

New Zealand court ruling a setback to the US Megaupload case

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The New Zealand High Court declared on August 16 that the United States government must prove it has the evidence to justify an extradition case against Kim Dotcom, founder of the Megaupload internet file sharing site. Dotcom, a German-born New Zealand resident, and three business associates, were arrested in an FBI-led raid on his Auckland home in January and charged with copyright infringement, racketeering and money laundering.

The US government is mounting a global campaign, at the behest of the media conglomerates, to criminalise file-sharing operations. It was initiated by the Justice Department's Task Force on Intellectual Property, established by President Barack Obama's attorney general, Eric Holder. Holder claimed that Megaupload was the hub of an "international organised criminal enterprise" responsible for online "piracy" of copyrighted movies, television programs, music, software and books.

Justice Helen Winkelmann, the Chief High Court Judge, had already ruled in July that the warrants used in the raid were illegal because they were too broad and did not properly describe Dotcom's alleged offences. She also ruled it was unlawful for copies of Dotcom's computer data to be taken offshore by the FBI.

Last week's decision, also by Winkelmann, was a further setback for both the US and New Zealand authorities. Winkelmann upheld an earlier ruling that the US must reveal the information it has gathered about Dotcom that forms the basis of its case against him. The US had challenged the initial order to force disclosure, made by District Court Judge David Harvey, saying it was unprecedented in New Zealand law.

NZ Crown lawyers, acting for the US government, claimed it did not have to disclose the information, as it

needed only to prove that its case was strong enough for a jury to reasonably convict. Winkelmann, however, said Dotcom had a legal right to see the evidence on which he was to be extradited. Without it, someone in his position would be "significantly constrained" in participating in the extradition hearing, while the United States would have a "significant advantage" by having access to the evidence.

The judge said the extradition court had the same character as a committal process, which would see evidence weighed before proceeding to a full criminal trial. As part of that process, she said, it was open to the defence to present its own evidence, test the prosecution's claims and examine witnesses.

Winkelmann found that the "record of case" that laid out the argument for extradition did not meet the legal requirements. The judge said the FBI was under an "obligation of candour" to provide any evidence that could affect the court's judgment on whether the extradition threshold had been met, yet no information had been provided to support the FBI's claims.

One of Dotcom's lawyers, Willie Akel, described the decision as a further victory for the Dotcom camp. "This evidence is important and it'd be difficult to proceed without it," he said.

Evidence provided in the week-long hearing underscored both the fundamentally anti-democratic character of the operation against Dotcom, and the complicity of the New Zealand government. The raid was carried out by 80 police officers, including the elite "anti-terrorist" Special Tactics Group (STG) and the Armed Offenders Squad.

Under cross examination, Detective Inspector Grant Wormald, who oversaw the operation for the NZ Organised and Financial Crime Agency (Ofcanz), revealed the involvement of a secret top-level New

Zealand government organisation, which he refused to name, in its planning, along with US authorities. As the operation unfolded, the most senior US law enforcement officer for cyber crime, Jay Prabhu, was in the Auckland Crown Law office watching a video feed. Wormald refused to divulge where the video feed originated from.

Footage obtained by the media showed that the dawn raid was akin to a paramilitary operation, with helicopters, multiple vehicles and heavily-armed police used to storm the property. Officers forced entry to the house. Wormald claimed that this was all necessary to prevent evidence being deleted. Police claimed that officers faced the threat of injury or death if the specialist armed squads were not used. Under questioning, however, police representatives could not point to any information supporting this fanciful claim.

Dotcom countered that the FBI had the technical means to disable the Megaupload servers even before the raid. Moreover, he told the court, he would have co-operated with police had he been asked. Instead, he had been assaulted, pushed to the floor and stood on. His pregnant wife had been refused help to obtain medical attention. Police denied the claims, claiming that Dotcom had been injured by accident.

In response to the police testimony, Dotcom released a Twitter message saying: “After reliving the raid in the court room I am angry. So many lies. There was no justification for this! All just a big show for the US!”

A litany of errors, fabrications and prejudicial conduct by the authorities was exposed during the hearing. Police claimed Dotcom was in possession of a device which the FBI said could delete servers around the world. No such device was found. The operations manager who approved the raid had no legal authority to do so. Police had rejected the option of a more low-key arrest outside Dotcom’s home, in order to delay his ability to contact his lawyer. A police “threat assessment” form had been completed with misleading information and had not been appropriately verified.

Dotcom’s lawyer, Paul Davidson, denounced the “disgraceful performance” of the police. “Those responsible for planning are shown to be deficient in their judgement to a serious degree,” he said.

The judgement came the same day Dotcom’s legal team appeared again in the High Court asking that more money be released from his frozen accounts so he could

pay his legal fees. His team estimated that his costs would run to nearly \$NZ5 million. The extradition hearing, set down for this month, has now been pushed back into next year.

Despite every unfavourable court ruling, the US government is proceeding with the case. The measures taken against Dotcom and Megaupload are a warning of the lengths to which the US administration and its allies will go to establish control over the Internet. Further, they constitute an assault on basic democratic and legal rights that sets a dangerous precedent for similar police actions against workers and youth in the future.



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