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Australian Digital Alliance

Decisive iiNet victory shared by all

The Australian Digital Alliance (ADA) welcomes today's decision by the Federal Court in *Roadshow Films v iiNet* on copyright and intermediary liability. The decision affirms the importance of ISPs and other providers in the digital economy. It will benefit the legitimate activities of consumers, educational institutions, libraries, research universities, technology developers, and search engines. To provide further certainty and clarification, the ADA calls on the Federal Government to reform Australia's narrow, impractical and archaic safe harbours defence.

The ADA is a coalition of public and private sector interests formed to promote balanced copyright law. Members include universities, libraries, schools, museums, galleries, IT companies, and individuals.

Perth based ISP iiNet won a hard fought battle against Hollywood movie studios, who sued for copyright infringement alleging that iiNet failed to take adequate steps to prevent its users downloading and sharing movies and TV. A one word summation of the Court's ruling on this claim would be 'overreaching'.

iiNet did not authorise infringement as it: (a) provided a general internet service not a file sharing service; (b) had no powers to cut off peoples' internet to prevent infringement; and (c) did not encourage infringement.

The ADA is pleased with the extra step taken by the Court to decide that iiNet qualified for the safe harbours defence, which limits the liability of ISPs who are found to authorise infringement. The Court found that iiNet was not required either to pass on notifications alleging its users had infringed copyright or subsequently cut off their internet access.

ADA Chair Derek Whitehead said "the practical impact of the decision for ISPs has been to overrule the copyright industry's demands that they must police the activities of their users." The ruling also provides comfort to almost anyone who provides any form of internet related service, such as cultural institutions that make their collections available online or developers of new technologies whose products have the mere ability to facilitate infringement.

The decision is an important victory for internet users and consumer rights as it rejects calls for arbitrary termination of internet access. Mr Whitehead said, "as a matter of principle, the ADA firmly believes that access to essential services, such as the internet, should not be terminated without the fundamental protection of independent judicial oversight."

This outcome rejects the infamous 'three strikes' procedure, where users are warned about infringement three times and then their internet is cut off. The procedure threatens matters of fundamental importance: freedom of communication, expectations of justice and fairness, access to essential services and the digital economy.

Regardless of the decision in iiNet, the safe harbour defence is in urgent need of reform because it only protects ISPs. It must be broadened to protect online service providers, such as hosts of user generated content like YouTube and search engines like Google. The Australian position is inconsistent internationally and ignores the importance of these providers in facilitating the free flow of information. "Australia's narrow and impractical safe harbour defence is a serious impediment to the growth of Australia's digital economy," Mr Whitehead said.

Matt Dawes

Copyright Law and Policy

t (02) 6262 1273 | e mdawes@nla.gov.au | w www.digital.org.au | a PO Box E202 Kingston ACT 2604