



Courthouse News Service



Friday, June 01, 2012 Last Update: 10:11 AM PT

Megaupload Taunts Feds Over Piracy Charges

By LORRAINE BAILEY

J'aim

Tweet

ShareThis

(CN) - Megaupload, the file-hosting giant shuttered by the government this year for piracy, says it cannot be prosecuted because it is "impossible" to properly serve a foreign corporation without offices in the United States.



In January 2012, the U.S. government [indicted](#) the Hong Kong-based Megaupload, its founder Kim Dotcom, and six other individuals, in one of the

"largest criminal copyright cases ever brought by the United States," according to the indictment.

Dotcom and his fellow corporate officers were arrested at the high-profile raid of Dotcom's birthday bash in New Zealand.

The indictment claimed that Dotcom and the other defendants "were members of the 'Mega Conspiracy,' a worldwide criminal organization whose members engaged in criminal copyright infringement and money laundering on a massive scale with estimated harm to copyright holders will in excess of \$500,000,000 and reported income in excess of \$175,000,000."

But when the government issued arrest warrants and summons for the seven individual defendants, it "did not request a summons as to Megaupload, despite being required to do so under the Federal Rules," according to Megaupload's motion to dismiss in Alexandria, Va.

"It is thus apparent that, on January 5, 2012, the government saw fit to indict Megaupload, seize all its assets, and force the company into extinction without serving - or even attempting to serve - the company in any way, shape or form," the Wednesday filing states.

"This failure to serve the company is not surprising, because Megaupload does not have any officers or authorized agents for service of process in the United States. Even if the government could find a Megaupload officer or agent within the United States - if, for example, Mr. Dotcom is eventually extradited here - the government still could not properly serve Megaupload."

Megaupload says that Rule 4 of the Federal Rules of Civil Procedure requires that a summons served on a foreign entity "must also be mailed to the organization's last known address within the district or to its principal place of business elsewhere in the United States."

"In no event can the government satisfy Rule 4's second requirement that it mail the summons to Megaupload's last known address within the district or to its principal place of business elsewhere in the United States,' for no such address exists," according to the filing authored by Megaupload attorney Heather Martin. "Megaupload does not have an office in the United States, nor has it had one previously. Service of a criminal summons on Megaupload is therefore impossible, which forecloses the Government from prosecuting Megaupload."

"As a foreign corporation with no agents or offices in the United States, Megaupload lies beyond the intended class of criminal defendants amenable to service of process under Federal Rule of Criminal Procedure 4," added Martin, of Washington, D.C.-based Quinn, Emmanuel, Urquhart & Sullivan.

"In the absence of effective service of process, criminal proceedings against Megaupload cannot commence, and as the court has aptly noted, [we] frankly don't know that we are every going to have a trial in this matter," Martin concluded, quoting U.S. District Judge Liam O'Grady's comment at an April hearing.

[Home](#) [Back to Top](#)

[Courthouse News Service](#) [Privacy Policy](#) [Search](#) [RSS](#) [About Us](#)