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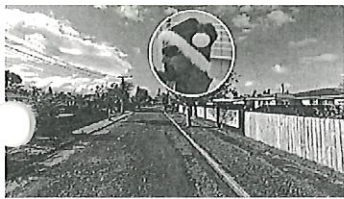
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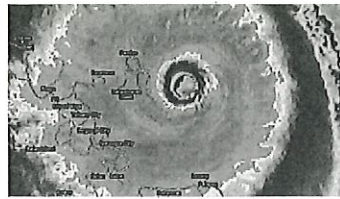
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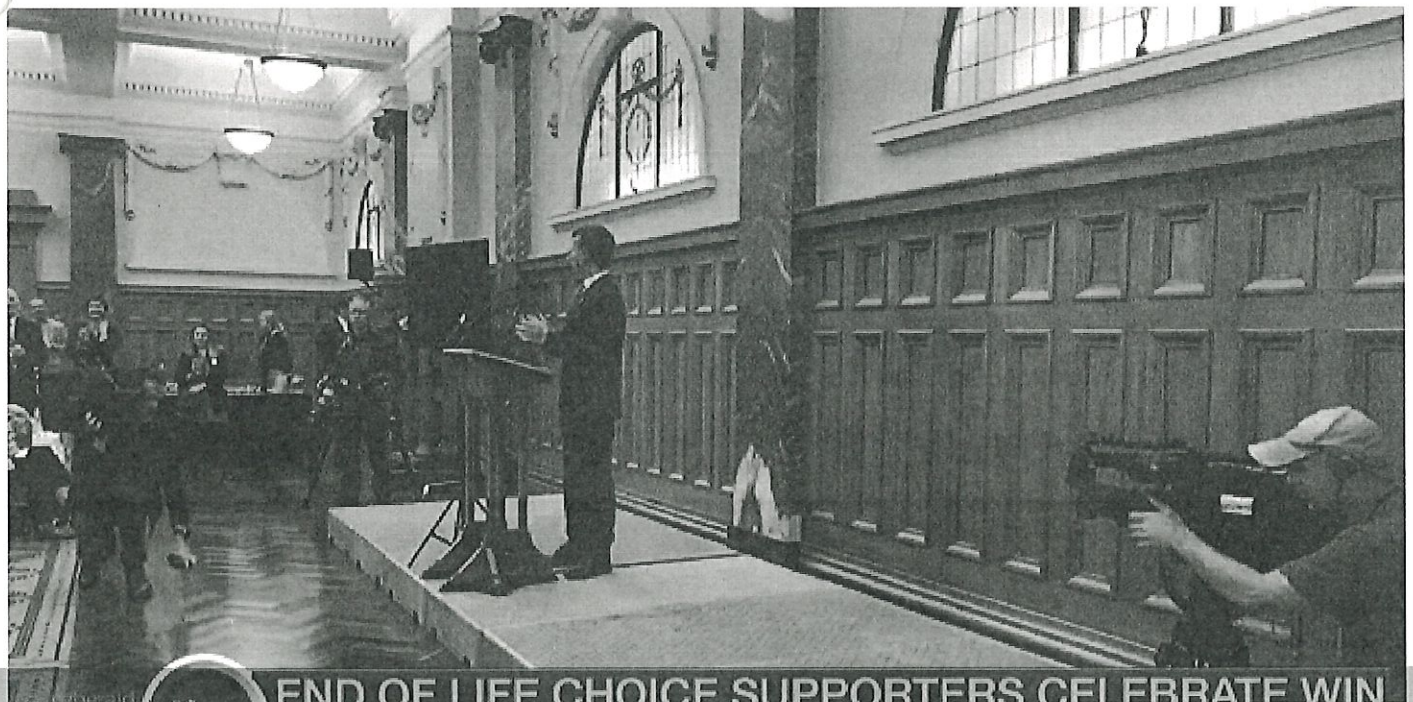
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# Kim Dotcom's US extradition case stalls, Supreme Court calls for further arguments over copyright allegations

4 Nov, 2020 11:10 AM

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**By: Sam Hurley**

New Zealand Herald business journalist

sam.hurley@nzherald.co.nz

@SamuelPHurley

Kim Dotcom can technically be extradited to the United States over copyright allegations - but his case has stalled after New Zealand's top court says more legal arguments are required.

The Supreme Court ruling, delivered this morning by Chief Justice Helen Winkelmann in Wellington, said the Court of Appeal erred in its finding that judicial review proceedings by the internet entrepreneur and three others were an abuse of process.

It said these arguments must be allowed before a final decision is made.

However, unless the group are successful at a new hearing, they will be eligible for extradition for alleged copyright offences, but not over a charge of conspiracy to commit money laundering, which the Supreme Court said had "no available extradition pathway".

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## 'Mixed bag' for Dotcom

Dotcom's New Zealand lawyer, Ron Mansfield, described the judgment as a "mixed bag" for his German-born client and family.

"There is no final determination that he is to go to the United States."

The nailbiting US Presidential race: NZ markets in a volatile state



Kim Dotcom's wife Liz Dotcom and lawyer Ron Mansfield arrive at the Supreme Court in Wellington in June 2019. Photo / Mark Mitchell

Mansfield said the court had accepted that there were "serious procedural issues" in the case that should be heard.

"This means there will be further argument in the Court of Appeal and/or the Supreme Court regarding these significant concerns that are well established in the evidence.

"This is significant and means that nothing further can happen until the further required hearings take place. Kim stays here, at home, with his family.

"We welcome the opportunity to take the United States to task on its prosecution and management of this request for extradition. This has been a political case and the United States have sought to thwart Mr Dotcom running any meaningful factual defence to it."

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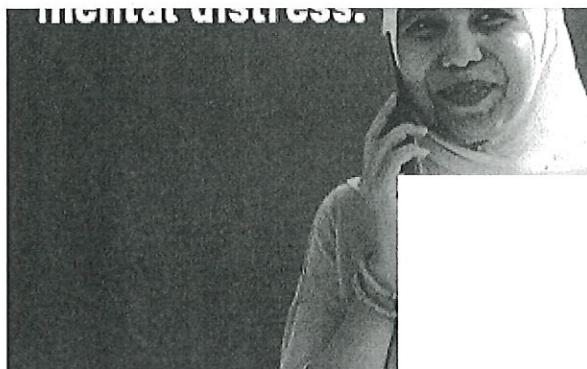
Mansfield said the court's rejection of Megaupload's claim it had the same "safe harbour" provisions that protect internet service providers and its other copyright findings would have "an immediate and chilling impact on the internet".



Kim Dotcom's US lawyer Ira Rothken outside the Supreme Court in Wellington last year. Photo / Mark Mitchell

"It will be interesting to see how the challenges now faced by internet service providers are responded to. Can they live with it? Will it result in access restrictions and further costs that we will all incur as a result? Or will our Government be lobbied to intervene and provide real and workable protections for them?"

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"With Covid-19 upon us, access to the Internet is now essential to our business community, more so than it has ever been in the past."

Dotcom's US lawyer Ira Rothken also tweeted: "Our legal team looks forward to pointing out that the government's misconduct should lead to a denial of extradition."

## Mammoth legal fight

The mammoth courtroom fight - costing millions of dollars - has spanned nearly a decade since Dotcom's dramatic arrest during an FBI-ordered raid on his former Coatesville mansion north of Auckland in 2012.

A US grand jury indicted Dotcom, computer programmers Mathias Ortmann and Bram van der Kolk, and marketing manager Finn Batato on February 6, 2012, over the now-defunct file-sharing website Megaupload, which allegedly shared pirated films and other media.





The Megaupload accused, pictured in 2012, Bram van der Kolk, Kim Dotcom, Mathias Ortmann and Finn Batato. Photo / Sarah Ivey

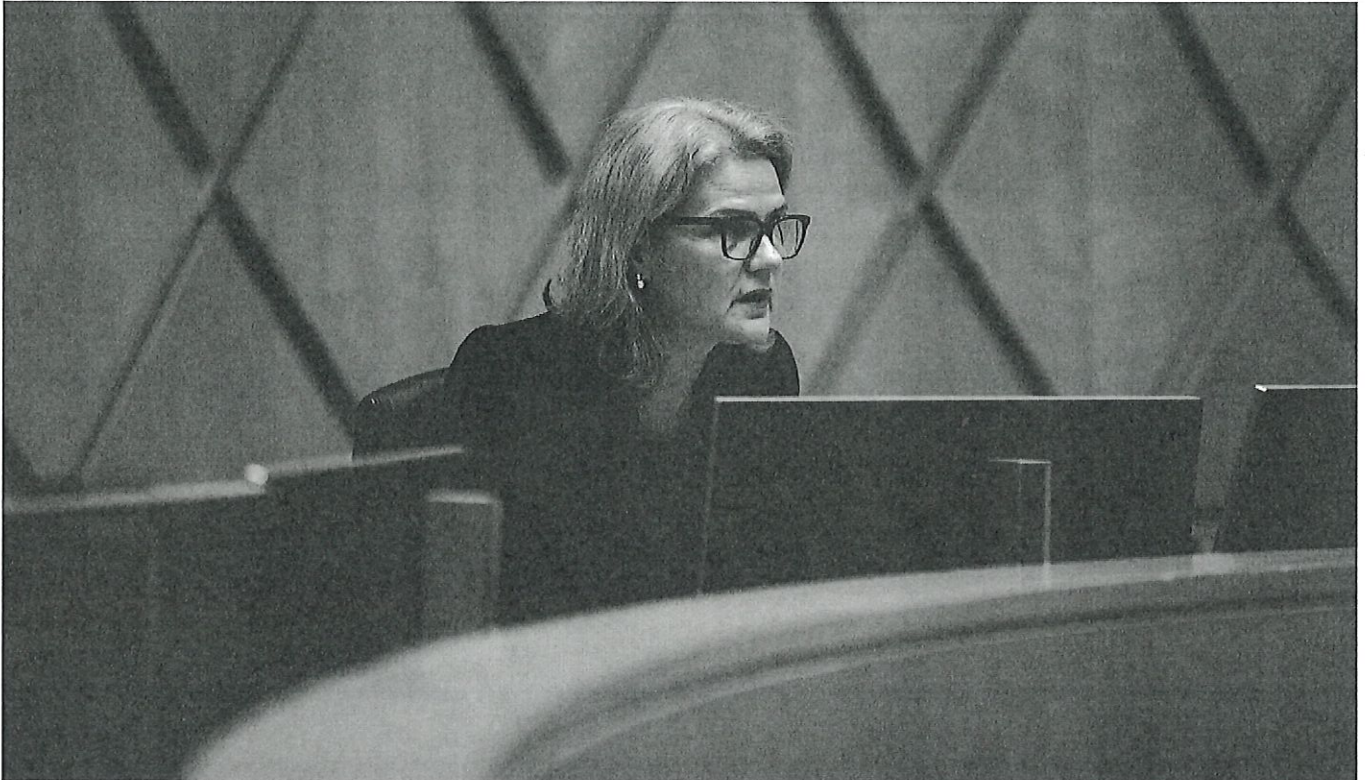
It has been called the "Mega conspiracy" after several companies allegedly facilitated, encouraged and profited from significant mass infringement of copyright.

The US has sought the men's extradition and the group have fought it ever since.

The appeal by the group to the Supreme Court was heard in June last year, before the court announced its decision from 11am today.

It came after failed appeals to the High Court and Court of Appeal in 2018.





Chief Justice Helen Winkelmann delivered the Supreme Court's ruling today. Photo / Pool

The initial issue for the Supreme Court was to consider whether there was double criminality - meaning would the allegations contained in the US charges also be criminal offences in New Zealand.

But the court found there to be no matching offence for count 3, an allegation of conspiracy to commit money laundering, and it discharged the group on that count.

However, the 12 other charges the group can be extradited for include, racketeering conspiracy, conspiring to commit copyright infringement, five charges of wilful copyright infringement including by distributing a pre-release copy of the movie Taken, and five wire fraud counts.

The alleged copyright abuse was said to have cost movie and music producers US\$500m.

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But the bid for judicial review was dismissed by the High Court and later Court of Appeal, which found the proceedings to be an abuse of process.

The Supreme Court today said the Court of Appeal was wrong in its finding.



Kim Dotcom (left) arriving at the North Shore District Court in 2012 with his contingent of lawyers, co-accused and bodyguards. Photo / Sarah Ivey

It allowed the group's appeal and said the Court of Appeal should have engaged with the grounds raised in the judicial review applications to determine whether they were truly duplicative of grounds raised in the extradition appeals.

Those grounds which did not overlap needed to be addressed, the top court said in its 194-page judgment.

It directed the parties to file submissions by mid-December to identifying the issues which remain outstanding in the judicial review proceedings and outline their view about what court should resolve them.

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