

ROADSHOW FILMS PTY LIMITED & ORS v iiNET LIMITED

NSD 1802 of 2008

SCHEDULE 1: ANALYSIS OF ACCOUNTS RC-01 TO RC-20 BY REFERENCE TO EX MJW-10 AND CONFIDENTIAL EX MJW-15

A. THE APPLICANTS' ARGUMENT

1. As submitted in para 5-133 ff of Chapter 5 of iiNet's closing outline, the applicants suggest that the reminders to the customers encourage infringing downloading by egging customers on to upgrade when their quota is approaching, or at, its limit.¹ Inherent in that argument is the proposition that the customers are using up their quotas for illegal downloading.
2. However, the data available in the evidence demonstrates that not to be correct.
3. The material in Exs MJW-10 and MJW-15 can be taken together to show, on the (logical) basis that each film or episode connected with each iiNet account was downloaded just once by someone on or through that account, that relatively modest percentage of quota were used for downloading of the applicants' films and episodes over the accounts.

B. METHODOLOGY

4. The table below calculates the amount in megabytes used by the 20 accounts for downloading the applicants' film and episodes, and calculates what percentage of each account's quota that amount was on a monthly basis.
5. This table was prepared from the information apparent from Ex MJW-10 and Confidential Ex MJW-15 by the following method:
 - (a) **Identification of plan and monthly quota** The plans for each of the customer accounts were mostly identified from references made to the plans

¹ ACS 414.

iiNet Closing Outline – Attachment to chapter 5

and associated quota in Confidential Ex MJW-15. Where such information was not apparent in these e-mails, the plans were confirmed by iiNet's records and assumptions were made. This occurred for RC-07 and RC-22. Whether a customer account had a plan upgrade apply during the relevant period (voluntarily or otherwise) has also been taken into account. For simplicity, the table assumes that each customer plan commences on the first day of the month and ends on the last day of the month. In reality, the calculation of monthly quota would vary for each customer account depending on when the broadband service was activated (e.g. the monthly quota for a particular account may be calculated from 16 June 2008 to 17 July 2008 if that account was activated on 16 June 2008).

- (b) **Identification of films** The films were identified from Ex MJW-10 for each customer account. Both Catalogue Films and Identified Films have been taken into account. Yellow highlighting indicates, as has become conventional in this case, Identified Films. Where Ex MJW-10 lists a film as having been made available more than once for a particular customer account, only one instance of that film is, of course, taken to have actually been downloaded (i.e. in the earliest month that the film is listed). That is because whatever the outcome of the debate about “making available online” and the number of infringements, or the debate about transmission infringements, only one copy is downloaded onto the computer that has accessed the Internet via iiNet's facilities. And of course, quota is only used in any substantial way on download – upload quota is used while the film is available for sharing, as all these were, but as the Court knows, only tiny pieces are taken in an upload.
- (c) **Calculation of size of film downloaded** The file size in MB for each film was calculated using the figures under the columns “MB downloaded” and “% of file Downloaded” in Ex MJW-10. In some instances, the percentage of the file shared was less than 100%. If in a particular month a film is listed as only being partially shared (i.e. less than 100%), it is assumed that the film is only partially downloaded and therefore only the relevant proportion of the film was calculated for that particular month. If that film was then subsequently

iiNet Closing Outline – Attachment to chapter 5

listed as being 100% shared, then the remaining proportion was calculated for the subsequent month.

- (d) **Calculation of total MB downloaded per month** The sum was taken of the various titles downloaded in a particular month.
- (e) **Calculation of percentage of quota used by downloading** The percentage of quota used was calculated using the peak quota amount. It is likely that this has provided a higher percentage (ie, supporting the applicants' argument) for those customers on plans that are entitled to more off-peak quota than peak quota, as arguably, most downloads occur during off-peak times.

6. The method is to some degree, therefore, approximate. However the results are sufficiently consistent to illustrate that the applicants' suggestion that these accounts show users straining for quota, and ripe for encouragement by iiNet to upgrade for the purposes of infringing, is entirely misplaced.

C. CALCULATIONS

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
RC-01				
Plan: Naked DSL Home 4 - 30,000 MB peak; 30,000 MB off-peak quota				
Feb 09	The Dark Knight	750 MB	750 MB	2.5%
Jun 09	American Dad S4 E3	177 MB	177 MB	0.59%
RC-02				
Plan: Home 5 - 8,000 MB peak; 15,000 MB off-peak quota				
Feb 09	Cloverfield	760 MB	760 MB	9.5%
RC-03				
Plan: Broadband2 Plus light - 10,000 MB peak; 10,000 MB off-peak quota				
Aug 08	Hellboy (Part download)	177 MB of 700 MB	177 MB	1.77%

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
Feb 09	Wanted	625 MB	625 MB	6.25%
Jun 09	Heroes - S3 E11	346 MB	346 MB	3.46%
RC-04				
Plan: Home 7 - 70,000 MB peak; 90,000 MB off-peak quota				
Jun 08	The Spiderwick Chronicles	625 MB	3,824 MB	5.46%
	American Gangster	900 MB		
	Spider-Man 3	806 MB		
	National Treasure 2 - Book of Secrets	625 MB		
	Blades of Glory	688 MB		
	The Simpsons - S19 E20	180 MB		
Feb 09	Transformers	833 MB	417 MB	0.60%
RC-05				
Plan: Home 3 - 10,000 MB peak; 20,000 MB off-peak quota				
Jul 08	Street Kings	300 MB	300 MB	3.00%
Aug 08	National Treasure 2 - Book of Secrets	675 MB	1,032 MB	10.32%
	Burn Notice - S2 E7	357 MB		
Oct 08	Enchanted	625 MB	2,376 MB	23.76%
	Heroes - S3 E5	351 MB		
	Made of Honour	700 MB		
	Baby Mama	700 MB		
Nov 08	Two and a Half Men - S6 E7	172 MB	524 MB	5.24%
	Family Guy - S7 E3	176 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
	Family Guy - S7 E6	176 MB		
Dec 08	Life - S2 E8	345 MB	689 MB	6.89%
	Heroes - S3 E12	344 MB		
Jan 09	Two and a Half Men - S6 E11	179 MB	179 MB	1.79%
Feb 09	Burn Notice - S2 E12 (Part download)	305 MB of 352 MB	486 MB	4.86%
	Two and a Half Men - S6 E15	172 MB		
	Two and a Half Men - S6 E15 (hash ending 04A3 - part download)	9 MB of 173 MB		
Mar 09	Two and a Half Men - S6 E15 (hash ending 04A3 - remaining download)	164 MB of 173 MB	164 MB	1.64%
Apr 09	Two and a Half Men - S6 E20	172 MB	172 MB	1.72%
Jun 09	How I Met Your Mother - S4 E17	177 MB	522 MB	5.22%
	How I Met Your Mother - S4 E18	173 MB		
	How I Met Your Mother - S4 E5	172 MB		
RC-07				
Plan: Home 5 - 20,000 MB peak; 40,000 MB off-peak quota				
Jun 08	The Simpsons - S19 E17	173 MB	700 MB	3.50%
	The Simpsons - S19 E19	174 MB		
	The Simpsons - S19 E18	174 MB		
	The Simpsons - S19 E20	179 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
<i>Quota upgraded: Home 5 - 25,000 MB peak; 40, 000 MB off-peak quota</i>				
Sep 08	The Deception	714 MB	714 MB	2.86%
RC-08 Plan: Home 5 - 25,000 MB peak; 40,000MB off-peak quota				
Nov 08	Pineapple Express	687 MB	687 MB	2.75%
Dec 08	21	750 MB	750 MB	3.00%
RC-09 Plan: Naked DSL Home 4 - 30,000 MB peak; 30,000 MB off-peak quota				
Oct 08	American Gangster	833 MB	1,493 MB	4.97%
	Stardust	660 MB		
Apr 09	Jumper	660 MB	660 MB	2.2%
RC-10 Plan: Broadband2 Plus medium - 20,000 MB peak; 20,000 MB off-peak quota				
Jun 08	Two and a Half Men - S5 E19	179 MB	179 MB	0.90%
Oct 08	American Dad - S4 E2	172 MB	869 MB	4.35%
	The Simpsons - S20 E2	177 MB		
	How I Met Your Mother - S4 E3	174 MB		
	Family Guy - S7 E2	174 MB		
	The Simpsons - S20 E1	172 MB		
Nov 08	Samantha Who? - S2 E3	172 MB	868 MB	4.34%
	Two and a Half Men - S6 E2	172 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
	Two and a Half Men - S6 E3	173 MB		
	Samantha Who? - S2 E4	179 MB		
	Samantha Who? - S2 E4 (hash ending F88D)	172 MB		
Dec 08	American Dad - S4 E7	172 MB	696 MB	3.48%
	The Simpsons - S20 E7	172 MB		
	Samantha Who? - S2 E7	175 MB		
	My Name is Earl - S4 E9	177 MB		
Jan 09	My Name is Earl - S4 E13	179 MB	1,758 MB	8.79%
	My Name is Earl - S4 E2	172 MB		
	My Name is Earl - S4 E6	173 MB		
	My Name is Earl - S4 E5	175 MB		
	My Name is Earl - S4 E11	173 MB		
	Shutter	714 MB		
	My Name is Earl - S4 E14	172 MB		
Mar 09	American Dad - S4 E9	174 MB	347 MB	1.74%
	Family Guy - S7 E7	173 MB		
<i>Quota upgraded: Home 5 - 25,000 MB peak; 45,000 MB off-peak quota</i>				
Jul 09	Forgetting Sarah Marshall	625 MB	1,250 MB	5.00%
	Pineapple Express	625 MB		
RC-11				
Plan: Home 5 - 25,000 MB peak; 40,000 MB off-peak quota				
Aug 08	Weeds - S4 E10	233 MB	233 MB	0.93%

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
Sep 08	Horton Hears a Who	625 MB	4,164 MB	16.66%
	Stop-Loss	700 MB		
	Forgetting Sarah Marshall	670 MB		
	The Happening	625 MB		
	What Happens in Vegas	711 MB		
	Speed Racer	833 MB		
Oct 08	Gossip Girl - S2 E5	348 MB	1,910 MB	7.64%
	Boston Legal - S5 E2	345 MB		
	Boston Legal - S5 E3	350 MB		
	How I Met Your Mother - S4 E2	179 MB		
	How I Met Your Mother - S4 E3	172 MB		
	Two and a Half Men - S6 E3	173 MB		
	Hancock (Part download)	343 MB of 700 MB		
Nov 08	Wanted	675 MB	3,017 MB	12.07%
	Hancock (Remaining download)	357 MB of 700 MB		
	Gossip Girl - S2 E8	352 MB		
	Tropic Thunder	625 MB		
	Step Brothers	670 MB		
	Boston Legal - S5 E10	338 MB		
Jan 09	Gossip Girl - S2 E13	355 MB	955 MB	3.82%
	Zoolander	600 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
Feb 09	How I Met Your Mother - S4 E11	172 MB	172 MB	0.69%
Mar 09	American Dad - S4 E2	173 MB	348 MB	1.39%
	Family Guy - S7 E7	175 MB		
Apr 09	How I Met Your Mother - S4 E20 (Part download)	141 MB of 177 MB	141 MB	0.56%
May 09	The Simpsons - S20 E1	32 MB of 175 MB	733 MB	2.93%
	The Simpsons - S20 E6	175 MB		
	Gossip Girl - S2 E21	349 MB		
	Family Guy - S7 E15	177 MB		
<i>Plan upgraded: Home 6 - 50,000 MB peak; 70,000 MB off-peak quota</i>				
Jul 09	Ocean's 12	625 MB	625 MB	2.50%
RC-12				
Plan: Home 6: 20,000 MB peak; 40,000 MB off-peak quota				
Aug 08	Wanted	1,380 MB	2,280 MB	11.4%
	Transformers	900 MB		
RC-13				
Plan: Home 5 - 25,000 MB peak; 40,000 MB off-peak quota				
Sep 08	Bones - S4 E3 (Part download)	44 MB of 351 MB	396 MB	1.58%
	Supernatural - S4 E1	352 MB		
Oct 08	Bones - S4 E3 (Remaining download)	307 MB of 351 MB	3,911 MB	15.64%
	Supernatural - S4 E3	357 MB		
	Smallville - S8 E2 (Part download)	350 MB of 351 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
	Chuck - S2 E1 (Part download)	131 MB of 357 MB		
	Bones - S4 E4	352 MB		
	Smallville - S8 E3	347 MB		
	Chuck - S2 E2	357 MB		
	Bones - S4 E6	353 MB		
	Supernatural - S4 E5	346 MB		
	Smallville - S8 E4	347 MB		
	Bones - S4 E7	347 MB		
	Chuck - S2 E3	317 MB of 347 MB		
Nov 08	Bones - S4 E8	357 MB	357 MB	1.43%
Dec 08	Bones - S4 E11	350 MB	350 MB	1.40%
Jan 09	Heroes - S3 E13	357 MB	1,361 MB	5.44%
	My Name Is Earl - S4 E2	172 MB		
	Heroes - S3 E11	357 MB		
	Chuck - S2 E9	357 MB		
	My Name Is Earl - S4 E6 (Part download)	118 MB of 172 MB		
Feb 09	My Name Is Earl - S4 E6 (Remaining download)	54 MB of 172 MB	1,839 MB	7.36%
	24 - S7 E1	357 MB		
	Supernatural - S4 E14	357 MB		
	24 - S7 E3	357 MB		
	24 - S7 E2	357 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
	Chuck - S2 E11	357 MB		
Mar 09	24 - S7 E8	357 MB	1,230 MB	4.92%
	The Simpsons - S20 E1	172 MB		
	My Name Is Earl - S4 E10	172 MB		
	Bones - S4 E15	357 MB		
	My Name is Earl - S4 E13	172 MB		
Apr 09	24 - S7 E10	357 MB	2,307 MB	9.23%
	My Name is Earl - S4 E14	172 MB		
	24 - S7 E15	357 MB		
	Supernatural - S4 E16	357 MB		
	Bones - S4 E18	357 MB		
	Chuck - S2 E17	357 MB		
	Smallville - S8 E12	350 MB		
May 09	Bones - S4 E17	350 MB	1,778 MB	7.11%
	Chuck - S2 E20	357 MB		
	Caprica - S1 E00	714 MB		
	Smallville - S8 E13	357 MB		
Jun 09	Smallville - S8 E14	357 MB	892 MB	3.57%
	Smallville - S8 E16	350 MB		
	Smallville - S8 E19 (Part download)	285 MB of 357 MB		
<i>Quota upgraded: Home 5 - 25,000 MB peak; 45,000 MB off-peak quota</i>				
Jul 09	My Name is Earl - S4 E23	179 MB	2,373 MB	9.49%
	Smallville - S8 E20	357 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
	Smallville - S8 E21	352 MB		
	Smallville - S8 E19 (Remaining download)	72 MB of 357 MB		
	24 - S7 E23	353 MB		
	Supernatural - S4 E22	357 MB		
	24 - S7 E22	346 MB		
	24 - S7 E24	357 MB		
RC-14				
Plan: Home 3 - 10,000 MB peak; 20,000 MB off-peak quota				
Aug 08	Weeds - S4 E10	232 MB	465 MB	4.65%
	Weeds - S4 E11	233 MB		
Sep 08	The Simpsons - S20 E1	172 MB	172 MB	1.72%
Oct 08	American Dad - S4 E2	173 MB	863 MB	8.63%
	Family Guy - S7 E2	175 MB		
	The Big Bang Theory - S2 E3	172 MB		
	How I Met Your Mother - S4 E3	172 MB		
	The Big Bang Theory - S2 E4	172 MB		
Dec 08	Prison Break - S4 E12	357 MB	711 MB	7.11%
	The Big Bang Theory - S2 E11	179 MB		
	The Big Bang Theory - S2 E7	175 MB		
Jan 09	Private Practice - S2 E10	353 MB	1,047 MB	10.47%
	Prison Break - S4 E16	348 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
	The Big Bang Theory - S2 E12	174 MB		
	The Big Bang Theory - S2 E13	172 MB		
Feb 09	How I Met Your Mother - S4 E12	175 MB	704 MB	7.04%
	The Big Bang Theory - S2 E15	172 MB		
	24 - S7 E8	357 MB		
Mar 09	Breaking Bad - S2 E2	353 MB	525 MB	5.25%
	How I Met Your Mother - S4 E18	172 MB		
Apr 09	Private Practice - S2 E19	345 MB	345 MB	3.45%
May 09	How I Met Your Mother - S4 E17	174 MB	353 MB	3.53%
	Family Guy - S7 E16	179 MB		
RC-15				
Plan: Home 5 - 25,000 MB peak; 40,000 MB off-peak quota				
Sep 08	One Tree Hill - S6 E3	357 MB	357 MB	1.43%
Oct 08	How I Met Your Mother - S4 E3	179 MB	1,055 MB	4.22%
	One Tree Hill - S6 E6	357 MB		
	One Tree Hill - S6 E7	345 MB		
	Two And a Half Men - S6 E4	174 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
RC-16				
Plan: Naked DSL Home 4 - 30,000 MB peak; 30,000 MB off-peak quota				
Aug 08	Burn Notice S2 E5	352 MB	352 MB	1.2%
Sep 08	One Tree Hill S6 E1	352 MB	2,467 MB	8.22%
	Prison Break S4 E1	357 MB		
	Bones S4 E1 E2	693 MB		
	Greek S2 E3	357 MB		
	Gossip Girl S2 E2	357 MB		
	Bones S4 E3	351 MB		
<i>Plan upgraded: Naked DSL Home 5 - 40,000 MB peak; 60,000 MB off-peak quota</i>				
Oct 08	Prison Break S4 E3	350 MB	1,057 MB	2.64%
	Bones S4 E4	351 MB		
	Supernatural S4 E1	356 MB		
Nov 08	One Tree Hill S6 E3	341 MB	341 MB	0.85%
RC-17				
Plan: Home 4 - 7,000 MB peak; 14,000 MB off-peak quota				
Oct 08	One Tree Hill - S6 E6	357 MB	357 MB	5.1%
<i>Plan upgraded: Home 5 - 15,000 MB peak; 30,000 MB off-peak quota</i>				
Nov 08	One Tree Hill - S6 E09	347 MB	696 MB	4.64%
	One Tree Hill - S6 E10	349 MB		
Jan 09	Harry Potter and the Order of the Phoenix	792 MB	1,149 MB	7.66%
	One Tree Hill - S6 E13	357 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
Mar 09	One Tree Hill - S6 E17	350 MB	350 MB	2.33%
May 09	One Tree Hill - S6 E24	346 MB	346 MB	2.31%
Jun 09	Gossip Girl - S2 E25	345 MB	345 MB	2.30%
RC-18				
Plan: Home 7 - 60,000 MB peak; 80,000 MB off-peak quota				
Sep 08	Cloverfield	750 MB	1,940 MB	3.23%
	Pirates of the Caribbean: Curse of the Black Pearl	833 MB		
	Supernatural - S4 E1	357 MB		
Oct 08	Smallville - S8 E2 (Part download)	329 MB of 349 MB	1,802 MB	3.00%
	How I Met Your Mother - S4 E3	172 MB		
	Heroes - S3 E4	352 MB		
	Smallville - S8 E4	349 MB		
	How I Met Your Mother - S4 E2	175 MB		
	Friday Night Lights	250 MB of 353 MB		
	How I Met Your Mother - S4 E4	175 MB		
Nov 08	One Tree Hill - S6 E9	351 MB	697 MB	1.16%
	Smallville - S8 E9	346 MB		
Jan 09	One Tree Hill - S6 E13	355 MB	355 MB	0.59%
Feb 09	Supernatural - S4 E14	357 MB	714 MB	1.19%
	Smallville - S8 E14	357 MB		

iiNet Closing Outline – Attachment to chapter 5

Month	Title	Size of film downloaded	Total MB downloaded/month	% of quota used by downloading
Mar 09	One Tree Hill - S6 E18 (Part download)	108 MB of 348 MB	108 MB	0.18%
RC-19				
Plan: Home 5 - 25,000 MB peak; 40,000 MB off-peak quota				
Aug 08	Wanted	1,382 MB	1,382 MB	5.53%
Sep 08	Prison Break - S4 E1	357 MB	357 MB	1.43%
Nov 08	Heroes - S3 E5	357 MB	357 MB	1.43%
RC-22				
Plan: Home 5 - 25,000 MB peak; 40,000 MB off-peak quota				
Aug 08	Cloverfield	625 MB	625 MB	2.50%
Oct 08	Smallville - S8 E3	345 MB	1,759 MB	7.04%
	Smallville - S8 E1	357 MB		
	Supernatural - S4 E3	352 MB		
	Supernatural - S4 E2	348 MB		
	Smallville - S8 E2	357 MB		
RC-44				
Plan: Home 5 - 25,000 MB peak; 40,000 MB off-peak quota				
Jul 08	Street Kings	500 MB	1,214 MB	4.89%
	27 Dresses	714 MB		
Oct 08	Hancock	800 MB	800 MB	3.20%
May 09	The Dark Knight	900 MB	900 MB	3.60%