

(Fisher, D., 2021)

# The Dotcom decade - and what it has cost the taxpayer

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P. The Government's lawyers have spent 40,500 hours working on Megaupload- and Kim Dotcom-related cases over the past decade.

If those lawyers were working 40-hour weeks, the effort exerted would be 19 years and six months of work - or two lawyers constantly working full time over the entire period the drama has unfolded.

If lawyers were builders, the work invested could have seen 40 houses built. If the case was theatre - which at times it has been - then 20 productions could have been staged.

P. Data released through the Official Information Act show that, in addition to the 40,500 hours, the case has cost \$3.6 million in airfares, external solicitors' fees, court fees, photocopying and other costs.

This year sees the 10th anniversary of the Crown's involvement in the United States' prosecution of Dotcom and those who worked with him on the Megaupload file-sharing site.

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...akes made in 52 Kim Dotcom Privacy Act requests=

5<sup>th</sup>

It began with a single extradition case intended to provide the legal framework to transport Dotcom and three others to the United States to face charges stemming from allegations of massive copyright infringement.

That legal work in 2011 was a critical part of the FBI's global operation to shut down Megaupload.

In January 2012, the operation was executed simultaneously in seven countries, centred on New Zealand and Dotcom's \$30m mansion north of Auckland, where he was celebrating his birthday with Megaupload co-workers Finn Batato, Bram van der Kolk and Mathias Ortmann.

P. The four were arrested in a spectacular helicopter-borne dawn raid using New Zealand's specialist anti-terrorist squad, with a subsequent court hearing expected to be the first step in a straight-forward extradition to the United States and decades in jail.

Instead, the extradition has become a legal hydra, with the single case spawning 23 related legal cases across all levels of our court system.

The Crown Law Office data shows the sprawl of cases over the years since, and how the legal hours invested mounted even as costs grew.

Paul Radich QC considers the hours spent - exactly 40,495 hours and 15 minutes - to be what would be expected for a case that has snowballed across a decade.

Crown Law is "efficient", he says, and the hours accrued is more a reflection of the increasingly complicated path to the courtroom.

While the expansion to 23 separate proceedings is "amazing", it fits with a rough benchmark of 2000 hours for litigation that takes three years to complete, featuring pre-trial hearings and several weeks of trial.

"That's very generic but it is an indication of how expensive litigation is. I don't say, for a second, that's a good thing. There's real 'access to justice' issues here."

It's a key issue in the Megaupload proceedings that has struck Professor Neil Boister, head of the University of Canterbury's School of Business and Law.

Big money buys better legal representation, he says. "It's wrong at the most fundamental level."

The wealth that came from Megaupload was significant. At its peak, the website boasted its traffic consumed 4 per cent of the internet. It offered fast streaming for those who paid to join as members and sold advertising displayed across Megaupload and related sites.

The website launched in 2005 and by 2009, according to court documents, it saw Dotcom earning \$20m. In 2010, it was \$42m. In November that year Dotcom became a New Zealand resident by investing \$10m in government bonds.

Inside a year of Dotcom's residency, Crown Law had opened a file in preparation for his raid, arrest and extradition. The initial work was a shade of what was to come - the OIA material from the Crown Law Office shows 432 hours spent working on the case and \$463.

Each of the next three years - 2012 to 2014 - saw more than 7000 hours each year spent on increasing numbers of proceedings.

There were bail arguments that went to the High Court, the Crown's incorrect seizure of assets and wealth without notice, challenges over the search warrant and - when unlawful spying by our intelligence agencies was discovered - claims for damages.

"I don't think it was appreciated how complex it would be," says Boister. "The whole thing was so complicated."

In 2011, Crown Law allocated hours and costs to two proceedings. By the end of 2014, it had grown to eight proceedings. As some cases wrapped up, others began. Figures for 2020 show six proceedings, although at 267 hours it was the lightest year yet.

It's a ferocious amount of energy that, says New Zealand Certified Builders chief executive Grant Florence, would build at least 40 standard three-bedroom homes.

Or, says actor, director and producer Sam Snedden, about 20 full-blown stage productions. In 2012, Snedden helped produce a Christmas pantomime written around Dotcom, who appeared in the show every night it ran.

"That was an insane time. You never expected a person running point on a panto in a tiny fringe theatre to be fielding calls from CNN."

The decade that has passed has seen constants, like Crown Law's Fergus Steadman. Never in the limelight, always involved in the Dotcom case, he has slogged away year after year as others have arrived or left.

It has also seen much change. Dotcom and his co-accused have built lives in New Zealand over the past decade.

Dotcom has grown his family from three to five children, seen his marriage to Mona Dotcom end then married Liz Dotcom, moved from the mansion to an estate in Queenstown and then back to Auckland.

He initially embraced public life, appearing in the Christmas pantomime, leading a campaign against greater powers for our intelligence agencies and launching the Internet Party to challenge the 2014 election.

A dismal showing in votes saw Dotcom retreat from public life, saying "the brand Kim Dotcom ... was poison for what we were trying to achieve".

World-class coders Van der Kolk and Ortmann continue to run Mega.co.nz, the website they coded in the year following the raid. Dotcom sold his shares in the business, making millions of dollars. They stayed and the website is now rated among the best in the world.

Finn Batato, Dotcom's friend since teenage years, is in a stable, loving relationship and has become a father.

The legal work by Crown Law has been more than matched by Dotcom's legal team. By the time of the extradition hearing in 2015, it was estimated he had spent \$15m on lawyers. If that initial estimate was right, and the hours matched Crown Law's pattern, he would have spent about \$25m.

The lawyers who accrued those work for Crown Law so there is no direct cost beyond their salaries. If the time was charged at senior prosecutor rates, it would have cost around \$10m.

The hours spent last year included the Supreme Court's hearing arguments for and against extradition. It found the extradition, according to our laws and international agreements, should go ahead.

It was a decision with a twist. The court ruled the Megaupload Four had been denied an opportunity at the district court extradition hearing to make arguments over procedural issues they claimed would impact on the case.

The Supreme Court has yet to issue a ruling on whether it, or one of the lower courts, will unpick that Gordian Knot. It's another delay in the process.

Beyond that, Dotcom and the others are expected to be in New Zealand for years to come. When the courts are finished, Kris Faafoi will be the sixth Justice Minister to face the formality of signing the extradition warrant that would put Dotcom on a plane.

That warrant will also be subject to challenge through judicial review in the High Court. And then appeals will follow, and more hours will be allocated to new files at Crown Law.

Dotcom told the Herald the time spent on his case "could have been spent on going after real criminals and not a harmless internet guy whose websites made 50 million people happy every day".

"They will waste another 40,000 hours and millions of taxpayer dollars until we are done."