

Hollywood studios lose landmark download case

April 20 2012, by Martin Parry

Top Hollywood film studios Friday failed in their attempt to stem the flow of illegal downloads when they lost a landmark appeal against an Australian Internet provider.

A group of international and Australian companies, including Warner Bros, Disney and 20th Century Fox, alleged that iiNet authorised the infringement of their [copyright](#) when its customers downloaded movies and television programmes.

In a world-first judgement in 2010, Australia's Federal Court ruled iiNet did not authorise the downloads or have the power to stop them, thwarting the studios' attempt to staunch losses they say run into billions of dollars.

The Australian Federation Against Copyright Theft (AFACT), made up of 34 film, television and music companies, appealed, claiming it set a dangerous precedent that allowed Internet companies to ignore copyright theft.

But in a serious blow to their fight against piracy it was thrown out by Australia's highest court Friday.

"The High Court held that the respondent, an [Internet service provider](#) (ISP), had not authorised the infringement by its customers of the appellants' copyright in commercially released films and television programmes," the unanimous ruling said.

It added that iiNet had no direct technical power to prevent its customers from using the BitTorrent file sharing system to infringe copyright, by downloading content to watch on their laptops and PCs.

"Rather, the extent of iiNet's power to prevent its customers from infringing... copyright was limited to an indirect power to terminate its contractual relationship with its customers," the court said.

The case was seen as an ambitious attempt to force ISPs to act against piracy.

It hinged on thousands of downloads over the Perth-based iiNet network over 59 weeks from June 2008 involving nearly 90 films and TV series including "Batman Begins", "Transformers" and "Heroes".

The movie studios had hoped to set a worldwide precedent forcing ISPs to act against offenders, while Internet rights groups feared it would compel the firms to cut customers' web access without having to take them to court.

AFACT managing director Neil Gane said the judgement exposed the failure of copyright law to keep pace with the online environment.

"Both judgements in this case recognise that copyright law is no longer equipped to deal with the rate of technological change we have seen since the law of authorisation was last tested," he said.

Gane added that the global film and television industry, represented by the Los Angeles-based Motion Picture Association, was pursuing other avenues including targeting the software developers behind BitTorrent technology.

iiNet chief executive Michael Malone said the best way for the film

industry to protect copyright was to boost the availability of lawful, online content in a more timely and affordable way.

He added that there was strong evidence that content partnerships and agreements between ISPs, legal websites and copyright holders was the best way to reduce piracy, rather than costly legal battles.

"Increasing the availability of licensed digital content is the best, most practical approach to meet consumer demand and protect copyright," Malone said.

"We have consistently said we are eager to work with the studios to make their very desirable material legitimately available to a waiting customer base and that offer remains the same today."

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