



HIGH COURT OF AUSTRALIA

20 April 2012

ROADSHOW FILMS PTY LTD & ORS v iiNET LIMITED

[2012] HCA 16

Today the High Court dismissed an appeal by a number of film and television companies from a decision of the Full Court of the Federal Court of Australia. The High Court held that the respondent, an internet service provider, had not authorised the infringement by its customers of the appellants' copyright in commercially released films and television programs.

The appellants, thirty-four Australian and United States companies, either own or exclusively license the copyright in thousands of commercially released films and television programs ("the appellants' films"). The respondent, iiNet, provides internet services to its customers under an agreement which requires that the services not be used to infringe others' rights or for illegal purposes. Users of internet services provided by iiNet infringed copyright in the appellants' films by making the appellants' films available online using the BitTorrent peer-to-peer file sharing system. The Australian Federation Against Copyright Theft, on behalf of the appellants, served notices on iiNet ("the AFACT notices") alleging that iiNet's customers had infringed copyright in the appellants' films, and requiring iiNet to take action to prevent the infringements from continuing. iiNet took no action in response to the AFACT notices.

In the Federal Court at first instance, the trial judge held that iiNet had not authorised the infringement by its customers of copyright in the appellants' films. The appellants appealed to the Full Court of the Federal Court. The Full Court, by majority, dismissed the appeal.

The appellants were granted special leave to appeal to the High Court, where they argued that the majority of the Full Court had not correctly applied ss 101(1) and 101(1A) of the *Copyright Act* 1968 (Cth). Those provisions make authorising an act comprised in a copyright (without the licence of the owner of the copyright) an infringement of the copyright. They also set out matters which must be taken into account in determining whether a person has authorised such an act. The appellants contended that iiNet had the power to prevent its customers from infringing copyright in the appellants' films by issuing warnings and suspending or terminating customer accounts. The appellants argued that the AFACT notices provided credible information of past infringements by iiNet's customers sufficient to raise a reasonable suspicion that acts of infringement were continuing, and that, once iiNet had received this information, its failure to take action amounted to authorisation of its customers' infringements.

The High Court unanimously dismissed the appeal. The Court observed that iiNet had no direct technical power to prevent its customers from using the BitTorrent system to infringe copyright in the appellants' films. Rather, the extent of iiNet's power to prevent its customers from infringing the appellants' copyright was limited to an indirect power to terminate its contractual relationship with its customers. Further, the Court held that the information contained in the AFACT notices, as and when they were served, did not provide iiNet with a reasonable basis for sending warning notices to individual customers containing threats to suspend or terminate those customers'

accounts. For these reasons, the Court held that it could not be inferred from iiNet's inactivity after receiving the AFACT notices that iiNet had authorised any act of infringement of copyright in the appellants' films by its customers.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*