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Copyright Infringement – Australia

Nintendo settlement gives warning to individual copyright infringers and pirates

Unauthorised Wii games downloads – watch out for copyright infringement

GAME OVER AS AUSTRALIAN COPYRIGHT PIRATE WALKS THE PLANK

A warning was issued to copyright pirates earlier this month when a claim made by the video game company Nintendo Co Ltd (Nintendo) against an Australian individual for illegally copying and uploading to the Internet its new Super Mario Bros Wii game was settled. As a result, the pirate, 24 year old James Burt of Brisbane, will pay AUD\$1.5 million to Nintendo by way of damages to compensate Nintendo for the loss of sales revenue caused by his actions. In addition, the Federal Court has ordered Mr Burt to pay AUD\$100,000 towards Nintendo's legal costs.

In November 2009, Nintendo commenced Federal Court proceedings against Mr Burt. Mr Burt had received an early copy of Nintendo's New Super Mario Bros Wii (apparently after having it sold to him early by mistake) and made it available for illegal download on 6 November 2009, one week before the game's official Australian release.

Super Mario Bros. is one of the best selling video game products of all time. This latest game is the first version released for Nintendo's popular Wii console.

Under Australian law, it is a breach of the Copyright Act to copy and distribute games without the permission of the copyright holder.

Upon receiving notice that the game had been uploaded to the Internet, and through forensic investigation, Nintendo was able to trace the source of the illegal upload and identify Mr Burt as the individual responsible for the upload. Nintendo was then able to obtain a Federal Court Order to search Mr Burt's home and seize relevant materials. By way of the Order, Mr Burt was forced to disclose the whereabouts of all computers, computer discs and electronic information storage devices or systems at the premises. In addition, Mr Burt was ordered to allow access, provide passwords to his social networking sites, email accounts and websites and an independent computer expert that was appointed was permitted to make copies of

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and/or remove any computer hard drive and computer from the premises. Nintendo's forensic investigations revealed that the file that Mr Burt uploaded to the Internet was downloaded 50,000 times over a five day period.

Burt's version of events, as told to the Sydney Morning Herald by his father, is that in order to prove to other gamers on Internet forums and blogs that he'd been able to purchase the game a week ahead of its official release date, Burt uploaded the game file on to the Internet. Burt's father told the SMH that his son was a very quiet and "fanatical gamer who owned every console released since he was a teenager and worked part-time at a freight handling company". Mr Burt snr also said that, once the game was uploaded to the Internet, another party was responsible for making it available to be downloaded by others. Nintendo says that evidence obtained during its investigations revealed that Burt knew that, by uploading a copy of the game to a known hacking website, members of the hacking community would be able to overcome the security measures to allow the game to be hacked and ultimately downloaded.

In a press release issued on 9 February 2010, Nintendo stated that it would "pursue those who attempt to jeopardise our industry by using all means available to it under the law". The action against Mr Burt, and its successful outcome for Nintendo, show that Nintendo is serious about protecting its intellectual property. Nintendo's success, and the advances in technology that assisted Nintendo in identifying Mr Burt, may give heart to other intellectual property rights holders who, like Nintendo, see copyright piracy as a major problem resulting in huge costs to industry.

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