



April 3, 2012

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**Re: *United States v. Kim Dotcom, et al.; Case No. 1:12-cr-00003 (E.D. Va.)***

Dear Counsel:

We write to notify you of the concerns of the many individuals (at least one of whom we represent) who lost access to their legal, noninfringing materials stored with Megaupload.com on January 19, 2012, when the U.S. Government shut down the website at [www.megaupload.com](http://www.megaupload.com) (and related sites). We understand that LeaseWeb owns servers with MegaUpload's customer data on them. We also understand that LeaseWeb has stated that it will preserve that data until April 13, 2012. You are likely aware that the Court in the Eastern District of Virginia is holding a hearing on that same day concerning Carpathia, Inc.'s Emergency Motion for a Protective Order.

We now write to formally request that you preserve that material both for purposes of contemplated future litigation and as a matter of obligation and courtesy to the innocent individuals whose materials have unfortunately been swept up into this case.

As we expect you are well aware, many innocent third parties (in addition to our current client) used Megaupload for wholly legal purposes and have since lost access to their data. This may include both commercial and personal materials. We also note that, in many instances, this material included protected expression under the First Amendment, which raises additional concerns. Many of these materials are property of the individuals involved, and they are legally entitled, not only to access, but to preservation and privacy. We are hopeful that our client and other third parties can obtain access to their material without resorting to legal action, but if that is not the case, we intend to take the necessary steps to ensure the return of their materials. To that end, we filed a brief in support of Carpathia's Motion for a Protective Order. I enclose a copy of that brief for your reference.

LeaseWeb B.V.

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We request that anyone with access to our client's materials, or evidence potentially relevant to an action filed on behalf of our client or other similarly situated third parties, immediately institute a litigation hold that covers all reasonably potentially relevant evidence, *e.g.*, the complete set of data on servers used by Megaupload.

As we stated in our brief, we are hopeful that all parties to this matter can together devise a process as expeditiously as possible to ensure that Megaupload's innocent clients may control and retrieve their own lawful data. These third parties were given no notice that their data were at risk, nor have they been given any information about how or whether they can retrieve it. We ask that all those concerned work together to make sure innocent users are returned their legal property, both as a matter of law, and a matter of simple fairness to the individuals who have been, and are being harmed, by the government's actions.



Sincerely,

ELECTRONIC FRONTIER FOUNDATION

CINDY A. COHN

Legal Director and General Counsel

cc: The Honorable Liam O'Grady, United States District Judge