

Indictment, the defendants collectively have received more than \$175 million from advertising and subscriptions.

68. It was further part of the Conspiracy that infringing copies of many thousands of copyrighted works on Megaupload.com and Megavideo.com were made available to tens of millions of visitors each day.

Overt Acts

69. It was further part of the Conspiracy that the following acts in furtherance of and to effect the objects of the above-described Conspiracy were committed in the Eastern District of Virginia and elsewhere:

a. From at least November 24, 2006 until at least the date of this Indictment, infringing copies of copyrighted materials were stored on computer servers located at Carpathia Hosting in Ashburn, Virginia, which is in the Eastern District of Virginia.

b. For the 180 days up to and including the date of this Indictment, members of the Conspiracy infringed by electronic means, including by means of the Internet, more than ten copies of one or more copyrighted works which had a total retail value of more than \$2,500 for purposes of private financial gain. In part, copies of copyright-infringing works were downloaded by agents of the Federal Bureau of Investigation (“FBI”) and other participating federal agencies from the National Intellectual Property Rights Coordination Center in Arlington, Virginia, from computer servers controlled by the Mega Conspiracy, since approximately March 2010, when federal law enforcement began their investigation.

c. During the course of the Conspiracy, the Mega Conspiracy has paid more than \$65 million to hosting providers around the world for computer leasing, hosting, bandwidth, and support services. The amounts of some of these payments are detailed in Count Three, and

incorporated herein by reference. These payments involved the use of proceeds of criminal copyright infringement to promote the objects of the conspiracy.

d. From at least September 2005 until July 2011, the Mega Conspiracy offered and provided financial incentives to its premium subscribers to upload copies of popular works to Megaupload.com and then distribute links that provided a download of that file, with a single click, to anyone on the Internet. Though the “Uploader Rewards” program warned that the uploading of copyrighted files would result in disqualification, the Mega Conspiracy rarely, if ever, terminated the accounts of individuals who posted copyrighted content. In fact, the Mega Conspiracy affirmatively chose to financially reward specific uploaders of infringing copies of copyrighted content, including repeat offenders.

e. An early version of the “Uploader Rewards” program for Megaupload.com from approximately September 2005 announced: “Today we are also introducing our ground breaking Uploader Rewards. Our new reward program pays money and cash prizes to our uploaders. This makes Megaupload the first and only site on the Internet paying you for hosting your files. The more popular your files the more you make.” Directly addressing “file traders,” the announcement continued: “You deliver popular content and successful files[.] We provide a power hosting and downloading service. Let’s team up!” In addition, the announcement stated: “You must have at least 50000 downloads within 3 months to qualify” and “You must allow us to list your files & descriptions on our Top 100 pages.” The rewards included “\$1 USD Cash per 1000 downloads of your uploaded files”, plus an additional bonus between \$50 to \$5,000 for Top 100 “Megauploaders with the most downloads” during a three-month period, to be paid through PayPal according to the following ranking:

Rank 1: \$5,000 USD Bonus
Ranks 2-5: \$1,000 USD Bonus

Ranks 6-10: \$500 USD Bonus
Ranks 11-50: \$100 USD Bonus
Ranks 51-100: \$50 USD Bonus

f. A later version of the “Uploader Rewards” program, available at least as early as November 2006, offered the following: “For every download of your files, you earn 1 reward point. * You can redeem your reward points for premium services and cash[.]” The program required “a premium membership to qualify for a payment.” Rewards were paid through PayPal according to the following reward point totals:

5,000 reward points: One day premium
50,000 reward points: One month premium
100,000 reward points: One year premium
500,000 reward points: Lifetime platinum + \$300 USD
1,000,000 reward points: \$1,000 USD
5,000,000 reward points: \$10,000 USD

g. At the time of its termination, as recently as July 2011, the “Uploader Rewards” program offered rewards according to the following reward point totals:

10,000 reward points: One month premium membership
50,000 reward points: 6 months premium membership
100,000 reward points: One year premium + \$100 USD
500,000 reward points: Lifetime platinum + \$500 USD
1,000,000 reward points: \$1,500 USD
5,000,000 reward points: \$10,000 USD

h. In approximately April 2006, members of the Mega Conspiracy copied videos directly from Youtube.com to make them available on Megavideo.com.

i. On or about April 10, 2006, VAN DER KOLK sent an e-mail to ORTMANN asking “Do we have a server available to continue downloading of the Youtube’s vids? ... Kim just mentioned again that this has really priority.”

j. On or about April 10, 2006, VAN DER KOLK sent an e-mail to ORTMANN indicating “Hope [Youtube.com is] not implementing a fraud detection system now... * praying *”.

k. On or about April 10, 2006, ORTMANN sent an e-mail to VAN DER KOLK in reply to the “fraud detection” message indicating “Even if they did, the usefulness of their non-popular videos as a jumpstart for Megavideo is limited, in my opinion.”

l. On or about April 10, 2006, VAN DER KOLK sent an e-mail to ORTMANN in reply to the “jumpstart for Megavideo” message indicating that “Well we only have 30% of their videos yet.. In my opinion it's nice to have everything so we can descide and brainstorm later how we're going to benefit from it.”

m. On or about May 10, 2006, a member of the Mega Conspiracy registered the Internet domain Megaclck.com.

n. On or about August 31, 2006, VAN DER KOLK sent an e-mail to an associate entitled “lol”. Attached to the message was a screenshot of a Megaupload.com file download page for the file “Alcohol 120 1.9.5 3105complete.rar” with a description of “Alcohol 120, con crack!!!! By ChaOtiX!”. The copyrighted software “Alcohol 120” is a CD/DVD burning software program sold by www.alcohol-soft.com.

o. On or about November 13, 2006, VAN DER KOLK sent an e-mail to another individual that contained 100 Megaupload.com links to infringing copies of copyrighted musical recordings by the artist Armin van Buuren.

p. On or about November 13, 2006, a member of the Mega Conspiracy registered the Internet domain Megavideo.com.

q. On or about December 3, 2006, DOTCOM distributed a Megaupload.com link to a music file entitled “05-50_cent_feat._mobb_deep-nah-c4.mp3” to ORTMANN. A copy of this file was still present on servers controlled by the Mega Conspiracy as of December 20, 2011.

r. On or about February 5, 2007, VAN DER KOLK sent an e-mail to ORTMANN entitled “reward payments”. Attached to the e-mail was a text file listing the following proposed reward amounts, the Megaupload.com username, and the content they uploaded:

100 USD	[USERNAME DELETED] 10+ Full popular DVD rips (split files), a few small porn movies, some software with keygenerators (warez)
100 USD	[USERNAME DELETED] 5845 files in his account, mainly Vietnamese content
100 USD	[USERNAME DELETED] Popular DVD rips
100 USD	[USERNAME DELETED] Some older DVD rips + unknown (Italian serries?) rar files
1500 USD	[USERNAME DELETED] known paid user (vietnamese content)

The last individual received at least \$55,000 from the Mega Conspiracy through transfers from PayPal Inc., as part of the “Uploader Rewards” program.

s. On or about February 11, 2007, VAN DER KOLK sent an e-mail to ORTMANN indicating that “Kim really wants to copy Youtube one to one.”

t. On or about February 13, 2007, ORTMANN sent an e-mail to VAN DER KOLK entitled “my concerns about the thumbnails table.” In the e-mail, ORTMANN asked VAN DER KOLK to create “a dummy lifetime premium user,” stating that “[t]his is very important to prevent the loss of source files due to expiration or abuse reports.”

u. On or about February 21, 2007, VAN DER KOLK sent an e-mail to ORTMANN entitled “2 reward payment files.” Attached to the e-mail was a file containing Megaupload.com users’ e-mail addresses and reward payments for that time period, which ranged from \$100 to \$500. For one user that was paid \$300, VAN DER KOLK wrote, “30849 files, mainly Mp3z, some copyrighted but most of them have a very small number of downloads per file.” For other users, all of which were selected for reward payments of \$100 by the Mega Conspiracy, he wrote the following: “Our old famous number one on MU, still some illegal files

but I think he deserves a payment”; “Loads of PDF files (looks like scanned magazines)”; “looks like vietnamese DVD rips”; “This user was paid last time has mainly split RAR files, however more than 50% deleted through abuse reports.”

v. From on or about March 1, 2007, through July 3, 2010, payments totaling approximately \$13 million were transferred in and affecting interstate and foreign commerce through PayPal, Inc. by a member of the Mega Conspiracy to WR, the Chief Financial Officer of Carpathia Hosting in Ashburn, Virginia, which is in the Eastern District of Virginia, for computer leasing, hosting, and support services. The details of these payments are described more specifically in Count Three and incorporated herein by reference.

w. From on or about March 2, 2007, through July 3, 2010, payments totaling at least \$9 million were transferred in and affecting interstate and foreign commerce through PayPal, Inc. by a member of the Mega Conspiracy to Leaseweb in the Netherlands for computer leasing, hosting, and support services. The details of these payments are described more specifically in Count Three and incorporated herein by reference.

x. On or about April 15, 2007, VAN DER KOLK sent an e-mail to ORTMANN entitled “reward batch payment.” In the e-mail, VAN DER KOLK stated: “We saved more than half of the money. Most of the disqualifications were based on fraud (automated mass downloads). The other disqualifications had very obvious copyrighted files in their account portfolio, but I was rather flexible (considering we saved quite a lot on fraud already). Total cost: 5200 USD.” Attached to the e-mail was a file containing the Megaupload.com users’ e-mail addresses and selected reward payments for that time period, which ranged from \$100 to \$1,500.

y. On or about May 17, 2007, a representative from Google AdSense, an Internet advertising company, sent an e-mail to DOTCOM entitled “Google AdSense Account Status.” In the e-mail, the representative stated that “[d]uring our most recent review of your site [Megaupload.com,]” Google AdSense specialists found “numerous pages” with links to, among other things, “copyrighted content,” and therefore Google AdSense “will no longer be able to work with you.” The e-mail contains links to specific examples of offending content located on Megaupload.com. DOTCOM and his conspirators have continued to operate and financially profit from the Megaupload.com website after receiving this notice.

z. On or about July 1, 2007, the Mega Conspiracy publicly launched the Megavideo.com website.

aa. On or about August 12, 2007, VAN DER KOLK sent an e-mail to ORTMANN regarding a particular file located on Megaupload.com. The file was a music video, entitled “soulja_boy-crank_dat_soulja_boy_(superman)-[zGalaxy_Xvid].avi.” In the e-mail, VAN DER KOLK copied information about the file from the Megaupload.com internal database, which contains, among other things, the following: file name; file extension type (*e.g.*, .avi, .jpg, etc.); file size; date; rank; the file’s 32-digit identification number, also referred to as a MD5 hash; and the file’s 8-digit download number for use with the Megaupload.com link (for example, the last eight digits of the following: www.megaupload.com/?d=BY15XE3V).

bb. On or about August 15, 2007, BENCKO sent VAN DER KOLK an e-mail message indicating “the sopranos is in French :(((fuck.. can u pls find me some again ?”

cc. On September 29, 2007 and again on March 11, 2009, a member of the Mega Conspiracy made transfers in and affecting interstate and foreign commerce through PayPal, Inc. to PA, a resident of Newport News, Virginia, which is in the Eastern District of

Virginia, as part of the Mega Conspiracy's "Uploader Rewards" program. Specifically, this individual received a transfer of \$1,500 on each of these dates from the Mega Conspiracy (for a total of \$3,000).

dd. On or about October 4, 2007, BENCKO sent VAN DER KOLK an e-mail message entitled "pls" requesting "can u pls get me some links to the series called 'Seinfeld' from MU?"

ee. On or about October 18, 2007, BENCKO sent an e-mail to VAN DER KOLK indicating that "sorry to bother but if you would have a second to find me some links for the "Grand Archives" band id be very happy." On or about the same day, VAN DER KOLK responded to BENCKO with an e-mail that contained a Megaupload.com link to a Grand Archives music album with the statement "That's all we have. Cheers mate!"

ff. On or about December 11, 2007, a credit card payment processor e-mailed ECHTERNACH and VAN DER KOLK regarding "complaints" that the processor had received from third-parties, including one in which a third-party stated, "we have pulled over 65 full videos from Megarotic. That's \$200k in content we paid for." In the e-mail, the processor stated, among other things: "you are not allowed to sell or financially benefit from the content that is infringing in copyrights on your site"; and "you are not allowed to continue with allowing the user to upload content if you can have knowledge of the infringing of copyright." DOTCOM responded to the e-mail, stating "The DMCA quotes you sent me are not relevant. We are a hosting company and all we do is sell bandwidth and storage. Not content. All of the content on our site is available for "free download"."

gg. On or about December 12, 2007, BATATO distributed a Megaupload.com link to an infringing copy of the copyrighted music file "Louis Armstrong – We have all the time

in the world.mp3” to DOTCOM. An infringing copy of this copyrighted work was still present on servers leased by the Mega Conspiracy as of September 2, 2011.

hh. Starting as early as January 27, 2008, a member of the Mega Conspiracy made multiple transfers in and affecting interstate and foreign commerce through PayPal, Inc. to CB, a resident of Alexandria, Virginia, which is in the Eastern District of Virginia, as part of the Mega Conspiracy’s “Uploader Rewards” program. CB received total payments from the Conspiracy of \$500, including transfers of \$100 on January 27, 2008; \$300 on October 8, 2009; and \$100 on February 1, 2010.

ii. Starting as early as February 11, 2008, a member of the Mega Conspiracy made multiple transfers in and affecting interstate and foreign commerce through PayPal, Inc. to ND, a resident of Falls Church, Virginia, which is in the Eastern District of Virginia, as part of the Mega Conspiracy’s “Uploader Rewards” program. ND received total payments from the Conspiracy of \$900, including transfers of \$100 on February 11, 2008; \$100 on March 3, 2008; \$300 on March 15, 2008; \$100 on March 29, 2008; and \$300 on April 15, 2008.

jj. On or about July 1, 2008, DOTCOM sent an e-mail to ORTMANN entitled “[Fwd: Illegal links]”. DOTCOM instructed him: “Never delete files from private requests like this. I hope your current automated process catches such cases.”

kk. On or about July 9, 2008, VAN DER KOLK sent an e-mail to a third-party, entitled “funny chat-log.” In the e-mail, VAN DER KOLK copied the text of a previous online conversation between himself and ORTMANN, in which VAN DER KOLK had stated, “we have a funny business . . . modern days pirates :)” ORTMANN responded, “we’re not pirates, we’re just providing shipping services to pirates :)”.

ll. On or about July 18, 2008, DOTCOM sent an e-mail message to ORTMANN instructing him to list “Mega Manager” as the “Number 1 download” out of the Top 100 Megaupload.com files.

mm. On or about August 4, 2008, the Mega Conspiracy launched their own advertising company for the Mega Sites called Megaclick.com.

nn. On or about August 11, 2008, DOTCOM requested that the Mega Conspiracy’s contract with Leaseweb drop a standard clause requiring contract termination for violations of Leaseweb’s “Acceptable Use Policy.”

oo. On or about September 1, 2008, VAN DER KOLK uploaded an infringing copy of the copyrighted television program entitled “BBC.Earth.-.The.Power.Of.The.Planet.5of5.Rare.Earth.XviD.AC3.MVGroup.org.avi” to Megaupload.com and e-mailed the URL file to another individual. An infringing copy of this copyrighted work was still present on servers leased by the Mega Conspiracy as of September 8, 2011.

pp. On or about October 13, 2008, BATATO sent an e-mail to an advertiser, which included a screen capture of the Megaupload.com download page for the file “MyBlueBerryNights.part1.rar”. The screen capture also contained an open browser window to the linking site www.mulinks.com.

qq. On or about October 14, 2008, BATATO sent an e-mail to an advertiser that contained two Megaupload.com links. One of the links directed to a file “DanInRealLife.part2.rar”, which was a portion of an infringing copy of the copyrighted motion picture “Dan in Real Life.”

rr. On or about October 25, 2008, VAN DER KOLK uploaded an infringing copy of a copyrighted motion picture entitled “Taken 2008 DVDRip Repack [A Release Lounge H264 By Micky22].mp4” to Megaupload.com and e-mailed the URL link for the file to another individual. An infringing copy of this copyrighted work was still present as of October 27, 2011, on a server in the Eastern District of Virginia controlled by the Mega Conspiracy.

ss. On or about October 31, 2008, DOTCOM forwarded an e-mail to ORTMANN from a customer entitled “Sharebee.com” and stating that “Sharebee.com have uploaded over 1million files to megaupload in 2008.” ORTMANN responded to DOTCOM that Sharebee.com was a “multifile hoster upload service.” Sharebee.com allows the mass distribution of files to a number of file hosting and distribution services, including Megaupload.com, and creates clickable links to access that content from multiple sites.

tt. On or about November 17, 2008, DOTCOM forwarded an e-mail to ORTMANN from a customer that indicated “I just want to start of by saying that i love the site, but today i discovered something i would consider a flawd. I was watching a video of Myth Busters when i recived a message that said “You have watched 3079 minutes of video today””. ORTMANN responded to DOTCOM that this was the correct behavior of the service.

uu. On or about November 23, 2008, DOTCOM forwarded an e-mail to ORTMANN and ECHTERNACH from a non-premium customer that indicated “i guess we need to find a new hobby because watching pirated material via megavideo is now over-rated and ruined because of this video bandwidth limit.”

vv. On or about November 23, 2008, DOTCOM received an e-mail from a Mega Site user entitled “video problems.” The e-mail described, “I’ve been trying to watch Dexter episodes, but... the sound doesn’t match up with the visual... I didn’t choose to use your

site, you seem to dominate episodes 6 and 7 of Dexter on alluc[.org, a linking site].” DOTCOM forwarded the e-mail to ORTMANN and wrote, “... on many forums people complain that our video / sound are not in sync... We need to solve this asap!” “Dexter” is a copyrighted television series on the premium cable channel Showtime.

ww. On or about December 5, 2008, NOMM sent VAN DER KOLK an e-mail, which included a screenshot of NOMM’s account using Megavideo.com to watch an infringing episode of the copyrighted television show “Chuck.” The episode in the image, Season 2 Episode 9, initially aired on December 1, 2008, four days before the e-mail.

xx. On or about January 14, 2009, BATATO sent an e-mail message to a Megaupload.com advertiser saying “You can find your banner on the downloadpages of Megaupload.com. Just choose a link for example from this site: www.mulinks.com...”

yy. On or about March 3, 2009, DOTCOM sent an e-mail to a reporter indicating “Whenever a user uploads a new file it is checked against our database and if we already have the exact same file the upload completes instantly. This way a complete system backup into the cloud only takes a fraction of the time it used to take. And the longer we exist, the more files we receive, the faster we get.”

zz. On or about April 23, 2009, DOTCOM sent an e-mail message to VAN DER KOLK, ORTMANN, and BENCKO in which he complained about the deletion of URL links in response to infringement notices from the copyright holders. In the message, DOTCOM stated that “I told you many times not to delete links that are reported in batches of thousands from insignificant sources. I would say that those infringement reports from MEXICO of “14,000” links would fall into that category. And the fact that we lost significant revenue because of it justifies my reaction.”

aaa. On or about April 24, 2009, DOTCOM sent an e-mail to BENCKO, ORTMANN, and VAN DER KOLK indicating, “I remembered the steep drop of revenue at the same time in 2008 and thought that this might have also been caused by careless mass link deletions. This made me very mad, especially because I told you that such mass deletions should be prevented and sources checked much more carefully. I am sure such mass link deletions are also contributing to a drop of revenue ... In the future please do not delete thousands of links at ones from a single source unless it comes from a major organization in the US.”

bbb. Starting as early as April 29, 2009, a member of the Mega Conspiracy made multiple transfers in and affecting interstate and foreign commerce through PayPal, Inc. to NA, a resident of Alexandria, Virginia, which is in the Eastern District of Virginia, as part of the Mega Conspiracy’s “Uploader Rewards” program. NA received total payments from the Conspiracy of \$600, including transfers of \$100 on April 29, 2009; \$100 on May 25, 2009; and \$400 on July 31, 2009.

ccc. Starting as early as April 29, 2009, a member of the Mega Conspiracy made multiple transfers in and affecting interstate and foreign commerce through PayPal, Inc. to NS, a resident of Fairfax, Virginia, which is in the Eastern District of Virginia, as part of the Mega Conspiracy’s “Uploader Rewards” program. NS received total payments from the Conspiracy of \$300, including transfers of \$100 on April 29, 2009; \$100 on April 26, 2010; and \$100 on May 8, 2010.

ddd. On or about May 7, 2009, ORTMANN sent an e-mail in German to DOTCOM indicating the top referring or linking sites to Megaupload.com by Megaupload premium users. The linking sites included: seriesyonkis.com, surfthechannel.com, sharebee.com, taringa.net, watch-movies-links.net, cinetube.es, and megauploadforum.net.

eee. On or about May 17, 2009, NOMM sent an e-mail to ORTMANN entitled “Competitor Links Report.” The e-mail indicated that the top third-party sites used to reach Megavideo.com content were seriesyonkis.com, peliculasyonkis.com, dospuntocerovision.com, cinetube.es, and surfthechannel.com, which are all linking sites.

fff. On or about May 25, 2009, NOMM sent an e-mail to DOTCOM and ORTMANN entitled “status report.” NOMM wrote “I have been processing HD videos for some time now to find best of the best for showcase (Mathias gave specification). Even though we have lots of HD content uploaded most seems to be problematic quality or legality wise.”

ggg. On or about May 25, 2009, BATATO sent an e-mail to ORTMANN that contained customers’ e-mails. One of the customer e-mails indicated: “We watched Taken successfully and then tried to watch the “Alphabet Killer” a day later and got the message to upgrade if we wanted to continue watching.”

hhh. On or about June 6, 2009, BATATO sent an e-mail to an advertiser indicating, “Banners will be shown on the download pages of Megaupload. You will find some links here for example: <http://mulinks.com/news.php>”.

iii. Starting as early as July 31, 2009, a member of the Mega Conspiracy made multiple transfers in and affecting interstate and foreign commerce through PayPal, Inc. to TT, a resident of Woodbridge, Virginia, which is in the Eastern District of Virginia, as part of the Mega Conspiracy’s “Uploader Rewards” program. TT received total payments from the Conspiracy of \$2,700, including transfers totaling \$100 on July 31, 2009; \$100 on August 29, 2009; \$200 on September 18, 2009; \$100 on September 29, 2009; \$200 on October 8, 2009; \$200 on November 8, 2009; \$600 on November 24, 2009; \$1,000 on December 23, 2009; and \$200 on February 1, 2010.

jjj. Starting as early as August 9, 2009, a member of the Mega Conspiracy made multiple transfers in and affecting interstate and foreign commerce through PayPal, Inc. to CW, a resident of Moseley, Virginia, which is in the Eastern District of Virginia, as part of the Mega Conspiracy's "Uploader Rewards" program. CW received total payments from the Conspiracy of \$2,900, including payments of \$100 and \$600 on August 9, 2009; a payment of \$500 on October 8, 2009; a transfer of \$1,500 on December 23, 2009; and a payment of \$200 on June 21, 2010.

kkk. On or about August 10, 2009, TT of Woodbridge, Virginia, which is in the Eastern District of Virginia, sent a payment of \$9.99 that traveled in interstate and foreign commerce through PayPal, Inc., and was received by the Megaupload.com PayPal, Inc. account.

lll. On or about September 4, 2009, a representative of Warner Brothers Entertainment, Inc. ("Warner") sent an e-mail to Megaupload.com, stating that Warner was "unable to remove links" to copyright-infringing content on Megaupload.com using the Abuse Tool. In the e-mail, the Warner representative requested an increase in Warner's removal limit, which is controlled by the Mega Conspiracy. On or about September 8, the representative sent a follow-up request, and on or about September 9, the representative sent another follow-up request. On or about September 10, ORTMANN sent an e-mail to DOTCOM, stating, "They are currently removing 2500 files per day - a cursory check indicates that it's legit takedowns of content that they own appearing in public forums." ORTMANN also stated, "We should comply with their request - we can afford to be cooperative at current growth levels." DOTCOM responded that the limit should be increased to 5,000 per day, but "not unlimited."

mmm. On or about September 29, 2009, CB of Alexandria, Virginia, which is in the Eastern District of Virginia, sent a payment of \$9.99 that traveled in interstate and foreign commerce through PayPal, Inc., and was received by the Megaupload.com PayPal, Inc. account.

nnn. On or about October 25, 2009, VAN DER KOLK instructed a Mega Conspiracy employee in German through e-mail how to alter the “featured” videos list on Megavideo.com and the Top 100 Megaupload.com list.

ooo. On or about November 30, 2009, BATATO sent an e-mail to an advertiser stating: “Please go to mulinks.com and copy paste One of those URLs to your browser. You will then See where the banner appears.”

ppp. On or about January 28, 2010, in an e-mail entitled “activating old countries,” a user of a Mega Conspiracy site asked BATATO: “where can we see full movies?” BATATO replied “You need to go to our referrer sites. Such as www.thepiratecity.org or www.ovguide.com[.] There are the movie and series links. You cannot find them by searching on MV directly. That would cause us a lot of trouble ;-)”

qqq. On or about February 1, 2010, BATATO sent an e-mail to an unindicted co-conspirator with the subject “[tradeit] – Campaign stats” stating “We can’t deliver [Hong Kong] traffic because the company is based in [Hong Kong] and we don’t want to experience any trouble with license holders etc. Remember, I told you about that topic ;-)”

rrr. On or about March 15, 2010, a member of the Mega Conspiracy created Megastuff Limited, a New Zealand company, that has facilitated the transfer to New Zealand of millions of dollars in illicit proceeds and assets for the personal financial gain of DOTCOM and other conspirators, as well as to facilitate additional operations of the Mega Conspiracy.

sss. On or about May 8, 2010, NS of Fairfax, Virginia, which is in the Eastern District of Virginia, sent a payment of \$199.99 that traveled in interstate and foreign commerce through PayPal, Inc., and was received by the Megaupload.com PayPal, Inc. account.

ttt. On or about June 24, 2010, members of the Mega Conspiracy were informed, pursuant to a criminal search warrant from the U.S. District Court for the Eastern District of Virginia, that thirty-nine infringing copies of copyrighted motion pictures were believed to be present on their leased servers at Carpathia Hosting in Ashburn, Virginia. On or about June 29, 2010, after receiving a copy of the criminal search warrant, ORTMANN sent an e-mail entitled “Re: Search Warrant – Urgent” to DOTCOM and three representatives of Carpathia Hosting in the Eastern District of Virginia. In the e-mail, ORTMANN stated, “The user/payment credentials supplied in the warrant identify seven Mega user accounts”, and further that “The 39 supplied MD5 hashes identify mostly very popular files that have been uploaded by over 2000 different users so far[.]” The Mega Conspiracy has continued to store copies of at least thirty-six of the thirty-nine motion pictures on its servers after the Mega Conspiracy was informed of the infringing content.

uuu. On or about July 8, 2010, DOTCOM sent an e-mail to ORTMANN and ECHTERNACH entitled “attention.” The e-mail contained a link to a news article entitled “Pirate Bay and Megaupload Escape Domain Seizure by US.” The article discussed how, “[a]s part of an initiative to crack down on Internet piracy and counterfeiting, the US Government recently took action against sites making available movies and TV shows.” In the e-mail, DOTCOM stated, “this is a serious threat to our business. Please look into this and see how we can protect ourselves.” DOTCOM also asked, “Should we move our domain to another country

(canada or even HK?)” ECHTERNACH responded, “In case domains are being seized from the registrar, it would be safer to choose a non-US registrar[.]”

vvv. On or about September 5, 2010, BENCKO sent an e-mail to DOTCOM, ORTMANN, and VAN DER KOLK. Attached to the e-mail message was a screenshot of BENCKO logged into a Megaupload.com file download page with a filename of “Meet.Dave.2008.avi”.

www. On or about November 1, 2010, ECHTERNACH forwarded an e-mail from a Universal Music Group (“UMG”) executive to DOTCOM and ORTMANN, which discussed requirements that UMG would require of Megaupload before they could discuss licensing for MegaBox. Included in the list of requirements was “proactive fingerprint filtering to ensure that there is no infringing music content hosted on its service; proactive text filtering for pre-release titles that may not appear in fingerprint databases at an early stage; terminate the accounts of users that repeatedly infringe copyright; limit the number of possible downloads from each file; process right holder take down notices faster and more efficiently.”

xxx. On or about November 15, 2010, BATATO forwarded an e-mail to ORTMANN entitled “member-issue” that was received by a Mega Conspiracy employee from a user. In the forward, BATATO wrote “Fanpost ;-)”. The email from the user stated “I paid yesturday however can’t work it out!!!\ I have been trying to see Robin Hod, 3th season, chapter 10, and do not succeed. Please help me solve it – or cancel my payment!”

yyy. On or about December 10, 2010, DOTCOM forwarded a complaint from a user that “Megakey is not working” to ORTMANN and VAN DER KOLK. In the forward, DOTCOM writes “this doesn’t work yet? we are advertising it. why is it not working?”. In the user’s e-mail, he complained that he installed Megakey, which provides Mega Conspiracy

advertising to users in exchange for premium access to Megaupload.com and Megavideo.com, and the user was still receiving a message about the “megavideo time limit.” The e-mail included apparent screenshots of the user’s computer which shows the linking site animefreak.tv being used to attempt to watch an episode of the copyrighted television series “Fruits Basket” on Megavideo.com.

zzz. On or about December 22, 2010, ORTMANN provided DOTCOM with a possible response to a press inquiry that discusses the Recording Industry Association of America (“RIAA”)’s campaign to have payment services such as Mastercard to stop allowing payments to Megaupload.com because the site is, in the words of the reporter citing RIAA, “dedicated to facilitating copyright infringement.” ORTMANN’s proposed response includes: “We are watching the unfolding events with interest, but as the vast majority of our revenue is coming from advertising, the effect on our business will be limited.”

aaaa. On or about January 13, 2011, DOTCOM sent a proposed Megaupload.com public statement regarding piracy allegations against the website to hosting company executives DS and JK. On or about January 13, 2011, DS replied to DOTCOM: “It looks accurate to me. good luck.” The same day, JK replied, “Using the words, ‘...vast majority is legitimate.’ Opens you up. It’s an admission that there are ‘bad’ things on your site. I would get rid of that so it simply reads that it is legitimate.”

bbbb. On or about January 27, 2011, ECHTERNACH received an e-mail from an unindicted co-conspirator stating that “video resource sites such as youtube which is our source for videos which we upload to megavideo.”

cccc. On or about February 2, 2011, DOTCOM forwarded an article from The Telegraph by e-mail to ORTMANN, which discusses the potential for courts in the

United Kingdom to block access to “websites used exclusively for facilitating illegal downloading of content.”

dddd. On or about February 5, 2011, ORTMANN responded in an e-mail to DOTCOM, copying ECHTERNACH and VAN DER KOLK, about an article that DOTCOM sent him entitled “how-to-stop-domain-names-being-seized-by-the-us-government.”

ORTMANN indicates the status of the Mega Conspiracy’s completion of the recommendations made in the article.

eeee. On or about February 10, 2011, DOTCOM forwarded a complaint to ORTMANN from a Taiwanese broadband service provider about problems its users have had downloading from Megaupload.com. In the screenshots that are in the original e-mail complaint is what appears to be an ongoing download of a copyrighted The Simpsons episode from Fox Television entitled “Treehouse of Horror XIII.” The e-mail traces the download from the provider’s connection to Cogent Communications to the Mega Conspiracy’s servers.

ffff. On or about February 18, 2011, DOTCOM forwarded an e-mail inquiry entitled “‘Repeat Offender’ Infringement Policy” to ORTMANN. In the original e-mail, a representative of a copyright holder indicates that Megaupload.com does not specify any “repeat offender or repeat infringer policy” in its Terms of Service. The representative points out that the “Safe Harbor” provision of the DMCA “requires that providers deal appropriately with repeat offenders” and asks for the termination of repeat offenders on Megaupload.com.

gggg. On or about February 25, 2011, BATATO forwarded an e-mail to NOMM, copying ORTMANN, entitled “embedded ads not functioning correctly,” from an individual complaining that the advertising click through rate (“CTR”) from playing Megavideo.com videos directly on the linking site alluc.org has suffered because the embedded

advertising from the Mega Conspiracy is not automatically playing on the external website. The individual's e-mail contains screenshots from the linking site that shows episodes of the BBC copyrighted television show Red Dwarf that were available on Megavideo.com. BATATO, in the forward, stated: "Could you please check that issue? We need to help them a bit now as their CTR and conversions went down by 50% and 95% respectively. That was expected but at least we should help them now get their campaigns running w/o problems."

hhhh. On or about February 25, 2011, BATATO sent an e-mail to NOMM and VAN DER KOLK regarding problems with getting "pre-roll" advertising for Megavideo.com because of a "copy right issue." His e-mail contains messages between employees of Megaclick.com and a third-party advertising service. In an early message, the Megaclick.com employee informs BATATO that the third-party advertising service considers it illegal to monetize infringing content through advertising immediately prior to viewing the content.

iiii. On or about March 9, 2011, a developer for the Mega Conspiracy sent an e-mail to ORTMANN and two other individuals. In the e-mail, the developer indicated that an associate had downloaded an infringing copy of a copyrighted musical recording entitled "The_Matrix_-_Original_Motion_Picture_Score.rar" from Rapidshare.com, and then, using the "Megakey music search," added the files to a Megabox account. The e-mail further indicates that the Megabox website listed the wrong artist for the album.

jjjj. On or about April 29, 2011, members of the Conspiracy infringed the copyright of the motion picture "The Green Hornet" by making it available on publicly accessible Internet-connected servers at Carpathia Hosting in Ashburn, Virginia, within the Eastern District of Virginia, and reproduced and distributed the work over the Internet without

authorization. The film, which had been released in U.S. theaters on or about January 14, 2011, was not commercially distributed in the United States until on or about May 3, 2011.

kkkk. On or about May 13, 2011, members of the Conspiracy infringed the copyright of the motion picture “Thor” by making it available on publicly accessible Internet-connected servers at Carpathia Hosting in Ashburn, Virginia, within the Eastern District of Virginia, and reproduced and distributed the work over the Internet without authorization. The film, which had been released in U.S. theaters on or about May 6, 2011, was not commercially distributed in the United States until on or about September 13, 2011.

llll. On or about June 7, 2011, VAN DER KOLK sent an e-mail to ORTMANN forwarding a French complaint about infringement of their copyrighted motion pictures. In the forward, VAN DER KOLK stated: “They basically want us to audit / filter every upload, and are threatening with action against us if their material continues to appear on MV.”

mmmm. On or about July 6, 2011, DOTCOM forwarded an online story from Spiegel.tv to ORTMANN about the takedown of the linking site Kino.to by law enforcement in Germany, and wrote, in German: “Possibly not fly to Germany?”

nnnn. On or about July 6, 2011, BATATO sent an e-mail to ORTMANN forwarding a string of e-mails in German from an advertising entity saying that a customer wants their campaigns on a Mega Site discontinued because of concerns related to the Kino.to takedown.

oooo. On or about August 11, 2011, DOTCOM forwarded an e-mail to ORTMANN from a user who stated: “I used to buy monthly fees to help with the cost of you guys doing business . . . I miss being about to view tv shows on you service . My most favorite was True blood and battle star Gallactica . I would be happy to continue to pay for the service ,

but some thing would needs to change. I don't mind your services be bogged down from time to time. I don't mind paying, but i need to get something for the service i pay for.”

pppp. On or about August 12, 2011, members of the Conspiracy infringed the copyright of the motion picture “Bad Teacher” by making it available on publicly accessible Internet-connected servers at Carpathia Hosting in Ashburn, Virginia, within the Eastern District of Virginia, and reproduced and distributed the work over the Internet without authorization. The film, which had been released in U.S. theaters on or about June 24, 2011, was not commercially distributed in the United States until on or about October 18, 2011.

qqqq. On or about August 14, 2011, members of the Conspiracy infringed the copyright of the motion picture “Harry Potter and the Deathly Hallows, Part 1” by distribution without authorization.

rrrr. On or about September 16, 2011, NOMM sent an analysis of Megavideo.com to ORTMANN by e-mail. The analysis indicates: “The search function for the site should also list full length videos. Currently, movies that do not have copyright infringements are also not being listed in the search.” The analysis further indicates: “Movies should also be available in Megavideo and not from third party websites only[.]”

ssss. On or about September 17, 2011, VAN DER KOLK sent an e-mail to ORTMANN, attaching a Google Analytics report on referrals to Megaupload.com from the linking site Taringa.net. The single page report indicates that, between August 17, 2010 and September 16, 2011, Taringa.net provided more than 72 million referrals to Megaupload.com, with the top 10 links including some copyrighted software and music titles. The page indicates, for example, that the linking site produced 164,214 visits to Megaupload.com for a download of

the copyrighted CD/DVD burning software package Nero Suite 10. This software program had a suggested retail price of \$99.

tttt. On or about October 10, 2011, JK, an executive from a hosting provider, sent an e-mail to ORTMANN entitled “Article.” The e-mail contained a link to a news article, which discussed how a Dutch court ordered a “major” website “to delete all infringing content from its servers.” The article asked: “Could file-hosting services like MegaUpload and RapidShare be next?” In the e-mail, JK asked ORTMANN: “Do you have any concerns that this kind of thing could find its way to you”? ORTMANN responded to JK, with a copy to DOTCOM, stating that the sites in the article “provide a search index covering their entire content base, including the infringing material.”

uuuu. On or about October 14, 2011, DOTCOM sent an e-mail to a PayPal, Inc. representative indicating:

Our legal team in the US is currently preparing to sue some of our competitors and expose their criminal activity. We like to give you a heads up and advice you not to work with sites that are known to pay uploaders for pirated content. They are damaging the image and the existence of the file hosting industry (see whats happening with the Protect IP act). Look at Fileserve.com, Videobb.com, Filesonic.com, Wupload.com, Uploadstation.com. These sites pay everyone (no matter if the files are pirated or not) and have NO repeat infringer policy. And they are using PAYPAL to pay infringers.

vvvv. On or about October 18, 2011, VAN DER KOLK sent an e-mail to ORTMANN, forwarding a complaint from the Vietnamese Entertainment Content Protection Association. The complaint indicated that the DMCA Abuse Tool for Megaupload.com does not remove particular types of links. It also noted that a particular linking site is a repeat infringer “where users and admin team are all involved in upload and reupload as soon as the files are removed.” It also stated “To date, we have removed 24 pages of infringed download links and almost 100% are Megaupload.”

www. On or about November 10, 2011, a member of the Mega Conspiracy made a transfer of \$185,000 to further an advertising campaign for Megaupload.com, involving a musical recording and video.

xxxx. On or about November 20, 2011, members of the Conspiracy infringed the copyright of a high definition version of the motion picture “Lord of the Rings: Fellowship of the Ring” by distribution without authorization.

yyyy. On or about November 20, 2011, members of the Conspiracy infringed the copyright of the motion picture “The Twilight Saga: Breaking Dawn – Part 1” by making it available on publicly accessible Internet-connected servers at Carpathia Hosting in Ashburn, Virginia, within the Eastern District of Virginia, and reproduced and distributed the work over the Internet without authorization. The film, which was released in U.S. theaters on or about November 18, 2011, has not been commercially distributed as of the date of this Indictment.

(All in violation of Title 18, United States Code, Section 371)