



## **Assignment 3:**

### **REPORT PREPARED FOR:**

4shared.com

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Critique: Megaupload Case, Copyright & Data Ownership

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## **Executive Summary**

This report emphasizes on copyright violations committed by the Peer to Peer file sharing Internet Protocol Address Providers (IPAP). As we are all aware, the basic aim of Copyright is to protect and promote creativity. It is incredibly valuable to the individuals and organizations as it aims towards ensuring that the copyright owner will be the sole beneficiary of any financial compensation arising from the creative work.

Megaupload, a peer to peer file sharing website, allowed a user to store data in their servers, and this data could be accessed and downloaded by all the other members of the website. This website created so much panic among the copyright owners that the US Federal was forced to trace the origin of the website, and later convince and guide the New Zealand government to bust the website owners. The operation was carried out in such a way, as to set an example for other similar websites operating illegally. Mr. Kim Dotcom was finally arrested and tried under the special amendments made to the New Zealand Copyright Act 1994, for File sharing websites.

4shared is another similar website, which is still functional, but currently, operates under a strict scanner of the U.S. copyright enforcement. The website attracted a massive number of takedown requests from the copyright owners. Under the huge pressure of the Copyright enforcement bodies, the website did take strict action on the complaints it received from the copyright owners, but it has lost much of its popularity among the file-sharing community.

Now, 4shared has a proper procedure in place in order to terminate any law violating content upon the request of the copyright owner. The website is still illegal according to the New Zealand Copyright Act, as it still provides access to the copyright content without the consent of the copyright owners.

Even though infringement of copyrights can be reduced by some extent, by taking strict actions against the peer to peer file transfer website, it is not possible to put an end to this practice, as the members upload content on these websites purely out of communal altruism.

## **Introduction**

The sole purpose of writing this report is to provide detailed analysis of copyright and data ownership considering two websites, providing hosting services named – Megaupload and 4shared. The report talks about the copyright laws and how these two websites are violating it followed by its implications and conclusion.

### **A. Business background:**

#### **1. Megaupload**

Mr. Kim Dotcom in Hong-Kong started Megaupload in 2005. This organization was started to provide online service for the users to upload, store and share data. It gives access to famous copyright content uploaded by users such as music, movies, videos, games, books, images and other trespassing data.

This site was the 13st most gone by website on the Internet at its pinnacle. It had 180 million enlisted clients and 50 million dynamic clients for every day. It created income from premium users and paid publicity (Tsukayama, 2012).

Megaupload has generated more than \$175 million since year 2005. In 2012, Megaupload was shut down by Unites States federal for copyright encroachment (Gross, 2012). It was suspected for contriving to carry out tax evasion and two checks of criminal copyright encroachment, manipulating copyright laws for such data having copyrights (New York Post, 2012).

## 2. 4shared

4shared like Megaupload is one of the largest and most popular file-hosting services on the Internet, with 317 terabytes of the file transfer daily and managing up to 11 million users ("4shared.com - free file sharing and storage - Company," n.d.)

It provides its patrons with the to-quality, online hosting that's free and peer-to-peer sharing services. The website came into existence in 2005 and since then it hasn't looked back and gained popularity throughout the world. They provide services like upload, download – music, videos, movies, pictures and photographs and other types of files and documents. Limit is 500MB and 5GB for paid subscribers. They have also developed software to make data storage & access easier for users., One of the largest file-hosting services on the Internet.

## B. Copyright laws (Copyright Infringement)

### 1. Megaupload: Breached U.S copyright laws

There are many different administrations known for manipulating copyright data like Megaupload, 4shared, Pirate bay, Rapidshare. They are known as Cyber-lockers, but these lockers are not locked. It is open for users to distribute and access to content in the online cloud. Despite what might be expected, they exist to encourage the appropriation of documents on an enormous scale.



Megaupload was blamed for different 13 checks but all the charges were related to main 2 criminal copyright figures (Megaupload Indictment, 2012):

1. "17 U.S.C. 506(a)(1)(A)", Criminal Infringement: If any person wilfully infringes a copyright shall be punished according to section 2319 (18).

2. The provision for penalty according to "18 U.S.C. 2319(d)(2)", if any person manipulates section 506(a) which is related to criminal offence of title number 17 shall be punished in under subsections (b), (c), & (d). Few charges shall be in add on to another person of title number 17 or any other law (White, 2012).

**Because of following reasons Megaupload business was considered unlawful:**

Megaupload was only providing a service as the host website without any accountability. None of the files were inspected which were uploaded by users on the website (Managing Intellectual Property, 2011).

There were 66.6 millions of users and 91% of all users uploaded illegal contents. All the files which were downloaded and uploaded by users were infringing materials (Parloff,2012).

Megaupload promoted money rewards as a motivation to clients on bases of different users downloaded client's data (Telecommunication Report, 2012).

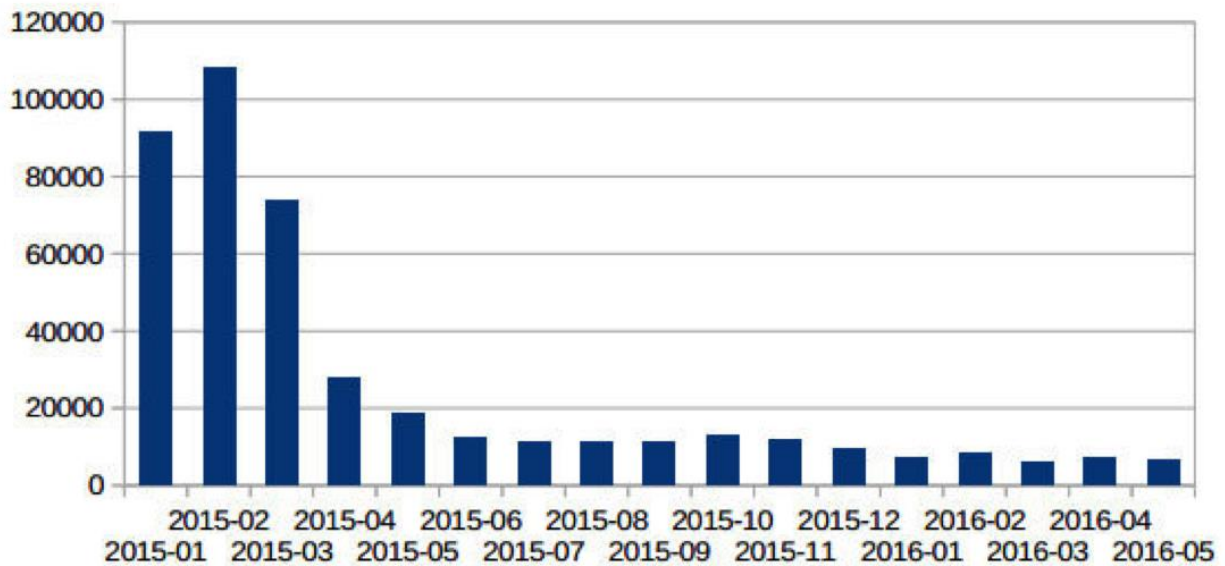
Megaupload earned profits from those files which were downloaded often by users. Files which were not downloaded by users in 90 days were deleted from the server (Parloff, 2012)

## 2. 4shared – Copyright infringement

Over the past several years the search engine has received a massive 50 million takedown requests for 4shared URLs alone. The astounding number indicates that there is heaps of infringing content on 4shared. This popular file-hosting website is on top of Google’s list of reported domain names followed by rapidgator.net and uploader.net (Scarlet ,2016).

Although the site has Digital Millennium Copyright Act (DMCA) takedown procedure in place where the right holders can remove their content directly but Google still receives complaints of takedown notices for the website.

### Takedown requests 4shared received



Source: (Ernestro, 2016)

4shared received 90,000 monthly takedown requests but over the years the take down requests have reduced by fifteen times which is 6,000 per month now (Ernestro, 2016).

RIAA (leading music industry group) also complained about 4shared to the U.S. Government, listing 4shared as one of the pirate sites on the Internet (Scarlet, 2016). Because of the mind-boggling number of complaints 4shared had to remove more than 50 millions of its URLs from Google's search index.

### **3. Copyright in NZ context**

Copyright is a part of New Zealand's law called as Intellectual property. The Copyright Act 1994, which was amended in 2011 states that the owner is the one who authors the work so owns its copyright too.

According to the below mentioned sections, Megaupload undoubtedly, violated laws and provided a platform to its users to infringe copyright content.

A Sections	B Description	C Megaupload	D 4shared
37	This copyright act outlines that other than copyright owner no individual can make, import, possess, or sell, let hire, offer, sale or expose any content which is adapted for making copies are the work that are illegal.	Yes	Yes
92B	The copyright act puts liability on internet service provider if its users infringes copyright. No restrictions on website. It doesn't fullfil 122A-122U and 234(eb)-(eh)	Yes	No
92C	Liable if ISP provides a platform to store unauthorised copyrighted content from its users.	Yes	Yes
92E(2)	The law states that if ISP doesn't delete the information or prevent access to it's users after the internet service provider came to know about the copyright infringement then it is considered laible.	Yes	No
131 and 226C	The sites can face upto NZ\$ 15,000 fine or five years imprisonment	Yes	Yes

**Source: NZ Copyright Act 1994 (New Zealand Legislation, 1994)**

According to Megaupload, it's just a website that provides hosting, and its users use this platform to store, download, upload files. The NZ copyright law will not consider any illegal content as infringed unless & until it's from outside NZ (New Zealand Legislation, 2014a)

But copyright infringement, which is secondary, is a crime in both the countries: U.S. & New Zealand. The website allowed its users to share the link of copyrighted content (Parloff, 2012)

Although, 4shared also has violated some of the copyright laws but they have their DMCA takedown procedure in place. It has its policy of terminating infringed content from their website ("4shared.com - free file sharing and storage - Terms of Use," n.d.).

#### 4. **Key findings**

1. Megaupload and 4shared both provided means to its users for infringing copyright content.
2. Megaupload didn't put any liability on its users for any copyright infringement whereas 4shared in serious cases (after receiving the court orders) did hold its users responsible for infringement (Ernesto, 2012)
3. The New Zealand laws can be considered well protected for parties from saving them from liability of copyright infringement in case if ISP is following all the rules.
4. 4shared allows its right holders to send them the request to block any link that is infringed.

## **C. Customer & Data Ownership:**

### **1. Copyright Ownership:**

As per the US copyright laws, a copyright owner is a person or entity, who holds an exclusive right to copyrighted material. The copyright owner might be the creator or the first owner. A copyright owner is granted a number of exclusive rights, such as reproduction rights, distribution rights, right to create adaptations, and performance and display rights. (Stanford University Libraries, n.d., para. 4).

### **2. Copyright laws in New Zealand:**

The copyright laws in New Zealand are based on 4 guiding principles that revolve around creativity (Copyright Council of New Zealand, n.d., para. 1):

1. Protect: To protect the creative work against unauthorised use.
2. Preserve: Preserve the creative work of the creators.
3. Develop: Develop an overall creative environment.
4. Promote: Promote creativity by ensuring the rightful ownership.

The copyright laws in New Zealand are enforced under the Copyright Act 1994, with 2 amendments made in the 2008 and 2011 respectively, as mentioned below:

1. Copyright (New Technologies) Amendment Act 2008.
2. Copyright (Infringing File Sharing) Amendment Act 2011.

Megaupload was busted based on the amendment made in Copyright Act in 2011, specifically to put a curb on illegal sharing of copyright material. This amendment repealed a part of the New Technologies amendment 2008.

The 2011 amendment clearly defined the following 5 parameters of Copyright infringement, in order to take a strict legal action against the Megaupload and other file sharing IPAP involved in copyright violations (New Zealand Legislation, n.d., para. 1):

1. File sharing regime.
2. IPAP (Internet Protocol Address Provider) or the business owner.
3. IPAP Obligations.
4. Various Notices related to Infringement, detection, Enforcement and Warning.
5. Remedies and Punishments.

### **3. 4Shared in the Copyright context:**

4shared is like any other cloud storage service providers. It works on a similar technical model as the Apple iCloud, Microsoft OneDrive or DropBox. A member of 4shared can upload any file on the cloud and later download it whenever he may need it. The only difference is that a person can even search and download files uploaded by other people. And that is what makes 4shared a peer to peer file sharing platform. (App Informers, n.d., para. 1)

If the content is uploaded on 4shared by the rightful copyright owner, there is no issue at all. The problem arises when any copyright material is uploaded on a peer to peer file sharing website,) by another person, who might even be a legitimate owner of a copy of the copyrighted material, as peer to peer portals are aimed at simply publishing the files uploaded by its members irrespective of any kind copyright violations that may occur.

#### **D. Issues, complexities and Implications**

Even though web sites like Megaupload have shuttered down, copyright infringement issues still persisting as major problem in cloud technology based file-sharing sector of digital industry (Angelov, 2013).

When considering most case specific issues, Megaupload users loses the access to their own data is prominent. Megaupload has leased hundreds of servers from third party digital infrastructure provider Virginia based Carpathia Hosting to use as their data storage. According to agreements Megaupload users should be accessed their data stored at Carpathia servers' through Megaupload. After shutdown the Megaupload site, users completely lost data access. Attempt of Mr. Kyle Goodwin by filling case in front of the Court to have his data return and demanding of a 527 group on same intention is still unsuccessful (Hart, 2012; Electronic Frontier Foundation, 2015).

When use cloud or any other data sharing site to store critical data, keeping a backup and availability of business continuity plan is essential to mitigate temporary or permanent data losses (Cotton, 2012).

Business impact on third party service provider Carpathia Hosting is another case specified issue. Carpathia has preserved servers that contain Megaupload data at the cost of US\$ 9000 per day in order to preserve the rights of end users who have non-infringing content stored on the Mega Servers and enabling the data return to Mega users who have not engaged in copyright infringement (Hart, 2012; Electronic Frontier Foundation, 2012).

It was enormous impact on Carpathia cost structure not only direct cost of server maintenance but also sunk cost due inability of rent out the servers to other customer.

Government and regulatory bodies should be taken necessary measures to minimize the economic impacts on innocent third parties under such an incident of Megaupload.

Also, Megaupload case leads to controversial debates regarding the judicial decisions and cross border law and regulations. Since digital industries are functioning crossing the borders, its reveals that harmonization of cross country law and regulations is required and the governments around the globe and other International Standards Setting bodies should be concerned on that.



In general point of view, centralized data storage increases the potential risk and devastating impact on customers due to service failures, outages, security breaches and hacker attacks. Data protection and security must be top concern in the cloud based environment (Gasser, 2014). Decentralization structures or appropriate business continuity mechanisms will help to minimize the same risk factors.

Under the Multitenancy environment with cloud based system may increase the risk of privacy and security breaches of neighbouring tenants (Gasser, 2014). Cloud Technology developers should provide effective solutions like “virtual walls between tenants” and introduce new data security solutions.

In addition to enforcement of legal systems, promoting alternative solutions such as introducing new business models to compete with online pirates and educate end users about online piracy may bring effective results against copyright infringements in digital industry. Sites such as apple icloud, iTunes, spotify, Magnatune, Jamendo and Radiohead are classic examples for successful alternatives for copyright piracy and illegal file sharing sites (Angelov, 2013).

## **E. Conclusion**

1. There have observed uncertainties in law, regulations and policies including jurisdiction mainly in the international context.
2. In digital ecosystem file sharing service providers should be key regulates.
3. Introducing new business models as alternatives for illegal file sharing sites is worthwhile action.
4. Introducing sites with rich contents (e.g. range of songs, movies etc.), ease of use, fast searching, attractive pricing structures (e.g. proportionate to works offered, low price, subscription free etc.), safe path for downloading to users who are doing so without recognising violation of copyrights as alternative for copyrights infringement is meaningful action.
5. Implementing and promoting awareness and education activities to change the consumer perception of piracy and copyrights is meaningful approach.
6. Above non- legal approaches are well effective in developing and transition countries which judicial systems and intellectual property laws are not matured, but still emerging markets for digital industries.

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