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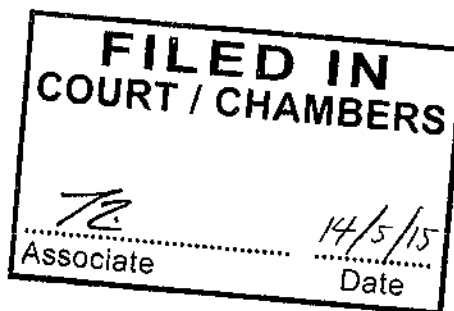
Form 59
Rule 29.02(1)

Affidavit

No. 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: 13 May 2015

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1	Affidavit of Michael Wickstrom		1
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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.

Filed on behalf of (name & role of party)	Dallas Buyers Club, LLC and Voltage Pictures, LLC, Prospective Applicants		
Prepared by (name of person/lawyer)	Nathan Mattock		
Law firm (if applicable)	Marque Lawyers		
Tel	02 8216 3000	Fax	8216 3000
Email	kimn@marquelawyers.com.au		
Address for service (include state and postcode)	Level 4, 343 George Street, Sydney NSW 2000		

[Version 2 form approved 09/05/2013]

Michael Wickstrom
[Signature]
CT

2. 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.

Compliance with orders

3. The Prospective Applicants, whether by themselves or together, have commenced proceedings for preliminary discovery and copyright infringement in respect of the film Dallas Buyers Club in a various jurisdictions (**DBC Litigation**).
4. The Prospective Applicants have appointed solicitors in the various jurisdictions to represent them in relation the DBC Litigation (**Solicitors**).
5. I am responsible for providing instructions to the Solicitors in relation to any matters arising from the DBC Litigation.
6. When the Solicitors seek instructions from me, I consider any advice provided by the Solicitors to ensure that the Prospective Applicants comply with any orders made by the Court in the relevant jurisdiction.

DBC Litigation in Australia

7. The Prospective Applicants are limited liability companies which have their registered offices in the USA.
8. The Prospective Applicants do not hold any assets in Australia.
9. With respect to the orders made in these proceedings on 6 May 2015, I have given instructions to the Solicitors in Australia that the Prospective Applicants provide an undertaking to the Court in the form annexed hereto and marked "A" (**Undertaking**).
10. I have seen the form of the letters which are annexed to the Undertaking.
11. It is my intention to send letters to account holders:
- (a) in the form set out in Annexure "A" to the Undertaking; and
 - (b) in the form of that set out in Annexure "B" to the Undertaking to educational institutions, hospitals or similar organisations, where appropriate.

Michael Nicholson


12. Notwithstanding paragraphs 7 and 8, the Prospective Applicants submit to the jurisdiction in circumstances in which it is alleged that the Prospective Applicants have breached the Undertaking.
13. I am aware that if the Prospective Applicants fail to comply with the Undertaking, then this may affect the ability of the Prospective Applicants to seek any damages and/or recover costs in any DBC Litigation taken against alleged copyright infringers.

Future DBC Litigation

14. Given the outcome in these proceedings, the Prospective Applicants intend to make future applications to the Court for preliminary discovery against other ISPs.
15. 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 granting preliminary discovery in any future application for preliminary discovery made by the Prospective Applicants.

Sworn by the deponent
at Los Angeles
in California, USA
on 13 May 2015

} *Michael Wickstrom*
} Signature of deponent

Before me:

A Notary Public or other public 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)

On May 13, 2015 before me, Brianna Brown, Notary Public, personally appeared Michael Wickstrom, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]



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

Certificate identifying annexure

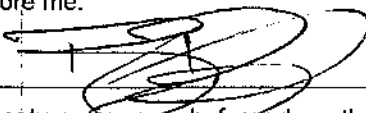
No. NSD1051 of 2014

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

PROSPECTIVE APPLICANTS
DALLAS BUYERS CLUB, LLC and Anor

RESPONDENTS
iNET LIMITED and others

This is the annexure marked "A" to the affidavit of Michael Wickstrom sworn on 13 May 2015 before me:



Signature of person before whom the affidavit is sworn

State of California)
County of Los Angeles)

A Notary Public or other public 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.

Subscribed and sworn to before me on this 13th day of May 2015, by Michael Wickstrom, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official seal.



Signature of Notary Public



Filed on behalf of (name & role of party)	Dallas Buyers Club, LLC and Voltage Pictures, LLC, Prospective Applicants
Prepared by (name of person/lawyer)	Nathan Mattock
Law firm (if applicable)	Marque Lawyers
Tel 02 8216 3000	Tel 02 8216 3001
Email	kimn@marquelawyers.com.au
Address for service (include state and postcode)	Level 4, 343 George Street, Sydney NSW 2000

[Version 2 form approved 09/05/2013]

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

1. 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 either be in the form annexed to this undertaking and marked "A" or in the form annexed to this undertaking and marked "B"; and
 - (b) they will submit to the jurisdiction of this Court if they breach this undertaking to the Court.

Date:

Solicitor for the Prospective Applicants

Filed on behalf of (name & role of party)	Dallas Buyers Club, LLC and Voltage Pictures, LLC, Prospective Applicants
Prepared by (name of person/lawyer)	Nathan Mattock
Law firm (if applicable)	Marque Lawyers
Tel	02 8216 3000
Fax	8216 3000
Email	nathanm@marquelawyers.com.au
Address for service (include state and postcode)	Level 4, 343 George Street, Sydney NSW 2000

[Version 2 form approved
09/05/2013]

Schedule

No. NSD 1051 of 2014

Federal Court of Australia
District Registry: NSW
Division: General

Prospective Applicants

Second Prospective Applicant	Voltage Pictures LLC
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Prospective Respondents

Second Respondent:	Internode Pty Ltd
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Third Respondent:	Amnet Broadband Pty Ltd
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Fourth Respondent:	Dodo Services Pty Ltd
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Fifth Respondent:	Adam Internet Pty Ltd
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Sixth Respondent:	Wideband Networks Pty Ltd
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[insert account holder's details]

Dear [insert name of account holder]

XX

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 IP address linked to your internet account with [insert] 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 Internet Protocol addresses (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 (ISP).

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/IP Addresses] which [was/were] allocated to you by [insert ISP] [was/were] 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/es] was/were used to upload the Film.

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

Why are we writing to you?

DBC and Voltage wrote to [insert ISP] seeking information which would identify the personal details of the account holder in respect of the Infringing IP [Address/es]. [insert ISP] 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 [insert ISP] provide the name and address of the account holder in respect of the IP Address/es [insert IP Address/es]. The Orders made by the Court are **enclosed** with this letter.

[insert ISP] identified you as the account holder of the Infringing IP Address/es.

The Court's order for [insert ISP] 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.

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:

- (a) making copies of the whole or a substantial part of copyrighted works;
- (b) making copyrighted works available online to other persons for viewing or copying; and/or
- (c) 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.

11.

We set out below the classes of damages that DBC and Voltage intend to pursue.

Damages for uploading and downloading the Film

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 (Piracy).

Piracy includes the unauthorised distribution of the Film. Voltage has entered into exclusive distribution agreements in respect of the Film both in Australia and overseas. Piracy negatively affects the value of those agreements and any future agreements which DBC and/or Voltage may enter into in respect of the Film and/or future productions. As such, DBC and Voltage are entitled to seek the payment of damages for Piracy.

It can also be inferred from Piracy that the Film was downloaded 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 also 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:

- (a) the flagrancy of the infringement;
- (b) the need to deter similar infringements of copyright;
- (c) 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
- (d) any benefit shown to have accrued to the person by reason of the infringement.

Out of pocket expenses

DBC and Voltage are out of pocket for legal costs which they incurred in obtaining your name and address from [insert ISP]. 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 in respect of the Infringing IP [Address/es], or another person with access to the IP [Address/es] allocated to you is, responsible for engaging in Piracy.

DBC and Voltage have the right to commence proceedings in the Federal Court of Australia against any party that it alleges 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 Piracy, 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 request that you provide a copy of this letter to that person.

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

1. provide us with the full name and address of that person;
2. confirm that that person is under 18 years of age;
3. confirm whether you are the parent or guardian of that person; and
4. 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 Piracy 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 Piracy and deliver up your computer for analysis to verify any denials you make.

What if you agree that you engaged in Piracy?

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

1. You provide an undertaking not to engage in Piracy in respect of the Film, or permit or authorise others to do so, in the form set out in Annexure "A" to this letter.
2. 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.

3. You contact [insert telephone number] to negotiate settlement with DBC and Voltage.

Next Steps

If you admit that you engaged in Piracy and no settlement can be reached, then DBC and Voltage may commence proceedings against you for Copyright Infringement. If Court action is taken against you in respect of Piracy, then DBC and Voltage may be entitled to seek the following relief from the Court:

1. an injunction to restrain you from further engaging in Piracy;
2. a declaration that you have breached the *Copyright Act 1968* (Cth);
3. damages for both the uploading and downloading of the Film;
4. damages for the legal costs incurred by DBC and Voltage in obtaining your account holder information from [insert ISP] for which they are out of pocket;
5. additional damages; and
6. costs of taking action against you.

Please respond to this letter, in writing, 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.

1. 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.
2. I/company will refrain from doing any act which amounts to copyright infringement in respect of the Dallas Buyers Club.

Or

3. [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

.....
Signature of director/company secretary

.....
Name of director (print)

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

[insert account holder's details]

Dear [insert name of account holder]

XX

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 IP address linked to your internet account with [insert] 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 Internet Protocol addresses (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 (ISP).

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/IP Addresses] which [was/were] allocated to you by [insert ISP] [was/were] 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/es] was/were used to upload the Film.

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

Why are we writing to you?

DBC and Voltage wrote to [insert ISP] seeking information which would identify the personal details of the account holder in respect of the Infringing IP [Address/es]. [insert ISP] 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 [insert ISP] provide the name and address of the account holder in respect of the IP Address/es [insert IP Address/es]. The Orders made by the Court are **enclosed** with this letter.

[insert ISP] identified you as the account holder of the Infringing IP Address/es.

The Court's order for [insert ISP] 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.

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:

- (a) making copies of the whole or a substantial part of copyrighted works;
- (b) making copyrighted works available online to other persons for viewing or copying; and/or
- (c) 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.

We set out below the classes of damages that DBC and Voltage intend to pursue.

Damages for uploading and downloading the Film

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 (**Piracy**).

Piracy includes the unauthorised distribution of the Film. Voltage has entered into exclusive distribution agreements in respect of the Film both in Australia and overseas. Piracy negatively affects the value of those agreements and any future agreements which DBC and/or Voltage may enter into in respect of the Film and/or future productions. As such, DBC and Voltage are entitled to seek the payment of damages for Piracy.

It can also be inferred from Piracy that the Film was downloaded 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

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

- (d) the flagrancy of the infringement;
- (e) the need to deter similar infringements of copyright;
- (f) 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
- (g) any benefit shown to have accrued to the person by reason of the infringement.

Out of pocket expenses

DBC and Voltage are out of pocket for legal costs which they incurred in obtaining your name and address from [insert ISP]. 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?

Based on the information provided to us by [insert ISP] and subsequent investigations undertaken, it is apparent that your account is or has been used to provide internet to [insert institution] and that such internet is accessible to the public or to designated users that have been provided with login details to computers physically connected to your network.

Accordingly, we have reason to believe that someone with access to the IP Address/es allocated to you is responsible for engaging in the Infringing Conduct.

Required conduct

If you know or believe that you know who engaged in the Infringing Conduct, please provide us with the details of the person whom you believe it is that engaged in the Infringing Conduct, 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 you do not know who engaged in the Infringing Conduct, it may assist you to identify the individual by performing a scan of all computers connected to your network to determine whether any computers have installed BitTorrent Clients which connect to the BitTorrent Network.

If you are unable to or do not provide us with the above information, then DBC and/or Voltage may need to commence proceedings against you for preliminary discovery in order to make further inquiries to identify the person who engaged in the Infringing Conduct.

However, prior to commencing proceedings, DBC and/or Voltage is 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.

If there is anything in this letter that you do not understand, or you require further information about the Infringing Conduct, please let us know. Alternatively, we suggest that you seek independent legal advice in respect of this letter.

Proposed course of action

On the basis that your account is used to provide internet to [insert institution] and the manner in which users access your network, DBC and Voltage may agree not to take any further action against you on the basis that you implement certain measures aimed at preventing future instances of copyright infringement on your network.

DBC and Voltage propose that you implement various measures to ensure that your users do not engage in any further copyright infringement including but not limited to:

1. informing users that copyright infringement of the Film was detected on your network;
2. an agreed education program which provides information to users of your network of responsible use of the internet and information regarding the effect of illegal downloading and uploading of copyrighted works;
3. notifications to wifi users connecting to your network that they are not permitted to use BitTorrent Network on their devices;
4. performing a scan of all computers connected to your network to determine whether any computers have installed BitTorrent Clients which connect to the BitTorrent Network and enable the sharing of copyrighted works and delete any such programs; and

5. a requirement that all computers connected to your network require an administrator's password to install software which connects to the BitTorrent Network, to restrict the installation of BitTorrent Clients and use of BitTorrent Network on such computers.

Subject to receiving further information from you, DBC and Voltage are willing to work with you to tailor the proposed measures so that they are suitable to the environment in which your network operates.

Further, DBC and Voltage are willing to work with you to develop the content of the education program to be deployed to the relevant users of your network.

Next steps

Please respond to this letter, in writing, within 28 days from the date on the front page of this letter. If you do not, then court action may be taken against you without further notice.

Yours sincerely