



Unilink

Legal & Risk Newsletter



Can the University be held liable for users' internet piracy?

The University's IT Acceptable Use and Security Policy (www.adelaide.edu.au/policies/2783/) specifically prohibits the use of University IT facilities to infringe intellectual property (IP), such as through illegal downloading of film, music and software. Not only is internet traffic on the University's network monitored internally, but IP owners are becoming increasingly vigilant of illegal downloads and the University has received notifications from external parties about infringing activity detected on a University's IP address.

Although not classified as an Internet Service Provider (ISP), the University does provide students, staff and other authorised users with access to the internet. So can the University be held liable for the copyright infringements of its staff and students in using the internet? A recent high-profile court case has provided some guidance.

Roadshow Films Pty Ltd & others v iiNet Ltd

Roadshow Films Pty Ltd & others v iiNet Ltd was a case in the High Court between members of the Australian Federation Against Copyright Theft (AFACT) and other movie and television studios, and iiNet, a major Australian ISP.

iiNet customers had been detected using BitTorrent to share copies of movies and TV programs without licence or permission of the copyright content owners. On behalf of the TV and film companies that owned the content, AFACT issued notices to iiNet requesting action be taken to prevent further alleged infringements by its users.

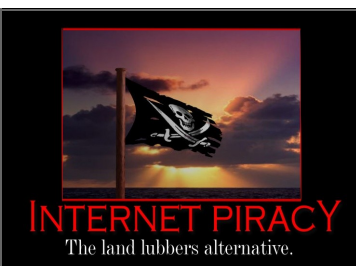
When iiNet did not take any steps to warn or suspend its users, AFACT sued iiNet for having "authorised" the infringement of copyright (under s101 of the *Copyright Act*), hoping that the case would set a precedent enabling rights-holders to hold ISPs liable for what the film industry says is widespread illegal peer-to-peer file sharing.

The High Court dismissed the case, ruling that iiNet's inaction did not constitute authorisation of copyright infringement, as iiNet had no direct power to prevent users using BitTorrent to infringe copyright; only indirect power by terminating its users' access to the internet services.

How is this case relevant to the University?

This decision confirms that the University will not be held to have authorised infringements by its staff and students merely as a result of enabling them to access the internet.

However, these matters are taken very seriously by Technology Services. If the University is given sufficient and verifiable evidence that a user is using the system to infringe copyright (i.e. by illegally downloading or sharing music, software, movies or TV content), there is an onus on the University to take steps to prevent this from continuing, such as by suspending or terminating the user's account.



In any event, users who engage in such activity (whether on the University's network or through their own internet connection at home), are breaking the law. AFACT's failure against iiNet may prompt copyright content owners to start taking action against individual infringers.

Individuals should be aware that there are significant criminal sanctions for internet piracy.

For more information email Technology Services at servicedesk@adelaide.edu.au.

The Australian Federation Against Copyright Theft (AFACT) estimates that online piracy costs rights-holders \$2.46 million per day.

Is it ok to 'fix up' a signed contract?

So you've finally reached agreement with the other party on the wording of that contract that took months to negotiate. The contract has been signed by the other party and sent to you to arrange for the University's signature. But then you notice an error in the contract: a missing word, a cross-reference to the wrong clause number, or formatting problem. "No big deal" you think, "I'll just fix the document up, print out a new page and substitute it into the contract". After all, the change doesn't make a difference to what has already been agreed to, errors in contracts are unprofessional, and neither party wants any further delays. Right?

Wrong. Such conduct is highly improper and **must be avoided.**

The other party has signed the contract as the document presented to it at the time. **Any** change to a contract—minor or otherwise—after it has been signed by one party, creates a 'new agreement', which must be put forward to that party and re-signed.

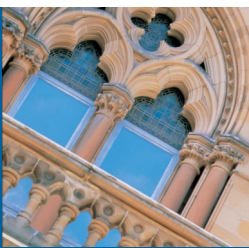
A contract is a legally binding agreement. If it is discovered at a later date that a contract has been changed after one party has signed it—minor or otherwise—at worst, the individual who made the changes may be guilty of fraud. It can also cause reputational damage to the individual and the organisation that the individual represents.

Furthermore, undisclosed amendments can cast doubt over the validity of a contract. If each party has signed a different version of the contract, it could be argued that agreement was not reached. This may jeopardise a party's chances if a contractual dispute arises.

For more information contact Kim Evans (Senior Legal Counsel) on 8313 6103 or email kim.evans@adelaide.edu.au.

For additional contract information and advice, contract templates, checklists, tips and reference material, download the Contract Management Handbook from the Legal & Risk website: www.adelaide.edu.au/legalandrisk/contracts/.





As of 2010, the world's most expensive domain names were:

1. **Insure.com**, sold to QuinStreet for \$16 million in 2009
2. **Sex.com**, sold for \$12-\$14 million in 2006
3. **Fund.com**, sold for \$9.99 million in 2008
4. **Porn.com**, sold for \$9.5 million in 2007
5. **Business.com**, sold for \$7.5 million in 1999

What's in a name? Business Names v Domain Names v Trademarks

Business names, domain names and trade marks – and the use of those names and marks in the University, can be confusing. All three must be registered separately, are governed by different legislation and can work independently of the other. So how are they linked? And what does each of them do?

Business Names

A business name is the name under which a person or legal entity trades. The *Business Names Registration Act 2011 (Cth)* requires a person to register their business name, unless they are using their own name or their partner's name to trade. Registration allows consumers to identify the person or organisation behind a business name where the business is not trading under its own name:- it is a form of consumer protection. Registration is compulsory in Australia, and must be completed before the business starts trading.

- An entity can trade under its own name;
e.g. *The University of Adelaide* or *SANTOS*
- A company may trade under a simplified version of its own name;
e.g. *Coles Express* for *Coles Supermarkets Australia Pty Ltd*.
- An entity can trade under an entirely different name;
e.g. *Architect, John Smith trading as 'Whiz-Bang Designs'* or *Ron and Betty McIntyre, trading as 'Port Road Fish & Chip Shop'*

A business name does not give you ownership or exclusive rights over the use of that name and will not by itself provide protection from being sued for infringing someone else's trademark, even if you don't know of its existence.

Trade marks

A trade mark is used to distinguish your goods or services from those of other traders. A trade mark can be a name, word, phrase, logo, symbol, scent, sound, image, or a combination of these elements. Registration of a trade mark gives you the legal right to exclusively use, control or sell the mark throughout Australia. It allows you to prevent others from using a similar name and protection can commence even before you start trading.

If you have a registered trade mark, you can take legal action against others for infringing your trade mark even if the other person holds the business name.

In addition to restrictions imposed by the Business Names Registration Act 2001 (Cth) and Trade Marks Act 1995 (Cth), the use of the University of Adelaide name is protected by the University of Adelaide Act 1971 (SA), and a fine of \$20,000 may apply for unauthorised or inappropriate use of official University insignia.

Domain names

Domain names are the addresses you type into your browser to visit particular websites, such as www.adelaide.edu.au. There are no proprietary rights arising from the registration of domain names. A person that registers a domain name does not own the name, but holds a licence to use it for a specific period, subject to certain terms and conditions. Some domain names, including .au domains, require a registered trademark, company or registered business name corresponding to the domain name.

Names, Marks and the University

Business names, trade marks and domain names all contribute to the establishment and value of a brand. The *University of Adelaide* brand is a valuable asset, and in accordance with the University's [Brand & Visual Identity Policy](#), all staff and title-holders are required to act in a way that "promotes and protects the brand".

It is thought that if areas within the University community establish their own identity independent of the University, and promote this identity at the expense of the University identity, the value of the University brand is diluted. Therefore, one way that the University protects its brand is by limiting the registration of "University" business names, domain names and trademarks, to only those operating units that can demonstrate "significant commercial or other advantage" by not being associated with the University brand.

Business and domain names are approved on a case-by-case basis by Marketing & Communications, and trade marks by the Council Secretariat.

For more information contact Heidi Todd (Special Projects—Brand Consistency) on 8313 0528.

Key Points

- A business name allows the consumer to identify the person or organisation behind a business name where the business is not trading under its own name
- Registration of a business name is compulsory in Australia and must be completed before the business starts trading
- A business name gives no proprietary rights or exclusive controls over use of the name. Only a trade mark can give you that kind of protection.

For more information, download the *Business Names Registration Act 101* from the Resources page of the Legal & Risk website: www.adelaide.edu.au/legalandrisk/resources.

coles
express a fresh approach



Smoking Bans: New Local Council powers

The University of Adelaide was the first higher education institution in the State to establish an entirely smoke-free environment, by banning smoking on all of its campuses. Now Adelaide Councils have been given stronger legislative powers to prevent smoking in public places which they control.

A recent amendment to the *Tobacco Products Regulation Act 1997 (SA)* bans smoking in all South Australian public playgrounds as well as at public bus stops, tram stops, railway stations, taxi ranks and airports that are either wholly or partially covered by a roof. Under the legislation, Councils also have the ability to apply to the Minister for Mental Health and Substance Abuse, to have certain public areas of their Council, and certain public events held in their Council, declared by the Governor to be smoke free. Smoking in any of these areas will be an offence which attracts a maximum penalty of \$200 or an expiation fee of \$75.

