

## Megaupload shut down by US authorities

26/01/2012 by [Penny Catley](#), [Deborah Kessell-Haak](#), and [Thomas Huthwaite](#)

On 19 January, United States authorities shut down [Megaupload.com](#), one of the world's largest digital storage and file sharing sites, charging several people, including a number of New Zealand residents, with federal crimes including racketeering, money laundering and criminal copyright violations. In the wake of the shutdown, similar service providers, such as FileSonic, have nervously disabled all services allowing users to download each others' files.

Megaupload offered an online storage, 'digital locker' or 'cloud' service where users uploaded digital content to servers controlled by Megaupload. So long as internet access is available, users have access to the stored content, enabling them to easily share that content between devices or with other parties. Everyone who has lost digital photographs or who has been forced into emailing themselves large files in order to share information with another computer or device will understand how useful this cloud technology can be when used for legitimate purposes.

Other mainstream providers such as Google Inc., Apple Inc. and Amazon.com, Inc. offer very similar services. So what is all the fuss and publicity about?

Essentially the fuss concerns revenue. Various estimates place the cost to United States copyright holders at more than \$500 million in

revenue lost through pirated material stored and shared through Megaupload.com (note that this figure is arguably an overestimate when one considers various economic principles such as deadweight loss). Yet the supporters of Megaupload and similar platform providers note that in addition to the exceedingly useful storage and sharing facilities, this technology provides the means for artists to derive income from their own material without going through the traditional industry middlemen. Both 'sides' have legitimate concerns and legitimate rights that need to be addressed.

From an intellectual property perspective, the central issues in this case will most likely be the extent to which Megaupload and associated persons (such as Kim Dotcom) can be held culpable for their own conduct in providing the ability to share content and, perhaps more importantly, for the allegedly infringing conduct of others. One very interesting aspect of the case is that federal prosecutors appear likely to argue that by offering a 'reward' to users that uploaded the most popular content to the site, Megaupload induced piracy. However, that argument presupposes that the most popular content will only be infringing content.

We cannot forget the legitimate users of Megaupload's services who have lost access to their content for what may be a considerable time. From a technical perspective, this case highlights issues such as the importance of jurisdiction and the security of data stored offshore. If you are a legitimate user of cloud computing platforms, to what extent are you protected should your content suddenly become inaccessible? Where will you enforce any rights if your platform provider is located overseas and stores your information at multiple sites around the world? If you are a platform provider, to what extent can you protect yourself from liability to your users should their data be lost or accessed by unauthorised parties?

Copyright cases such as the Megaupload saga have also prompted some discussion of US laws. In particular, critics and media are focusing on the Stop Online Piracy Act (SOPA) and Protect IP Act (PIPA), which have now entered a phase of redrafting, as well as various countries' extradition treaties with the US.

In relation to the latter, 23 year old Richard O'Dwyer has recently been arrested in the UK while his website, TV Shack, is being investigated by US authorities. US copyright owners are calling for this case to be the first in which a British citizen is extradited from his own country to the US for a copyright offence. Unlike Megaupload, TV Shack simply provides links to other websites where users can access films and TV programs illegally. TV Shack does not host any files and appears to do little more than act as a search engine in the same way that Google and Yahoo do. Parallels have, therefore, been drawn between suing the hosts of such search engines and suing ISPs for providing the internet connection by which copyright infringements take place: see for example the [BT Net](#) and [iiNet](#) sagas.

Collectively, these cases illustrate that copyright owners, particularly major players from the US, will at times be given local courts' leave to "sue the messenger". However, the question of what level of wrongdoing, encouragement, knowledge of offending, or simply inadvertence is required by the service provider remains unanswered.