

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 3/12/2015 3:41:36 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD1051/2014
File Title:	Dallas Buyers Club, LLC v iiNet Limited & Ors
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 3/12/2015 4:55:46 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59
Rule 29.02(1)

Affidavit

No NSD 1051 of 2014

Federal Court of Australia
District Registry: New South Wales
Division: General

Dallas Buyers Club, LLC and another
Prospective Applicants

iiNet Limited and others
Respondents

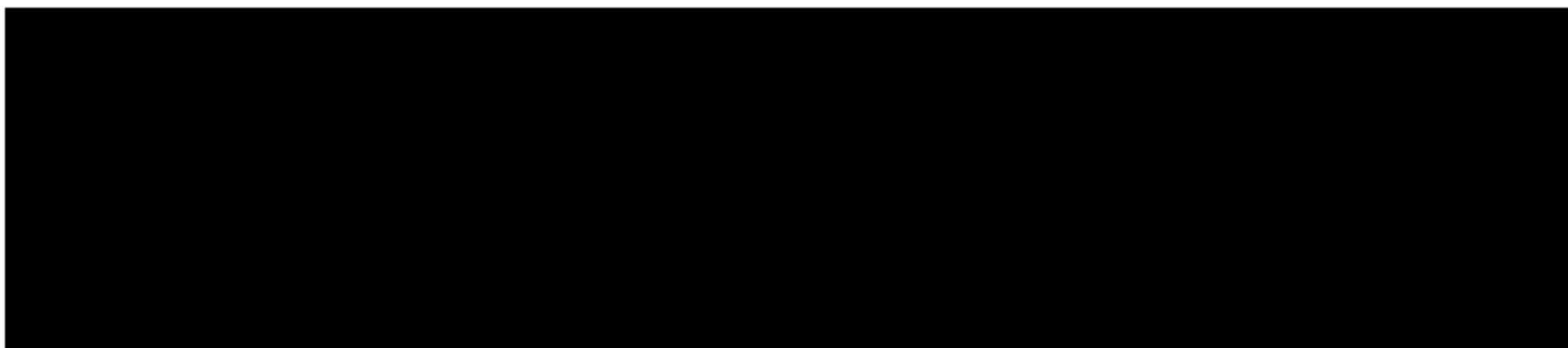
Affidavit of: **Michael Wickstrom**
Address: 116 North Robertson Boulevard, Suite 200, Los Angeles California 90048 USA
Occupation: Vice President of Royalties and Music Administration
Date:

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Michael Wickstrom		1
2	Annexure "A", being copy of the Undertaking	15	6

I, Michael Wickstrom of 116 North Robertson Boulevard, Los Angeles, California 90048 USA, say on oath:

1. I am the Vice President of Royalties and Music Administration at Voltage Pictures LLC (**Voltage**) and I am authorised to make this affidavit on behalf of the Prospective Applicants.
2. I make this statement in support of the Interlocutory Application filed by the Prospective Applicants on 30 September 2015 (**Application**).

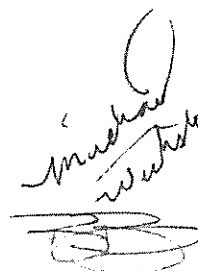


A handwritten signature in blue ink is visible at the bottom right of the page, partially obscured by the redaction box.

3. Unless indicated otherwise, the facts to which I depose in this affidavit are within my own knowledge and belief. Where I depose to matters on information and belief, I believe those matters to be true.

Instructing solicitors

4. Either or both of the Prospective Applicants have commenced proceedings for preliminary discovery in a number of jurisdictions. In each jurisdiction, attorneys are retained in relation to those proceedings. I am responsible for giving instructions to the various attorneys retained by the Prospective Applicants.
5. Given the various jurisdictions in which the Prospective Applicants have commenced proceedings, I rely solely on advice given by attorneys retained by the Prospective Applicants in each jurisdiction because I have no knowledge of the legal framework within each jurisdiction.
6. In Australia, the Prospective Applicants have retained Marque Lawyers as their solicitors in respect of these proceedings (**Marque**).
7. I am responsible for providing instructions to Marque in relation to any matters arising from these proceedings. Prior to giving instructions to Marque, I consider any advice provided by Marque in relation to the matters on which Marque seeks instructions.
8. On or around 7 April 2015, I was informed by Marque that
- (a) the Court had published its Reasons for Judgment in relation to the Prospective Applicants' application for preliminary discovery (**Reasons**); and
 - (b) the Court had determined that the Respondents should give discovery to the Prospective Applicants.
9. On or around 18 June 2015, I was informed by Marque that the Court made an order for the Prospective Applicants to make submissions regarding the methodology which would be employed by the Prospective Applicants in arriving at an initial proposed settlement figure with infringers. Marque prepared the submissions in accordance with the Court's order.
10. Prior to the Reasons and the Court's order referred to in the preceding paragraph, I had not considered what the Prospective Applicants would demand from infringers or what amounts would be demanded from infringers in Australia.
11. On or around 1 July 2015, I was provided with a copy of the submissions prepared by Marque in accordance with my instructions (**Submissions**). I reviewed the Submissions which included each basis upon which the Prospective Applicants sought to make demands from infringers and the proposed amounts to be demanded from infringers and determined that the demands as set out in the Submissions were reasonable. I then instructed Marque to provide the Submissions to the Court in the form in which the Submissions were provided to me.

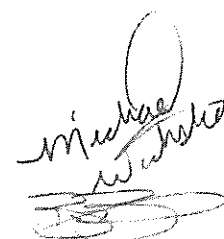
A handwritten signature in black ink, appearing to read "Michael White", with a stylized flourish underneath.

Demands

12. The Prospective Applicants have obtained Court orders for preliminary discovery in the following jurisdictions:
- (a) Singapore
 - (b) Germany
 - (c) Poland
 - (d) United Kingdom
 - (e) Japan
 - (f) Finland
 - (g) Denmark
 - (h) Spain
- (together Overseas Orders)
13. The Prospective Applicants have used the personal information obtained in the Overseas Orders to negotiate settlements with infringers in accordance with any parameters set by the Courts. At no time have the Prospective Applicants made any demand of or sought the payment of any amount from infringers in breach of any order Court order, limitations placed by the Court or any undertakings provided by the Prospective Applicants to a Court.
14. Should the Court lift the stay of order 1 made on 6 May 2015 (**Stay Order**), the Prospective Applicants will only make demands in accordance with the conditions imposed by the Court. I confirm that the Prospective Applicants have absolutely no intention of breaching any undertaking given to the Court or to otherwise make improper demands from infringers.
15. Having regard to the preceding paragraph, I have instructed Marque that the Prospective Applicants will provide an undertaking to the Court in the form annexed hereto and marked "A" (**Undertaking**).
16. I have seen the form of the letter which is annexed to the Undertaking. I will instruct Marque only to send letters to account holders in the form set out in Annexure "A" to the Undertaking or to any amended version approved by the Court.
17. The Prospective Applicants will submit to the jurisdiction of the Court in circumstances where it is alleged that the Prospective Applicants have breached the Undertaking.

Security

18. I am aware that in its judgment made on 14 August 2014 (**Judgment**), the Court required the Prospective Applicants to lodge the amount of \$600,000 with the Court as security for compliance with a proposed undertaking (**Bond**).

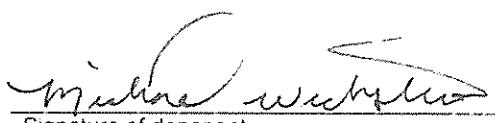


- 19 Voltage is the entity which will be making payment of the Bond. The payment of the Bond will significantly hinder the commercial activity of Voltage for the following reasons.
- (a) Apart from Voltage, there are external stakeholders who finance films produced by Voltage and there are also participants who waive their standard fees so that films can be made on a smaller budget (**Profit Participants**). Voltage is under an obligation to first distribute any incoming profits it makes from its films to the Profit Participants
 - (b) Voltage uses its profits earned on previous films to finance current productions. Voltage has already allocated these funds to current film productions. Given the allocation of Voltage's funds, the Prospective Applicants' only option is to obtain a bank loan in the amount of the Bond
 - (c) If the Prospective Applicants cannot obtain a bank loan for the Bond, they will be required to use funds that have been allocated to current film productions and which are necessary to continue production of those films.
 - (d) The Bond will be lodged with the Court for an indefinite period of time
- 20 For the reasons set out above in paragraph 19, the Prospective Applicants seek to pay only a part of the Bond in accordance with the Application.

Future proceedings

21. The Prospective Applicants intend to make future applications to the Court to lift the Stay Order in respect of the remaining IP addresses not the subject of the Application (**Remaining IP Addresses**).
- 22 I am aware that if the Prospective Applicants breach the Undertaking, then such a breach may be a discretionary factor which the Court may consider in lifting the Stay Order in respect of the Remaining IP Addresses in any future application made by the Prospective Applicants.

Sworn by the deponent
at Los Angeles
in California, USA
on

)
)
) 
) Signature of deponent
)

Before me

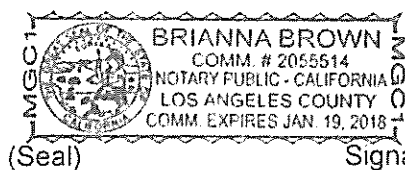
See loose certificate attached

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 2nd
day of December, 20 15, by Michael Wickstrom

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



Signature

A handwritten signature in black ink, appearing to be 'Michael Wickstrom', written over a horizontal line.

Schedule

No. NSD 1051 of 2014

Federal Court of Australia
District Registry, NSW
Division: General

Prospective Applicants

Second Prospective Applicant

Voltage Pictures LLC

Prospective Respondents

Second Respondent:

Internode Pty Ltd

Third Respondent:

Amnet Broadband Pty Ltd

Fourth Respondent

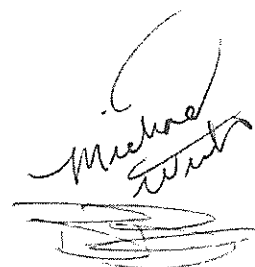
Dodo Services Pty Ltd

Fifth Respondent

Adam Internet Pty Ltd

Sixth Respondent:

Wideband Networks Pty Ltd

A handwritten signature in black ink, appearing to read "Michael Smith", with a stylized flourish underneath.

Annexure "A"

No. NSD 1051 of 2014

Federal Court of Australia
District Registry, New South Wales
Division: General

Dallas Buyers Club, LLC

Applicant

iiNet Limited and others

Respondents

CERTIFICATE OF ANNEXURE

(Rule 29 02(8))

This is the annexure marked "A" to the affidavit of Michael Wickstrom sworn before me on
2015.

See loose certificate attached

Signature of Witness

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 2nd
day of December, 20 15, by Michael Wickstrom

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



Signature

A handwritten signature in black ink, appearing to read "Michael Wickstrom", written over a horizontal line.

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

No: NSD 1051 of 2014

PROSPECTIVE APPLICANTS
DALLAS BUYERS CLUB, LLC and another

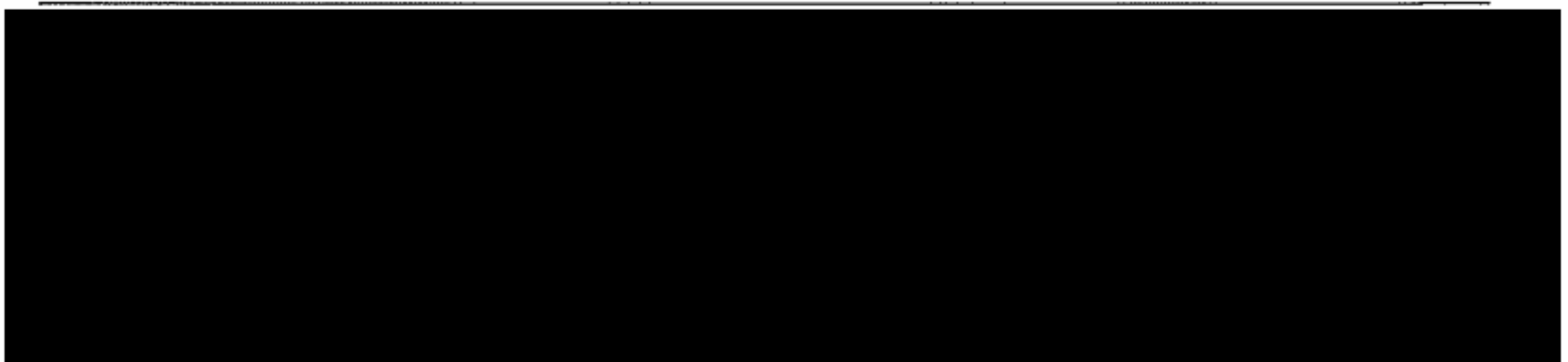
RESPONDENTS
iiNET LIMITED and others

UNDERTAKING TO COURT

23. The Prospective Applicants undertake to the Court until further order of the Court that:
- (a) if a letter is issued to an account holder whose details have been discovered by the Respondents, then the letter will in the form annexed to this undertaking and marked "A"; and
 - (b) the amount demanded from infringers in order to settle a claim for copyright infringement will not exceed an amount determined by the Court in these proceedings; and
 - (c) they will submit to the jurisdiction of this Court if they breach this undertaking to the Court.

Date:

Solicitor for the Prospective Applicants



Schedule

No. NSD 1051 of 2014

Federal Court of Australia
District Registry: NSW
Division: General

Prospective Applicants

Second Prospective Applicant

Voltage Pictures LLC

Prospective Respondents

Second Respondent:

Internode Pty Ltd

Third Respondent:

Amnet Broadband Pty Ltd

Fourth Respondent:

Dodo Services Pty Ltd

Fifth Respondent:

Adam Internet Pty Ltd

Sixth Respondent:

Wideband Networks Pty Ltd

“A”

[insert account holder's details]

[date]

Dear [insert name of account holder]

Copyright infringement of Dallas Buyers Club

We act for Dallas Buyers Club, LLC (**DBC**) and Voltage Pictures LLC (**Voltage**).

DBC is the copyright owner of the film Dallas Buyers Club (**Film**). Voltage is the exclusive licensee and sales agent of the Film.

Piracy

Piracy is a term used to refer to the illegal and unauthorised copying, distribution and selling of another's works in copyright. A common example of piracy is the use of the BitTorrent Network to upload and download copyrighted films without the copyright owners' consent. This is because the uploading and downloading of these films necessarily involves the illegal copying and distribution of such films.

There are substantial costs of producing films which are incurred from the outset of production and are not recuperated until such time as a film is exploited and made available to the public. The film industry, including DBC and Voltage, rely heavily on consumer sales derived from the box office, DVD/Blu-rays, TV, Video on demand, legal downloads and streaming to recoup costs which have been incurred in producing a film, including the payment of its staff and other service providers.

Independent film makers and producers, such as DBC and Voltage, rely particularly heavily on consumer sales from DVD/Blu-rays, TV, Video on demand and legal downloads, as they do not recoup the same amount of costs from the box office as larger film producers.

Piracy of the Film in Australia is significant and widespread. As a result of this piracy of the Film, DBC and Voltage have experienced a significant reduction in consumer sales and have suffered significant loss and damage.

DBC and Voltage consider the level of piracy of the Film to be egregious and, taking into account the profound impact of piracy on them, intend to take legal proceedings against any person who has engaged in piracy of the Film.

We are writing to you because an Internet Protocol address (**IP Address**) linked to your internet account with iiNet was used to illegally upload the Film.

Investigations

DBC and Voltage instructed Maverik Eye UG (**Maverik Eye**), which operates a software program that conducts investigations into the unauthorised uploading of copyrighted works both in Australia and overseas, including monitoring of the BitTorrent file distribution network (**BitTorrent Network**).

These investigations have occurred over the past year or so.

Maverik Eye conducts these investigations by using software which downloads the Film from users who make the Film illegally available over the BitTorrent Network.

As a result of these investigations, Maverik Eye has identified a number of IP Addresses that have been used to illegally upload the Film for other users of the BitTorrent Network to illegally download. Maverik Eye has identified the IP Addresses from where pirates are illegally uploading the Film.

An IP Address is a unique number sequence that can identify the 'address' of an account holder who has access to the internet via, and an account with, an internet service provider.

The BitTorrent Network

The BitTorrent Network is a sophisticated peer-to-peer file sharing network which is often used by people to distribute movies and music across the internet without payment to the copyright owner for the relevant work. The BitTorrent Network cannot be 'accidentally' accessed and operated. A person using the BitTorrent Network must actively download software and take active steps to become a pirate on the BitTorrent Network.

A pirate using the BitTorrent Network:

- (a) downloads specialised software;
- (b) installs the software on his or her computer;
- (c) runs the software;
- (d) searches for movies or music;
- (e) downloads the movie or music; and
- (f) in some cases makes available movies and music on his or her own computer for downloading by others on the BitTorrent Network (i.e. uploading).

A pirate is aware of the steps involved in obtaining movies and music over the BitTorrent Network and is aware that copyright owners have not authorised those steps.

DBC and Voltage consider that the accessing and use of the BitTorrent Network is a planned and calculated means by which people knowingly obtain movies and music illegally.

Legal means of obtaining movie and music content is available from many sources, including in cinemas, television, on-line (such as on iTunes) and in retail stores.

Maverik Eye's evidence

Maverik Eye has identified people who have uploaded the Film on the BitTorrent Network. Maverik Eye has identified that the IP Address which was allocated to you by iiNet Limited (**iiNet**) was used by a pirate to breach the copyright in the Film across the BitTorrent Network.

Maverik Eye has detected that on the following date(s) and times the following IP Address was used to upload the Film:

[insert date, time, film and IP addresses] (**Infringing IP Address**).

Why are we writing to you?

DBC and Voltage wrote to iiNet seeking information which would identify the personal details of the account holder with the Infringing IP Address. iiNet refused to provide this information unless it was required to do so by a Court order.

On 6 May 2015, DBC and Voltage obtained an order from the Federal Court of Australia that iiNet provide the name and address of the account holder with the Infringing IP Address. The Orders made by the Court are **enclosed** with this letter.

iiNet identified you as the account holder of the Infringing IP Address.

The Court's order for iiNet to disclose your contact information does not mean that the Court has considered any claims by DBC and Voltage in respect of Copyright Infringement (as defined below) or that there has been any determination by the Court in respect of your potential liability for Copyright Infringement.

You can obtain a copy of the Court's judgment by going to the Court's website located at www.fedcourt.gov.au and clicking on "*Find a Judgment*" under the heading "*Quick Links*", typing "*Dallas Buyers Club*" into the "*Case Name*" cell and clicking on the judgment dated 7 April 2015 in the search results.

Relevant law and damages

Pursuant to sections 86 and 101 of the *Copyright Act 1968* (Cth), copyright is infringed if a person who is not the owner of the copyright and without the licence of the owner of the copyright does an act including:

making copies of the whole or a substantial part of copyrighted works;

- (a) making copyrighted works available online to other persons for viewing or copying; and/or
- (b) electronically transmitting copyrighted works to other persons

(together **Copyright Infringement**).

Copyright owners and exclusive licensees are entitled to commence Court proceedings in respect of Copyright Infringement. If Copyright Infringement is established, the Court can order that the person or persons responsible for the Copyright Infringement pay such damages to the copyright owners and/or their exclusive licensees as it considers appropriate in the circumstances, including additional damages.

Damages

DBC and Voltage allege that the uploading of the Film amounts to Copyright Infringement for which DBC and Voltage are entitled to seek the payment of damages (**Infringing Conduct**).

The Infringing Conduct amounts to the unauthorised distribution of the Film. Voltage has entered into an exclusive distribution agreement in respect of the Film in Australia. The Infringing Conduct has caused DBC and Voltage to lose profits which they would have otherwise made through the payment of royalties under the distribution agreement had you not engaged in the Infringing Conduct. As such, DBC and Voltage are entitled to seek the payment of damages for the Infringing Conduct. [This paragraph will be included subject to the Court's determination].

It can be inferred from the Infringing Conduct that the Film was also downloaded by you without consent from DBC before being subsequently made available for uploading. The unauthorised downloading of the Film also constitutes Copyright Infringement for which DBC and Voltage are entitled to damages.

Additional damages

DBC and Voltage are entitled to seek additional damages against a pirate pursuant to section 115(4) of the *Copyright Act*.

The circumstances that a Court may have regard to in assessing additional damages include:

the flagrancy of the infringement;

- (a) the need to deter similar infringements of copyright;
- (b) the conduct of the person who infringed copyright after the act constituting the infringement or, if relevant, after that person was informed that the person had allegedly infringed copyright; and
- (c) any benefit shown to have accrued to the person by reason of the infringement.

The Infringing Conduct is sufficient to justify the Court awarding additional damages.

[This section will only be included subject to the Court's determination]

Out of pocket expenses

DBC and Voltage are out of pocket for legal costs which they incurred in identifying the Infringing IP Address and obtaining your name and address from iiNet. These costs form part of the damage suffered by DBC and Voltage to which they are also entitled to claim from any pirate.

What does this mean?

We have reason to believe that you are, as the account holder of the Infringing IP Address, or another person with access to the Infringing IP Address allocated to you is, responsible for engaging in the Infringing Conduct.

DBC and Voltage have the right to commence proceedings in the Federal Court of Australia against any party that they allege has engaged in Piracy.

Prior to commencing proceedings, DBC and Voltage are obliged to take genuine steps to attempt to resolve a dispute. This obligation is set out in the *Civil Dispute Resolution Act 2011* (Cth).

Such steps can involve notifying the other person of the issues that are or may be in dispute, offering to discuss them and providing relevant information and documents to help them understand the issues involved and how the dispute might be resolved.

As such, if there is anything in this letter that you do not understand, or you require further information about Piracy referred to in this letter, please let us know. Alternatively, we suggest that you obtain independent legal advice in respect of this letter.

What if you deny the Infringing Conduct?

If you deny engaging in the Infringing Conduct, then please let us know the basis on which you deny it by providing a written response to this letter. In this response, you should include the details of the person whom you believe engaged in Piracy, including their full name, address, phone number and email address. We also request that you provide a copy of this letter to that person.

If the person whom you believe to have engaged in the Infringing Conduct is under 18 years of age, then please:

provide us with the full name and address of that person;

1. confirm that that person is under 18 years of age;
2. confirm whether you are the parent or guardian of that person; and
3. whether you are authorised to engage with us on behalf of that person in respect of the matters set out in this letter.

If you deny engaging in the Infringing Conduct and do not provide details of another person who you suspect did, then DBC and Voltage may compel this information from you by commencing Court proceedings against you for preliminary discovery by seeking an order that you attend Court to answer

questions about the Infringing Conduct and deliver up your computer for analysis to verify any denials you make.

[When the letter is addressed to a company] You should be aware that there are provisions in the *Privacy Act 1988* (Cth) (**Privacy Act**) which prohibit the disclosure of personal information in some circumstances. If you are concerned that disclosure by you of the details of the person whom you believe engaged in Piracy may infringe the Privacy Act, then we suggest you seek legal advice.

What if you agree that you engaged in the Infringing Conduct?

If you admit that you engaged in the Infringing Conduct, DBC and Voltage are prepared to settle the dispute on the following basis.

You provide an undertaking not to engage in the Infringing Conduct in respect of the Film, or permit or authorise others to do so, in the form set out in Annexure "A" to this letter.

1. You undertake to delete any copies of the Film from any hard drive or operating system and any copies saved to external storage devices, other than any copyrighted works owned by DBC and/or Voltage that you have obtained legitimately. We also suggest you stop making any other copyrighted works available online across the BitTorrent Network.
2. You agree to pay DBC and Voltage the amount of \$[insert amount of damages as determined by the Court in these proceedings] (**Settlement Amount**) in full and final satisfaction of any claim by DBC and Voltage against you for the Infringing Conduct.
3. You contact us in writing at [insert email address] to arrange for payment of the Settlement Amount. Alternatively, if you would prefer to speak with someone directly, then you may call [insert telephone number] to arrange payment of the Settlement Amount.
4. Upon receipt of the Settlement Amount, DBC and Voltage will release you from all claims in relation to the Infringing Conduct.

Next Steps

If you admit that you engaged in the Infringing Conduct and refuse to pay the Settlement Amount, then DBC and Voltage may commence proceedings against you for Copyright Infringement. If Court action is taken against you in respect of the Infringing Conduct, then DBC and Voltage may be entitled to seek the following relief from the Court:

an injunction to restrain you from further engaging in the Infringing Conduct;

1. a declaration that you have breached the *Copyright Act 1968* (Cth);
2. damages for both the uploading and downloading of the Film;
3. damages for the legal costs incurred by DBC and Voltage in obtaining your account holder information from iiNet for which they are out of pocket;

4. additional damages; and
5. the costs of taking action against you.

Unless you call [insert telephone number] to speak with someone directly, then please respond to this letter, in writing, to [insert email address], **within 28 days from the date on the front page of this letter.** If you do not, then Court action may be commenced against you without further notice.

Yours sincerely

Annexure "A"

UNDERTAKING OF [insert] to DALLAS BUYERS CLUB, LLC AND VOLTAGE PICTURES LLC

In consideration of the Dallas Buyers Club, LLC and Voltage Pictures LLC refraining from taking action against ["me" or name of company], ["I" or name of company], [insert name]/[insert name of company] agree[s] and undertake[s] to Dallas Buyers Club, LLC and Voltage Pictures LLC as follows.

I/company will immediately delete all copies of the film Dallas Buyers Club from my/company's hard drive and operating system and any copies saved to external storage devices, other than any copies of Dallas Buyers Club that I/company have/has obtained legitimately.

6. I/company will refrain from doing any act which amounts to copyright infringement in respect of the Dallas Buyers Club.

Or

7. [insert name of company], whether by itself, its directors, servants, agents, employees, will refrain from doing any act which amounts to copyright infringement in respect of the Dallas Buyers Club.

Date:

Signed by [insert name]

in the presence of:

.....

Signature of witness

.....

Signature of [insert name]

.....

Name of witness (print)

OR

Executed by [insert name of company] in
accordance with s 127 of the
Corporations Act 2001 (Cth):

.....
Signature of director

.....
Name of director (print)

.....
Signature of director/company secretary

.....
Name of director/company secretary (print)