

Megaupload, iiNet, Obama and the French – the latest war on piracy

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So the U.S. has started the year with a bang.

Kim Dotcom, the mega-massive-man from Megaupload, was arrested (while having his birthday cake) and thrown in an Auckland jail with that French guy who eye gouged Richie McCaw in the Rugby World Cup final.

Now we're all for freedom on the internet, but eye gouging Richie McCaw deserves serious punishment.



Kim Dotcom

But we digress . . . what's interesting is that our High Court is shortly going to decide on very similar issues. In the *iiNet* case the movie studios have argued that if they send an ISP a letter saying to take down offending material, the ISP must do so or face a massive damages claim from the movie studio.

We think the movie studios' position is untenable.

First, who decides if someone is breaching copyright? The studios want effectively to circumvent the courts and have the power to threaten an ISP or website owner into submission. That's very dangerous.

Because, what if the studio is wrong? That is the part about which they remain conveniently silent. If an ISP is forced to shut you down and the studio is wrong, assuming you've got the money to even have that fight, by the time you're up and running again it may be too late.



Nathan Mattock
Partner

+61 2 8216 3003
nathanm@marquelawyers.com.au

Marque Lawyers Pty Ltd
Level 4, 343 George St
Sydney NSW 2000

Ph: +61 2 8216 3000
Fax: +61 2 8216 3001

www.marquelawyers.com.au

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A classic example of this was Universal Music demanding the removal of Megaupload's YouTube promotional clip featuring a number of celebs including will.i.am, P Diddy, Serena Willams and Jamie Foxx - <http://www.youtube.com/watch?v=o0Wvn-9BXVc>

Universal Music demanded the clip's removal because of copyright infringement. YouTube removed it, but guess what? Universal was 100% wrong and the clip was reinstated. So, yeah, they do get it wrong.

It's easy to forget that the people doing the wrong thing are those who are illegally copying movies and music. We're not defending piracy, but going after facilitators on the internet, such as ISPs, is not the way to solve this problem.

To date the Australian courts have not supported the studios, but the High Court will soon be giving us all a clearer picture of the local landscape.

No matter what happens in the High Court, the problem for Megaupload is that it has servers in the U.S. putting it within reach of the U.S. courts and FBI, and it disobeyed the notices sent by the big studios. The climate in the US is very different from here. They really hate copyright infringement.

The big question is will an ISP like *iiNet* face the same problems in Australia as mega-massive-man currently faces in an Auckland prison?

We're thinking not.

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