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High Court upholds Kim Dotcom extradition decision

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Kim Dotcom has been battling extradition through the courts.

The High Court has found that alleged internet pirate Kim Dotcom and his associates are eligible to be extradited to the US.

However, the long-running legal battle between Dotcom and the US government is far from over, with his lawyer promising to take the case to the Court of Appeal - and predicting that he will win in the end.

The United States claims that Dotcom, Mathias Ortmann, Bram van der Kolk and Finn Batato were members of a worldwide criminal organisation that engaged in criminal copyright infringement and money laundering with estimated loss to copyright holders of more than US\$500 million.

In a ruling released on Monday - more than five years after authorities launched a Swat-style raid to arrest him at his Auckland mansion - the court found that the evidence was sufficient to establish a prima facie case on all counts. However, it also ruled in favour of one of Dotcom's key legal arguments.

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The decision was in response to an appeal by Dotcom and his associates against an earlier district court ruling that they should be surrendered to the US.

The case has been touted as one of the largest criminal copyright cases ever brought by the United States.

In December 2015 in the North Shore District Court, Judge Dawson found that Dotcom and his associates were eligible for extradition. They appealed that to the High Court, claiming that the Judge made errors of law in virtually every aspect of his eligibility finding. The United States also appealed against several aspects of the judgment.

Dotcom's lawyer, Ron Mansfield, said on Monday that the matter will now have to go to the Court of Appeal.

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A best-case scenario was a hearing at the end of the year, but it was more likely the case would be pushed out until 2018.

He was confident that what he called a "complex and unprecedented legal case" would be resolved in Dotcom's favour.

"There's no doubt we'll be going to the Court of Appeal - we're disappointed but we're one step closer to achieving the right outcome for Kim

"It's a long battle but long battles are often successful battles so we have to keep going.

"Whilst many have struggled to get beyond the United States' hype in this politically charged and misunderstood case, an objective observer will now realise that there is much more to this case than they were previously informed of from the District Court judgment," Mansfield said.

In his 363-page ruling, Justice Murray Gilbert said he accepted one of the main planks of Dotcom's argument: that online communication of copyright protected works to the public is not a criminal offence in New Zealand.

"Accordingly, I have found, contrary to the view taken in the District Court, that this section does not provide an extradition pathway in this case.

"However, I have concluded that the appellants are not correct in asserting that the general criminal law fraud provisions in the Crimes Act cannot apply in cases of copyright infringement and that such cases can only be prosecuted under the Copyright Act.

"In short, these Crimes Act provisions, in combination with s 101B of the Extradition Act, provide other extradition pathways. I agree with the District Court Judge that the evidence summarised in the record of the case is sufficient to establish a prima facie case on all counts. I also agree with his ultimate conclusion that the appellants are eligible for extradition on all counts for which their surrender is sought."

Mansfield said that the decision showed Dotcom had not committed an offence under New Zealand copyright law. "Whether our law should still permit him to be extradited to the United States under an Act that has no interest in copyright, is the question that remains now to be answered by our Courts. We say no and we are confident that this must be right.

"Whether you are a supporter of Kim's or not, these are important principles of law for us all and the very issues that we need our justice system to grapple with if we want a credible and safe process for extradition to any requesting country, including those with whom we have a close commercial and political relationship."

Dotcom said in a tweet: "I'm no longer getting extradited for copyright. We won on that. I'm now getting extradited for a law that doesn't even apply.

"New Zealand Parliament wasted years and millions of taxpayer money on a Copyright Act that is now no longer relevant," Dotcom said.

Dotcom said he expected the case would be before New Zealand courts for at least two more years.

Dotcom said he would approach the Court of Appeal to "make clear" he was not facing fraud charges.

"We're going to make clear that this is not a fraud charge, the indictment is not for fraud, it is for copyright infringement," he told RNZ.

"The appeal can show general fraud status cannot be applied."

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