

Media Release

iiNet remains extremely confident Federal Court will dismiss copyright allegations

26 November 2009: iiNet, Australia's third largest Internet Service Provider (ISP), today said it remained extremely confident of success in their Federal Court case and that the claims of breaching copyright will be dismissed.

Commenting at the conclusion of the Court's hearings, iiNet Chief Executive Officer Michael Malone said he was even more confident of iiNet's defence and position following more than four weeks of court hearings.

iiNet has also released its entire Closing Submissions to the Court available on its website at:

<http://www.iiNet.net.au/press/copyright-case.html>

"We have always said that iiNet has never in anyway supported or encouraged breaches of the law, including infringement of the Copyright Act or the Telecommunications Act," Mr Malone said.

"We do not, and never have supported, encouraged or authorised illegal sharing or downloading of files in breach of the copyright laws.

"The evidence now clearly demonstrates that. I have every confidence the Court will dismiss these allegations as untrue and unfounded," Mr Malone said.

He said the hearings had also confirmed that iiNet has been an industry leader and innovator in encouraging customers to access licenced and legally available copyright content through iiNet's Freezone.

Releasing the entire Closing Submissions, Mr Malone said the documents demonstrated clearly iiNet's had no case to answer and the claims should be dismissed.

The more than 300-page document says despite AFACT's rhetoric, the case goes well beyond any other, anywhere in the world, in attempting to extend liability to a utilities provider for authorisation of copyright infringement.

In relation to allegations of primary infringement by iiNet users, it says in the final analysis the only acts of primary infringement were likely to occur in the day-to-day activities of some iiNet users making copies available online, but not in anything like the quantities contended by AFACT.

It also says there is no evidence at all of iiNet users illegally electronically transmitting the copyright material or copying it to DVD.

On the question of whether iiNet authorised any users to infringe copyright, the documents set out in detail the evidence that demonstrates that iiNet did not do so.

It says the evidence demonstrated that there was no express authority or invitation to infringe copyright and no implied authority or invitation should be found.



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Specifically, it argues that iiNet did not authorise copyright infringement because:

- iiNet’s Customer Relationship Agreement and website copyright page prohibited and warned against infringement;
- iiNet also encouraged users to access licenced material through its Freezone and discouraged excessive bandwidth usage by shaping accounts;
- iiNet did not provide the means of infringement, the BitTorrent software; and
- the Telecommunications Act prevents iiNet from using or disclosing information relating to communications carried on its network so as to disconnect particular customers

Further, the case should be dismissed because of the provisions of Section 112E of the Copyright Act which were expressly introduced to limit the liability of ISPs by stating that providers will not be taken to have authorised an infringement of copyright merely because they provide the facilities by which that material is communicated.

The Closing Submission says as a service provider, iiNet is exactly the kind of entity that the legislature introduced Section 112E specifically to protect.

It also states that iiNet is entitled to protection of the “safe harbour” provisions of the Copyright Act.

Mr Malone said he was pleased the case had concluded and was now behind the company.

“I am proud of iiNet’s long and strong record of being a good corporate citizen and an even better copyright citizen.

“That has been demonstrated most clearly over recent months through this case and I’m very confident the Court will find in our favour.

“I’m now looking forward to returning my 100% focus on what iiNet does best – delivering innovative content and products and great customer service.

- ENDS -

For further information or interviews, please contact:

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About iiNet

iiNet was established in 1993 and listed on the ASX in 1999, growing from a small Perth business into the third largest Internet Service Provider in Australia. The company now supports over 750,000 broadband, telephony and dialup services nationwide, with revenues of over \$400m, and proudly employs around 1300 people in Perth, Sydney, Auckland and Cape Town.

iiNet’s goal is to lead the market with the best internet access products and then differentiate with genuine, plain speaking customer service. The company has its own high speed ADSL2+ network reaching around 4million households across Australia, the largest Voice over IP network in the country, and is delighted to have led yet again with Naked DSL, recognised by PC User Magazine as the 2007 Product of the Year.