

Oz High Court Rejects Appeal by Media Giants against local ISP

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The High Court has thrown out an appeal by some of the world's biggest media companies to stop internet piracy after it excused Australian service provider iiNet from policing 'unauthorised' downloads.

A group of 34 international and Australian companies, including industry heavyweights Warner Bros, Disney and the Seven Network, had alleged that iiNet had authorised the infringement of their copyright when its customers downloaded movies and television programs.

The movie companies had argued that iiNet had the power to prevent its customers from infringing copyright by issuing warnings and suspending or terminating customer accounts.

However, the High Court found that iiNet had no direct technical power to prevent its customers from using the BitTorrent file-sharing system to infringe copyright.

"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.

iiNet chief regulatory officer Steve Dalby said while the company did not support illegal downloading, it was not its role to monitor or punish the behaviour of its customers by terminating internet access.

"It's not legal for us to look at what you're doing online anyway and secondly we don't have a responsibility to be the judge, jury and policeman who is working out what our customers are doing and trying to stop it and control it," Mr Dalby said.

Australian Federation against Copyright Theft managing director Neil Gane said internet service providers needed to play a central role in preventing online copyright infringements.

He said it was not in the internet providers' commercial interests to do so.

Mr Gane called on the federal government to intervene to prevent piracy and suggested it follow the US model in which the film, television and music industries had come to an agreement with the five largest ISPs.

"We would be in support of a similar framework," he said.

Mr Dalby said the US model had not yet been implemented and he would not support it because it relied upon a commercial agreement instead of an independent regulatory body.

iiNet chief executive Michael Malone said he would prefer the courts to regulate online copyright infringements.

Mr Dalby said the entertainment industry could help solve the problem by providing reasonably priced and easily accessible content to consumers around the world in a timely manner.

"This whole idea that customers should wait 12 to 18 months to get what their cousin in the United States is watching today - consumers just aren't buying that anymore," he said.

"They have to address what is a broken model from last century."

Mr Gane disagreed that online copyright would stop if people got quick, easy, affordable access to content.

"No best model in the world can compete with free," he said.

The High Court also observed that iiNet had no direct technical power to prevent its customers from using the BitTorrent system to infringe copyright. iiNet's power to prevent its customers from infringing the appellant's copyright was limited to an indirect power to terminate its relationship with its customers.

So What: This result sets a precedent for other Australian Internet Service Providers (ISPs), such as TPG Telecom Ltd (ASX: TPM), Telstra Limited (ASX: TLS), Optus, a subsidiary of Singapore Telecommunications (ASX: SGT) and iPrimus - now owned by M2 Telecommunications Limited (ASX: MTU). They can all now breathe a sigh of relief that they cannot be held liable for their users' infringement of copyright, will no longer be exposed to damages claims that could have run into the millions, and not be liable to enforce restrictions on illegal downloads.

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