

## **High Court Decision: Internet Piracy**

April 2012

On Friday 20 April 2012 the High Court ruled against 34 Australian and US copyright holders, in the case against internet service provider, iiNet Limited. Having failed twice in hearings at lower courts AFACT, Australian Federation Against Copyright Theft, representing the copyright holders, alleged that iiNet was authorising the copyright-infringement actions of its customers, by not taking action to prevent infringements from continuing.

In its decision the High Court observed that iiNet had no direct technical power to prevent their customers from copyright-infringement actions, but only an indirect power to terminate its contractual relationship with its clients.

### **Background**

In August 2007 AFACT launched an investigation into copyright infringements by internet users in Australia. AFACT instructed a third-party company to collect information concerning such infringements, particularly focusing on iiNet users using the BitTorrent system. From July 2008 to August 2009 AFACT notified iiNet on a weekly basis of infringements by iiNet customers. iiNet indicated to AFACT that it did not intend to act on the notices of infringements.

### **The High Court Decision**

The High Court held that the internet provider, iiNet, had not authorised the infringement by its customers of the 34 Australian and US copyright holders' material. The judges ruled that iiNet was not 'authorising' its customers' infringements by not acting on AFACT's weekly notifications. To a large degree this was a case that gravitated around the definition of 'authorisation'. In a separate judgement, Justices William Gummot and Kenneth Hayne said that the AFACT progression on the evidence from 'indifference', to 'countenancing' and then to 'authorisation' was too big a stretch.

### **Implications**

The High Court decision in this case is significant, not only in Australia but also globally, as it stands as a test case for the obligations of internet service providers when copyright holders raise claims of digital content infringements.

After the High Court's decision it is apparent that either a code of practice or legislation is required to aid the copyright-holders in their battle against internet piracy. The Attorney-General has told the anti-piracy lobby that the government will consider amending the copyright law and/or writing in an industry code on internet piracy.