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Kim Dotcom's next step:
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Fisher, 2017



Kim Dotcom says the High Court ruling which upholds his extradition will lead to the case against him being scrapped. Photo / Richard Robinson



By: David Fisher

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Kim Dotcom has outlined a fresh legal strategy which targets what he says is a fundamental error which occurred at the very moment he was arrested five years ago.

He says the arrest warrant used to pin him in place for the extradition process is bogus after a new judgment ruled that there was no criminal aspect to online copyright infringement.

"This is a major development in this case," said Dotcom. "This is the biggest focus now moving forward."

The original arrest and search documentation for the Dotcom raid cite Section 131 of the Copyright Act as the alleged criminal offending justifying the police presence and actions.

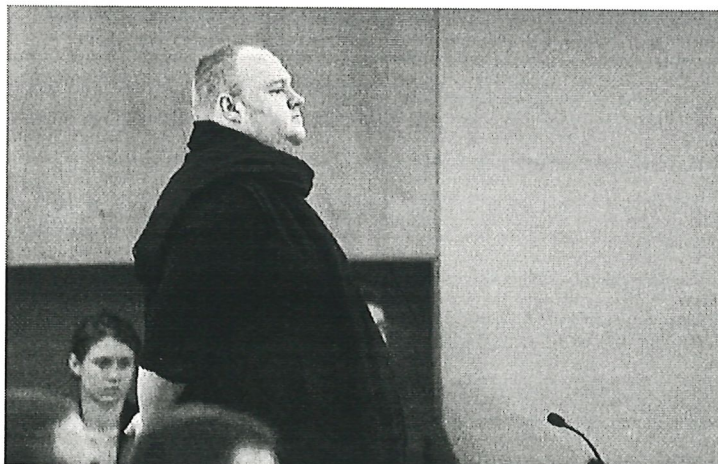
The new High Court judgment released this week has said this is not a crime.

Justice Murray Gilbert's judgment said: "Online communication of copyright protected works to the public is not a criminal offence in New Zealand under s 131 of the Copyright Act".

Justice Gilbert said he had "accepted one of the main planks" of his case that there was no criminal liability for online copyright infringement.

The judgment also upheld an earlier ruling that Dotcom and the three other Megaupload accused were eligible for extradition, accepting the argument that the way Megaupload handled copyrighted works was a fraud.

For extradition to work, the country wanting to deport an alleged criminal must show there are equivalent crimes in New Zealand to those the accused will face.



Kim Dotcom appearing in Auckland District Court for the decision on his extradition in December 2015. Photo / Nick Reed

In the Dotcom case, the underlying crime has been one of copyright violation which the court now says is not a criminal charge.

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The finding means Dotcom is still locked into extradition to the United States, subject to further appeals, but he says Gilbert's ruling makes a redundancy of the rest of the case because it has come undone from the start.

"They made a massive mistake in the outset of the case that is going to eliminate the entire case. They got the law wrong.

"We are now working full steam to get a judicial review on all these actions that were taken against me, my family and my co-defendants."

Dotcom expected the new court action to be filed with the High Court by April. It would seek a ruling that the case against him and the three other accused - Finn Batato, Bram van der Kolk and Mathias Ortman - was unsound because Dotcom had been arrested on a civil matter.



Kim Dotcom with ex-wife Mona in a helicopter. The entrepreneur has blamed pressure from the case impacting on their relationship. Photo / Supplied

"The raid, the search and the arrests were all based on the Copyright Act and what the judge has now done is give us a really powerful tool to attack again where it started.

"If I win on this, the whole thing falls over. And we can now not lose on that."

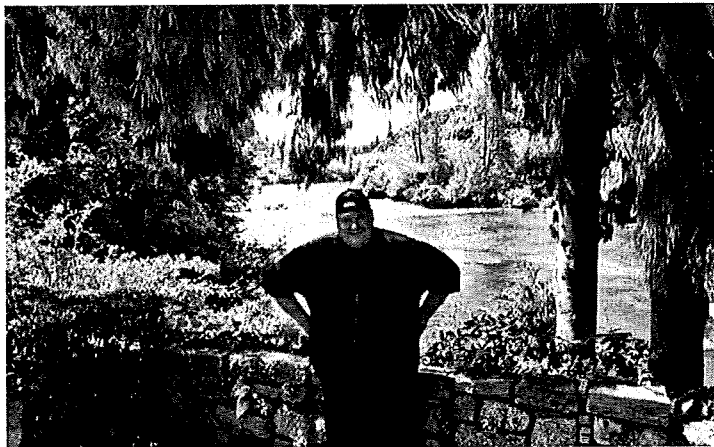
The documentation which led to the arrest of Dotcom and his co-accused relied on the Copyright Act and money-laundering in its argument to the judge who signed it off.

Dotcom said money-laundering was "never a stand-alone charge".

"It is always connected to the underlying crime. Obviously [there is] no money-laundering without criminal copyright infringement."

Dotcom said he believed the Crown changed the language it was using in court in 2013 to shift from speaking about "copyright violation" and to start speaking of fraud.

"They knew for years they had ***** up. I think New Zealanders deserve to know that was part of the case.



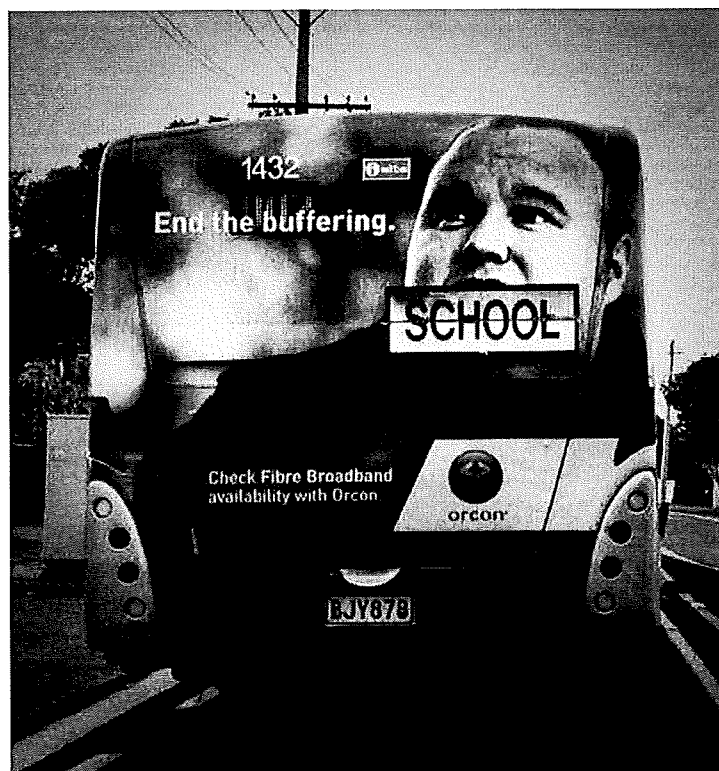
Kim Dotcom at Huka Lodge before the 2014 election. Photo / Supplied

"The entire raid was for civil copyright infringement and that is in their own documents. I was in jail for a month for a civil copyright claim, that is what the arrest warrant said. This thing will go all the way to the Supreme Court itself."

A spokeswoman for Attorney-General Chris Finlayson would not say whether he had been briefed on the decision or whether there was any ministerial oversight of the Dotcom case.

"Crown Law is acting for the Attorney-General in accordance with the Cabinet Manual and constitutional practice. As this matter could still be subject to an appeal, it is not appropriate for the Attorney-General to comment further."

Crown Law Office refused to comment, as did police. A police spokeswoman said: "At this stage we are not in a position to comment further as the matter remains before the courts."



Kim Dotcom found himself on the back of a bus during an advertising deal with ISP Orcon. Photo / Supplied

President of the Criminal Bar Association, Len Andersen, said there appeared to be some "inconsistency" and it could lead to a judicial review of the original documents.

Alternately, he said the Court of Appeal might also incorporate the issue into any consideration it gave the case.

"If you're found to be wrong, there is a question as to how that impacts on the next step."

Andersen said the warrants would have been approved by a judge based on information supplied by police or the Crown: "This wouldn't have been an issue that was obvious to the judge."

The first year of the Megaupload case was excruciating for the Government, with Crown Law exposed over using the wrong restraining order for Dotcom's assets, the police under question for the way it obtained the search warrant and the GCSB spy agency busted for illegal surveillance of the entrepreneur on the National Security Agency's systems.

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