

Justice Department Charges Leaders of Megaupload with Widespread Online Copyright Infringement

WASHINGTON – Seven individuals and two corporations have been charged in the United States with running an international organized criminal enterprise allegedly responsible for massive worldwide online piracy of numerous types of copyrighted works, through Megaupload.com and other related sites, generating more than \$175 million in criminal proceeds and causing more than half a billion dollars in harm to copyright owners, the U.S. Justice Department and FBI announced today.

This action is among the largest criminal copyright cases ever brought by the United States and directly targets the misuse of a public content storage and distribution site to commit and facilitate intellectual property crime.

The individuals and two corporations – Megaupload Limited and Vestor Limited – were indicted by a grand jury in the Eastern District of Virginia on Jan. 5, 2012, and charged with engaging in a racketeering conspiracy, conspiring to commit copyright infringement, conspiring to commit money laundering and two substantive counts of criminal copyright infringement. The individuals each face a maximum penalty of 20 years in prison on the charge of conspiracy to commit racketeering, five years in prison on the charge of conspiracy to commit copyright infringement, 20 years in prison on the charge of conspiracy to commit money laundering and five years in prison on each of the substantive charges of criminal copyright infringement.

The indictment alleges that the criminal enterprise is led by Kim Dotcom, aka Kim Schmitz and Kim Tim Jim Vestor, 37, a resident of both Hong Kong and New Zealand. Dotcom founded Megaupload Limited and is the director and sole shareholder of Vestor Limited, which has been used to hold his ownership interests in the Mega-affiliated sites.

In addition, the following alleged members of the Mega conspiracy were charged in the indictment:

- Finn Batato, 38, a citizen and resident of Germany, who is the chief marketing officer;
- Julius Bencko, 35, a citizen and resident of Slovakia, who is the graphic designer;
- Sven Echternach, 39, a citizen and resident of Germany, who is the head of business development;
- Mathias Ortmann, 40, a citizen of Germany and resident of both Germany and Hong Kong, who is the chief technical officer, co-founder and director;
- Andrus Nomm, 32, a citizen of Estonia and resident of both Turkey and Estonia, who is a software programmer and head of the development software division;
- Bram van der Kolk, aka Bramos, 29, a Dutch citizen and resident of both the Netherlands and New Zealand, who oversees programming and the underlying network structure for the Mega conspiracy websites.

Dotcom, Batato, Ortmann and van der Kolk were arrested today in Auckland, New Zealand, by New Zealand authorities, who executed provisional arrest warrants requested by the United States. Bencko, Echternach and Nomm remain at large. Today,

law enforcement also executed more than 20 search warrants in the United States and eight countries, seized approximately \$50 million in assets and targeted sites where Megaupload has servers in Ashburn, Va., Washington, D.C., the Netherlands and Canada. In addition, the U.S. District Court in Alexandria, Va., ordered the seizure of 18 domain names associated with the alleged Mega conspiracy.

According to the indictment, for more than five years the conspiracy has operated websites that unlawfully reproduce and distribute infringing copies of copyrighted works, including movies – often before their theatrical release – music, television programs, electronic books, and business and entertainment software on a massive scale. The conspirators' content hosting site, Megaupload.com, is advertised as having more than one billion visits to the site, more than 150 million registered users, 50 million daily visitors and accounting for four percent of the total traffic on the Internet. The estimated harm caused by the conspiracy's criminal conduct to copyright holders is well in excess of \$500 million. The conspirators allegedly earned more than \$175 million in illegal profits through advertising revenue and selling premium memberships.

The indictment states that the conspirators conducted their illegal operation using a business model expressly designed to promote uploading of the most popular copyrighted works for many millions of users to download. The indictment alleges that the site was structured to discourage the vast majority of its users from using Megaupload for long-term or personal storage by automatically deleting content that was not regularly downloaded. The conspirators further allegedly offered a rewards program that would provide users with financial incentives to upload popular content and drive web traffic to the site, often through user-generated websites known as linking sites. The conspirators allegedly paid users whom they specifically knew uploaded infringing content and publicized their links to users throughout the world.

In addition, by actively supporting the use of third-party linking sites to publicize infringing content, the conspirators did not need to publicize such content on the Megaupload site. Instead, the indictment alleges that the conspirators manipulated the perception of content available on their servers by not providing a public search function on the Megaupload site and by not including popular infringing content on the publicly available lists of top content downloaded by its users.

As alleged in the indictment, the conspirators failed to terminate accounts of users with known copyright infringement, selectively complied with their obligations to remove copyrighted materials from their servers and deliberately misrepresented to copyright holders that they had removed infringing content. For example, when notified by a rights holder that a file contained infringing content, the indictment alleges that the conspirators would disable only a single link to the file, deliberately and deceptively leaving the infringing content in place to make it seamlessly available to millions of users to access through any one of the many duplicate links available for that file.

The indictment charges the defendants with conspiring to launder money by paying users through the sites' uploader reward program and paying companies to host the infringing content.

The case is being prosecuted by the U.S. Attorney's Office for the Eastern District of Virginia and the Computer Crime & Intellectual Property Section in the Justice

Department's Criminal Division. The Criminal Division's Office of International Affairs, Organized Crime and Gang Section, and Asset Forfeiture and Money Laundering Section also assisted with this case.

The investigation was initiated and led by the FBI at the National Intellectual Property Rights Coordination Center (IPR Center), with assistance from U.S. Immigration and Customs Enforcement's Homeland Security Investigations. Substantial and critical assistance was provided by the New Zealand Police, the Organised and Financial Crime Agency of New Zealand (OFCANZ), the Crown Law Office of New Zealand and the Office of the Solicitor General for New Zealand; Hong Kong Customs and the Hong Kong Department of Justice; the Netherlands Police Agency and the Public Prosecutor's Office for Serious Fraud and Environmental Crime in Rotterdam; London's Metropolitan Police Service; Germany's Bundeskriminalamt and the German Public Prosecutors; and the Royal Canadian Mounted Police – Greater Toronto Area (GTA) Federal Enforcement Section and the Integrated Technological Crime Unit and the Canadian Department of Justice's International Assistance Group. Authorities in the United Kingdom, Australia and the Philippines also provided assistance.

This case is part of efforts being undertaken by the Department of Justice Task Force on Intellectual Property (IP Task Force) to stop the theft of intellectual property. Attorney General Eric Holder created the IP Task Force to combat the growing number of domestic and international intellectual property crimes, protect the health and safety of American consumers, and safeguard the nation's economic security against those who seek to profit illegally from American creativity, innovation and hard work. The IP Task Force seeks to strengthen intellectual property rights protection through heightened criminal and civil enforcement, greater coordination among federal, state and local law enforcement partners, and increased focus on international enforcement efforts, including reinforcing relationships with key foreign partners and U.S. industry leaders.