

# **New Zealand judge defers bail decision on Megaupload arrests**

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A New Zealand judge yesterday delayed his decision until later in the week on bail applications by Kim Dotcom, the founder of Megaupload internet file-sharing site, and three associates who face extradition on US copyright charges. The men were arrested in FBI-led raids on January 20.

Dotcom (Kim Schmitz) was seized at a rented mansion north of Auckland, where he was living with his family. The 39-year-old German holds Hong Kong and New Zealand residency. Also arrested were Bram van der Kolk, a Dutch-born New Zealand resident who oversees programming for the site, and German citizens Mathias Ortmann, the site's co-founder and chief technical officer, and Finn Batato, Megaupload's chief marketing officer. Three other Megaupload personnel are still being sought.

Lawyers representing the US government opposed bail when the men appeared in court after their arrest. New Zealand prosecutors and police did the same, asserting that Dotcom posed a flight risk "at the extreme end of the scale" due to his resources, a previous flight from Germany, his possession of "multiple aliases" and access to transport including a helicopter. Prosecutor Anne Toohey claimed there was also a significant risk of Dotcom "offending" while on bail, citing his "refusal to comply" with his arrest.

Dotcom's lawyer Paul Davison rejected the prosecution's allegations, and said his client emphatically denied accusations of wrongdoing. Earlier, he described Friday's raid as "incredibly aggressive and unnecessarily so."

Megaupload.com was a "cyberlocker" website that

allowed users to upload and store large files. It claimed to have 150 million registered users, 50 million daily visitors and 4 percent of the total traffic on the Internet.

The move to close down Megaupload is part of a global campaign by the US government, at the behest of media conglomerates, to criminalise file-sharing operations. It was initiated by the Justice Department's Task Force on Intellectual Property, established by President Obama's attorney general, Eric Holder.

The US government claims that Megaupload was the hub of an "international organised criminal enterprise" responsible for online "piracy" of copyrighted movies, television programs, music, software and books. Allegedly, the site generated more than \$US175 million in "criminal proceeds" and caused more than \$US500 million in "harm" to copyright holders.

This is among the largest criminal copyright cases ever brought by the US. The January 5 indictment against Megaupload, by a Virginia Grand Jury, included charges of engaging in a racketeering conspiracy, conspiring to commit copyright infringement, conspiring to commit money laundering and criminal copyright infringement. Dotcom and his associates could face cumulative prison terms of 55 years.

The arrests were part of an international operation led by the FBI, with the active involvement of government authorities across nine countries. Law enforcement agencies executed more than 20 search warrants in the United States and internationally, seized \$50 million in assets, and targeted sites in Virginia, Washington DC, the Netherlands and Canada, where Megaupload has

servers.

New Zealand police officer Detective Inspector Grant Wormald told a media briefing that the arrests had been a “complex operation” planned with the “help” of three FBI agents and an agency lawyer who had flown to New Zealand the previous week. Preparations for the crackdown had been underway for nearly a year, since the US administration lodged a request for “mutual legal assistance” with the National Party-led government of Prime Minister John Key in early 2011.

The raid on Dotcom’s residence was timed for the day before his birthday because the FBI had assessed that it offered the best opportunity to “net” his associates. About 15 family members were present when police descended on the mansion. Nine other locations around the country were also raided, in an operation that involved some 80 police, including officers from the Organised and Financial Crime Agency, two marked helicopters and the elite Armed Offenders’ Squad.

The crackdown on Megaupload has sparked a combination of fear and anger internationally. Since Friday’s raids, sites such as Uploaded.to and Filesonic have curtailed access or closed down their file-sharing features out of concern they could be next targeted. The internet activist group Anonymous retaliated after the arrests with what it called “the single largest internet attack in its history,” hacking and temporarily bringing down the websites of Universal Music, the US Department of Justice and the FBI.

American legal experts questioned the charges against the men. Jeff Ifrah, an attorney who co-chairs the American Bar Association’s criminal justice section, told *InformationWeek*: “The government seems to have ignored the fact that other popular content-sharing sites have successfully defended themselves in civil cases by using the safe harbour provisions of the Digital Millennium Copyright Act, which provide immunity to a site that promptly takes down infringing content.”

Ifrah described the charges against Dotcom and the others as “astonishing” and “more suitable to the type

of steps that the government takes against an organised-crime enterprise dedicated to murder, theft, and racketeering.”

The New Zealand political and media establishment expressed no such concerns. It has given blanket endorsement to the National government’s collaboration in the Obama administration’s operation. Media coverage has concentrated exclusively on Dotcom’s alleged wealth and lavish lifestyle. Labour Party and other opposition politicians have refused to raise any questions relating to the democratic and legal rights of the four arrested men. Instead, they have condemned the Key government over the fact that Dotcom had gained New Zealand residency.

Dotcom, who had Internet-related convictions from his native Germany, was able to settle in Auckland by investing \$10 million in New Zealand government bonds in 2010. Winston Peters, the parliamentary leader of the right-wing anti-immigrant NZ First party, called for an immediate inquiry into how Dotcom, whom he labelled “a notorious computer hacker,” was allowed permanent residence under the special wealthy investor category. Labour immigration spokeswoman Darien Fenton agreed, saying that millionaires of “dubious” character should not be able to bypass New Zealand’s “good character” test.

In the extradition proceedings, the prosecutors are required to establish that the charges faced by the accused in the US would also apply in New Zealand. A great deal rests on whether the four men are granted bail as the complex case could take a protracted time to resolve. If the District Court rules the men should be extradited, the matter will be referred to the Key government’s Justice Minister for the final decision.



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