



Indictments of Megaupload Are a Greater Threat to Web Users Than Piracy

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In last week's Megaupload indictment, the U.S. government has raised the debate over copyright infringement on the Web to a whole new level – treating the operators of one of the most popular sites on the Internet as if they were part of organized crime.

On January 19, 2012, a federal grand jury in the Eastern District of Virginia charged executives, founders and employees of Megaupload.com, one of the leading file-hosting services on the Web, with copyright infringement, conspiracy to commit racketeering and money laundering. The U.S. Department of Justice is charging that Megaupload.com caused over \$500 million in lost revenue from “pirated” content such as music and movies. In addition, the government seized Megaupload's domain names and shut down all of its sites, contending that Megaupload is an organization dedicated to copyright infringement.

These actions, more suitable to the type of steps that the government takes against an organized-crime enterprise dedicated to murder, theft and racketeering, are astonishing. 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 harbor provisions of the Digital Millennium Copyright Act, which provide immunity to a site that promptly takes down infringing content.

Among those charged in the indictment were Megaupload founders Kim Dotcom and Mathias Ortmann, chief marketing and sales officer Fin Batato,



and lead programmer Bram Van der Kolk. All four were arrested in Auckland, New Zealand. On Monday, the Auckland district court denied bail, making way for extradition proceedings that will likely be contested. In addition to the arrests, approximately 20 search warrants have also been executed within the United States and in eight additional countries. The Eastern District of Virginia has called for the seizure of 18 domain names associated with the site, and about \$50 million in assets and targeted sites have been seized thus far.

The indictment is riddled with inconsistencies. On the one hand, the government asserts that Megaupload is not entitled to use the safe harbor provisions. According to the government, everything on the site was doctored to create a veneer of legitimacy, while its employees knew full well that the site's main use was to distribute infringing content. Yet the government readily admits that it has Megaupload emails talking about using U.S. courts and lawyers to file actions against other "pirate" sites and that the site did take down illegal content and build an abuse tool. To top it all off, many big-name artists support the site, as evidenced by an entirely legal video posted on YouTube, which Megaupload tried to save in U.S. courts from takedown requests.

The 72-page indictment is not some knee-jerk reaction to the ongoing protests of proposed misguided legislation that would strengthen protections against piracy at severe costs to the Internet. This action was clearly in the works for some time. But the filing of a criminal case against one of the most popular sites in the world is remarkable to say the least, given that other popular content-sharing sites have never faced criminal charges for allegedly facilitating piracy. Indeed, when these other sites have been targeted in well-financed civil cases, they have successfully asserted defenses.

When Viacom filed its lawsuit against YouTube in 2007 based on charges that YouTube and its parent, Google were engaging in "massive intentional



copyright infringement,” the government did not arrest YouTube or Google executives. In fact, the U.S. District Court for the Southern District of New York held that YouTube was shielded from liability in that case by the safe harbor provisions.

Similarly, when IO Group, Inc. filed a complaint against Veoh Networks for copyright infringement, the U.S. District Court for the Northern District of California held that Veoh’s video-sharing website was entitled to the protection of the safe harbor provision. In both cases, U.S. courts recognized that simply providing access to content did not equate to engaging in infringing activities.

Megaupload, an online storage and web hosting service site, counts itself in the same category as YouTube and Veoh — merely acting as a hosting company that provides access to content. By invoking the full wrath of U.S. criminal laws, the government is using tools that were never meant for this situation – and is potentially doing incalculable harm to thousands of Internet users and to the integrity of the Web itself.

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