer software system. Therefore, the claim was that iiNet had authorised these infringements thereby making them liable to pay damages as well as other relief.

The movie studios had sent notices to iiNet of unauthorised downloading by iiNet customers, demanding that iiNet take action to stop the infringements occurring. According to the terms of its customer contracts, iiNet was entitled to suspend or terminate its services to the customers if the customer uses the internet service illegally.

Court finding

The Court found that there had been copyright infringements by unauthorised downloading of certain films and television shows, but that iiNet did not authorise those infringements and was therefore not liable to the movie studios.

In essence, the Court found that iiNet simply provided an internet service to its users. It had no control over or links with the BitTorrent system used by customers to download the films and television shows in breach of the studios' copyright.

The Court found that iiNet did not provide the 'means' of infringement because mere provision of access to the internet is not the 'means' of infringement. The movie studios' copyright

was not infringed simply by use of the internet but because of the illegal use of the BitTorrent system. Similarly, the Court found that merely providing access to the internet did not amount to a finding that iiNet had sanctioned, approved or countenanced the copyright infringements.

Furthermore, the Court found that it was not reasonable to expect iiNet to use its customer contracts to prevent copyright infringements in these circumstances.

Ramifications of the decision

The key part of the decision was that to be considered an 'authoriser' of copyright infringement, you must have provided the 'true' means of infringement. This is particularly so in 'technology' cases. Here it was the use of the BitTorrent software which was the real means by which the movie studios' copyright had been infringed, rather than provision of internet access. Issues such as control, power to prevent or knowledge of infringements only become relevant if it is found that the means of infringement have been provided.

Appeal

The studios have now lodged an appeal against the decision.

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