

April 18, 2012

VIA EMAIL AND FAX

Jay V. Prabhu
Chief, Cybercrime Unit, Assistant United States Attorney
United States Attorney's Office, Eastern District of Virginia
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314

Re: *United States v. Kim Dotcom, et al., Criminal Case No. 1:12-cr-3*

Dear Jay:

We are writing pursuant to Judge O'Grady's instruction at the April 13, 2012 hearing that the parties meet and confer regarding the disposition of the 1,103 servers previously leased to Megaupload Limited and currently in the possession of Carpathia Hosting, Inc. (hereinafter the "Mega Servers"). We left you a voicemail yesterday early afternoon, April 17, 2012, advising that Judge Anderson has indicated his availability for a meet and confer session on Thursday, April 26, 2012 at 1:00 p.m. We have not yet received a response from you. Please let us know as soon as possible whether that date and time work for the Government, as we all need to arrange our schedules and Judge Anderson has been kind enough to fit us into his quite busy docket. This is the only time Judge Anderson has available and we hope to secure it before the weekend.

In anticipation of our session with Judge Anderson, we wanted to provide Megaupload's proposal for the handling of the Mega Servers. Our hope is that we can reach a mutually agreeable resolution that, consistent with Judge O'Grady's concerns about preserving the evidence for trial, (1) preserves the data contained on the Mega Servers and enables access by defendants for purposes of preparing their defense; and (2) installs safeguards sufficient to address any concerns that the Government may have about possible illicit use of data on the Mega Servers.

To this end, Megaupload proposes the following:

- The Government will assume custody and control of the Mega Servers from Carpathia and will assume the costs of preserving and maintaining the Mega Servers.

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- With respect to the defendants in this case, access to the data hosted on the Mega Servers will be limited to the defendants, defendants' attorneys and their consultants retained for purposes of assisting the defense.
- Any use of the data on the Mega Servers by the defendants and their representatives shall be limited to assisting defendants in connection with criminal or civil litigation and legal compliance, such as compliance with lawful subpoenas, and for no other purpose absent court order.
- Any data access and imaging/copying will be conducted in a forensically-sound, read-only manner, and performed by third-party computer forensic examiners who have been advised of and have agreed to comply with the above.
- No electronically stored materials may be materially altered, wiped, deleted, or destroyed in any manner.
- The above shall be entered as a stipulated electronic evidence preservation order—to be negotiated, memorialized, and agreed to by the parties and then entered by the Court—that may thereafter be modified only for good cause shown to the satisfaction of the Court.

Please let us know what the Government's position is on the above-stated proposal. We would appreciate a written response by 5:00 p.m. on Friday, April 20, 2012. Once we have received your response, we can discuss the matter further. For our part, we will be glad to consider a reasonable counter-proposal the Government may offer assuming it is consistent with preserving the evidence and ensuring that the defendants have reasonable access to the servers to help them prepare for trial. Because a similar problem exists with servers currently maintained by Leaseweb in the Netherlands, we hope and envision that the ultimate solution for preservation of the servers held by Carpathia can likewise be applied to those in Leaseweb's possession.

Please feel free to contact us at any time. You can reach William Burck at (202) 538-8120 or (202) 538-1868. We look forward to your response and to working with you on reaching a workable solution that serves the interests of justice.

Sincerely,

William A. Burck /sh

William A. Burck
Quinn, Emanuel, Urquhart & Sullivan LLP

Ira P. Rothken /sh

Ira P. Rothken
Rothken Law Firm

cc: Marc J. Zwillinger, counsel for Carpathia Hosting, Inc.
Julie P. Samuels, counsel for Kyle Goodwin
Paul M. Smith, counsel for the Motion Picture Association of America
W. Clifton Holmes, counsel for Valcom and Microhits