

Q&A Script

Ex 1
FEDERAL COURT OF AUSTRALIA

EXHIBIT/MF No. 1

Judge: Perram J Date: 18/6/15

DBC v. iiNet

File No. NSD 1051 of 2014

Return to:

(party/non-party, if produced on subpoena)
Associate: ZZ

1. LETTERS WE SENT

1.1 Why Have I Received This Letter?

Our clients obtained an order from the Federal Court of Australia that your ISP provide your name and address because your account was assigned to an IP address which was used for the unlawful distribution of the film Dallas Buyers Club.

2. Liability

2.1 What evidence do you have that I infringed the film?

Our clients instructed a company known as Maverik Eye to conduct investigations into the unauthorised uploading of the film, Dallas Buyers Club, over the BitTorrent network. This company conducts these investigations by using software which downloads the Film from users who make the Film available over the BitTorrent Network.

Maverik Eye identified a number of IP addresses that were used to illegally upload the film for other users of the BitTorrent Network to illegally download.

Your ISP identified you as the account holder assigned to the IP address the time of infringement detected by Maverik Eye.

2.2 Am I guilty of copyright infringement?

The Court's order for your ISP to disclose your contact information does not mean that the Court has considered any claims by our clients in respect of copyright infringement or that there has been any determination by the Court in respect of your liability for copyright infringement. We have set out in our letter to you why we say that copyright has been infringed. If you deny liability then would you please let us know why. Please also provide us with the name, address, phone number and email address of the person which you say is responsible for the copyright infringement.

3. DEFENCES

3.1 Denies Liability?

If you deny liability for copyright infringement, then please let us know why. Please also provide us with the name, address, phone number and email address of the person which you say is responsible for the copyright infringement.

If you deny the copyright infringement and don't give us the person's details who you suspect did, then our clients may compel this information from you by commencing Court proceedings against you for preliminary discovery.

3.2 What if a child is responsible for the infringement?

A person under 18 who engaged in the unlawful distribution of the film Dallas Buyers Club is still liable for that conduct.

If your child or a person under 18 years old is responsible for the infringement, then please:

- (a) confirm that the person is under 18 years of age;
- (b) provide us with the full name and address of that person;
- (c) confirm whether you are the parent or guardian of that person; and
- (d) whether you are authorised to engage with us on behalf of that person in respect of the matters set out in this letter.

3.3 I'm just the account holder, I had nothing to do with this?

If you deny liability for copyright infringement, then please let us know why.

Please also provide us with the name, address, number and email address of the person which you say is responsible for the copyright infringement.

If you deny engaging in copyright and do not provide details of another person who you suspect did, then our clients may compel this information from you by commencing Court proceedings against you for preliminary discovery.

4. PAYMENT QUESTIONS

4.1 What will happen if I pay an amount to settle?

Provided you also provide the undertakings requested in our letter, if we negotiate a settlement amount, then our clients will not pursue their claim any further against you and you may treat this case as closed.

4.2 How much do I have to pay to settle?

This depends on a number of factors including your answers to the following questions:

- (a) Are you unemployed, disabled or suffering from terminal illness?
- (b) Are you serving in the military?
- (c) Are you currently employed and on what basis?
- (d) What is your annual income?
- (e) How long have you been using the BitTorrent network?
- (f) Did you download DBC on the BitTorrent network? If so, when? If not, how did you get it on your computer to make it available to other on the BitTorrent network?

- (g) When did you download it or put it onto your computer?
- (h) How long have you made DBC available on the BitTorrent network?
- (i) How many titles do you have available now and in the past on the BitTorrent network?

4.3 Do I have an obligation to pay a settlement amount?

No. However, our clients may take legal action against you for copyright infringement if settlement is not reached.

4.4 What happens if we don't negotiate a settlement?

If we don't negotiate a settlement, then our clients will consider issuing proceedings against you for copyright infringement and may seek the following from you:

- (a) an injunction to restrain you from further copyright infringement;
- (b) a declaration that you have breached the Copyright Act;
- (c) damages for uploading and downloading of the film;
- (d) damages for the costs incurred by our clients in obtaining your account holder information from your ISP for which they are out of pocket (including the costs our client has had to pay to your ISP to obtain your account information);
- (e) damages for the costs incurred by the investigation company engaged to obtain your IP address;
- (f) additional damages; and
- (g) costs of taking action against you.

4.5 How much would I have to pay if this matter went to Court?

It depends on your individual circumstances. However, our clients may seek damages for uploading and downloading the film, additional damages and the costs of obtaining your information from your ISP and costs of the copyright infringement proceedings against you.

4.6 Why can't I just pay the cost of downloading a copy of the film?

The damage suffered by our clients is made up of a number of factors. It is not simply a question of paying for the price of obtaining a copy of the film. On peer to peer networks, any work file shared is made available to hundreds, if not thousands of persons, thereby giving a potential claim for damages in respect of multiple copies of our client's work.

Our clients are also out of pocket for legal and compliance costs which they incurred in obtaining your name and address from your ISP. These costs form part of the damage suffered by DBC and Voltage to which they are also entitled to claim from you.

If it is necessary to bring our client's claim to Court, the claim for damages may be higher than the amount our clients are willing to settle for now. For that reason negotiation a settlement offer now is an opportunity for you to settle the matter early. This will not be the same amount claimed by our client should this matter proceed to Court.

5. LEGAL ADVICE

5.1 Doesn't Understand Claim?

If you are encountering difficulty in understanding our clients' claim against you, we strongly recommend that you seek the advice of a solicitor. Should you decide to do so, please advise us of the name and address of the person or firm so advising you, so that we can make a note in our records.

6. FILE SHARING QUESTIONS

6.1 What Is File Sharing?

In general terms, file-sharing is the activity of swapping digital files over the internet with other users. Users swap files by uploading (to share them with others) and downloading (to receive) them.

6.2 How Is File-Sharing Carried Out?

Once on a file-sharing website, users download software to gain access to a file-sharing or peer-to-peer (P2P) network. When the software is in use and the user is connected to the internet, it is possible to swap files with others who are online, by either uploading (also known legally as 'making available') or downloading them (or both).

6.3 Is File-Sharing Illegal?

Any files downloaded are usually stored in the shared files folder on the user's personal computer. The effect of each user making his/her own digital files available on the internet to other P2P users creates an enormous and potentially illegal library of digital files available for download using P2P services.

An internet user is downloading when the user obtains a digital file from an up-loader. Unless such downloading is done with the consent of the copyright owner, it constitutes copyright infringement.

Copyright legislation provides that a person must have the permission of the copyright owner to make a work protected by copyright available for download on the internet. Uploading without the permission of the copyright owner is illegal, irrespective of whether the copyright material was originally obtained legally or illegally by the up-loader.

7. ISP QUESTIONS

7.1 Disclosure of personal information by ISP

We obtained your details from your ISP as a result of a Court order which required your ISP to disclose that information to our clients.