

# New Zealand court refuses bail in Megaupload case

John Braddock  
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New Zealand judge David McNaughton refused a bail application last Wednesday for 38-year-old Kim Dotcom (Kim Schmitz), the founder of file-sharing internet site Megaupload. Dotcom and three of his colleagues—Bram van der Kolk, Finn Batato, and Mathias Ortmann—were arrested on January 20 at the behest of the United States Justice Department in an FBI-coordinated police raid on a north Auckland residence. They face extradition to stand trial in the US on a raft of alleged offences.

The arrests are part of a global campaign by the US government, at the behest of transnational media conglomerates, to close down Megaupload and criminalise file-sharing operations more broadly.

US authorities allege that Dotcom's company breached copyright laws and cost copyright owners more than \$US500 million, in what has been sensationally dubbed the "Mega Conspiracy." The charges include conspiracy to commit racketeering, money laundering and copyright infringement. The accused have denied any wrongdoing and insisted that Megaupload took the required action to prevent illegal file-sharing.

Dotcom was remanded in custody after McNaughton ruled he posed a significant flight risk, with the "financial resources to obtain forged identity or travel documents and to arrange transport out of the country by covert means." McNaughton declared that Dotcom's unlawful possession of a firearm suggested "a level of criminality" that could "extend to exploiting criminal connections to obtain false travel documents and leave the country undetected."

The opening sentence of McNaughton's judgment emphasised Washington's role in the case. The US government was, he said, "seeking to extradite Mr Kim Dotcom," following a lengthy FBI investigation that began in March 2010.

Dotcom's lawyer, Paul Davison had insisted there was "no risk whatsoever" of his client seeking to leave New Zealand and that there was no evidence he had any criminal connections. Davison noted that Dotcom was living in the country with his pregnant wife and wanted to retain residency and that "all of his assets have been frozen, all of his resources have been taken."

McNaughton conceded that the US authorities had not presented any evidence in support of their substantive case against Dotcom. Nevertheless, the businessman will now be held until February 22, when extradition papers are expected to be filed. In a separate hearing, bail for Ortmann was also denied. McNaughton said there was a \$2.5 million discrepancy in Ortmann's income accounts, according to the FBI, which had to be accounted for. Batato and van der Kolk were granted bail (subject to electronic tagging), but will remain in custody until their homes are assessed for suitability for monitoring.

While the bulk of media coverage has justified Dotcom's treatment with a lurid focus on his wealth and alleged "playboy" lifestyle, concerns are beginning to be raised in New Zealand over the extent of the collaboration by the government, the media and the courts in the US-directed operation.

The *Waikato Times* noted last week that Megaupload was used legitimately by hundreds of thousands of

clients around the world and the FBI “did not distinguish between legal and illegal content when it closed the site.” It quoted one web commentator who said a shadow had been cast over all cloud file-storage services.

Gordon Campbell, a New Zealand journalist, wrote on his online blog last week that keeping the men in custody for the full extradition process would be a “totally disproportionate infringement of the basic right of accused persons to liberty,” until the charges against them are proved.

Campbell placed the US-led operation against online “piracy” in the context of the expansion of state power by the Bush and Obama administrations since the September 11, 2001 terrorist attacks, which has involved systematic denial of basic democratic rights. Campbell wrote that the New Zealand courts “should not be serving as a dutiful helpmate of such a system.”

Theresa Clifford, a digital strategy advisor, opposed the actions of the US and New Zealand authorities. “The US government has shut down and seized the assets of a business based in a different continent without a trial or going before a court. Megaupload has been presumed guilty before any evidence has been considered or any jury asked to review the case,” she wrote.

Russell Brown, a commentator on the online industry, noted that the same US government powers deployed against Megaupload could be used to shut down YouTube, MediaFire, Rapidshare, YouSendIt and other prominent sites.

Concern has also been raised internationally, including in business and legal circles. *Information Week* noted that users’ inability to access the content that they had legally stored on Megaupload “has been leading to a populist backlash against the takedown.” Spanish privacy attorney Carlos Sanchez Almeida, based in Barcelona, said the closure of Megaupload may have violated users’ privacy rights under Spanish law and has threatened to file suit.

The New Zealand political establishment has

continued to give unquestioning endorsement to the National Party-led government’s collaboration with the Obama administration’s operation.

Labour Party and other opposition politicians have made no criticism of the fact that the accused’s rights are being flagrantly trampled at the behest of powerful financial and corporate interests. Instead, they have attacked the government from the right for allowing Dotcom, who has Internet-related convictions from his native Germany, to gain New Zealand residency.

The only question that Prime Minister John Key has been required to answer over the entire affair has been why one government department had approved Dotcom’s residency while another had declined his applications to purchase property on the grounds he failed “good character” assessments.



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