

'Modern-day pirate' Kim Dotcom's words now used against him

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In this Sept. 21, 2015 file photo, Kim Dotcom sits in the Auckland District Court during an extradition hearing in Auckland, New Zealand. The much-delayed extradition hearing for Doctom and three others who owned or helped run the website Megaupload began in Auckland this week in a case that could have broader implications for Internet copyright rules. (Jason Oxenham/New Zealand Herald via AP, File)

Prosecutors say Kim Dotcom and his colleagues sometimes reveled in

their role as "modern-day pirates," discussed how to thwart the justice system, and joked that a judge would one day realize how "evil" they were.

The much-delayed extradition hearing for Dotcom and three others who owned or helped run the website Megaupload began in Auckland this week in a case that could have broader implications for Internet copyright rules.

Megaupload was shut down by U.S. authorities in early 2012, but not before prosecutors claim it raked in some \$175 million, mainly from people who flocked to the site to illegally download movies.

Dotcom has been listening to the arguments while slowly swiveling in his black leather armchair, a concession by the judge to his bad back. Parked outside the court is a remnant from the high-rolling lifestyle Dotcom long embraced—a black Mercedes SUV with the vanity plate "kim.com."

Federal authorities have charged Dotcom and the others with conspiracy to commit copyright infringement, racketeering and money laundering. A summary of the U.S. case is being presented by New Zealand lawyers as the U.S. attempts to extradite the men to face trial in Virginia.

Lawyer Christine Gordon told a judge this week that after Dotcom launched Megaupload in 2005, it grew to become so popular that each day 50 million people used the site, sucking up 4 percent of all Internet traffic.

"This was a big fraud but conducted in a fairly simple manner," she said.

"Behind the scenes, the respondents admitted their business broke the law. Sometimes they enjoyed the fact they were making their money by

breaking the law," she said. "Sometimes they worried about protection, and pondered what action they should take to, and I'm quoting here Mr. Dotcom's words, 'counter the justice system.'"

That some people used the site for illegally downloading movies is not in dispute. The real question is the extent to which Dotcom and the others knew about this activity, and whether or not they encouraged it.

Prosecutors are trying to use the men's own words against them, after some of their online chatter was intercepted by the FBI.

Sometimes, Gordon said, they joked about being pirates, or how their site wasn't totally "legit," or how they weren't "the dumb pipe we claim to be."

In 2010, she said, Dotcom, in his native German, told a colleague over Skype: "At some point, a judge will be convinced about how evil we are."

The defense has yet to present its case, but Dotcom has long argued that plenty of people used his site to legitimately store files, and he can't be held responsible for those who elected to use it for illegal downloads.

His lawyers say that any action against him should have been taken in civil court and that criminal charges are unjustified.

Professor James Grimmelmann, who specializes in Internet law at the University of Maryland, said the outcome of the case could have important implications in defining the bounds of U.S. copyright law. He likened it to other cases which are testing the Internet's jurisdictional boundaries, such as the European notion of the right to be forgotten.

He said that if Dotcom loses the case, it will make sites like YouTube pay closer attention to ensure they are being vigilant enough in removing

copyrighted material. He added that the U.S. courts would likely be careful to define what distinguishes a pirate site from one that's legitimate.

In New Zealand, the extradition hearing has been delayed nine times since Dotcom was arrested in early 2012, after a dramatic SWAT-style raid on his mansion near Auckland. He was released from jail a month later, and has attracted intense media coverage since.

His unabashedly ostentatious lifestyle was unusual in a nation which often prizes humility. And his arrest hardly seemed to slow him down. He soon released a music album, started another Internet file-sharing company called Mega, and launched a political party which contested the nation's 2014 election.

But over the past year his star appears to have faded. Some of the money he made from Mega helped fund his political ambitions, which came to nothing after his party failed to win any seats in the election.

As major arguments began at the hearing on Thursday, a couple of dozen curious onlookers watched, including one man who seemed to enjoy the warmth of the courtroom and soon began to snore. Outside, a lone protester appeared from time to time, sometimes wearing a bandanna, sometimes a tinfoil hat.

Dotcom's U.S. lawyer Ira Rothken said the defense has been disadvantaged because authorities seized more than \$60 million belonging to Dotcom and the others and have refused to release some of it to pay legal bills outside of New Zealand. Rothken said his firm is owed more than \$500,000, but he's continuing to represent his client because he's confident he will prevail.

Dotcom, too, appears confident. During a break after Gordon had laid

out a summary of the case against him, he turned to a reporter: "That sounded bad, huh?" he said. "Wait till some of the rebuttal."

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