IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:12CR3
	)	
KIM DOTCOM,	)	
MEGAUPLOAD LIMITED,	)	
VESTOR LIMITED,	)	
FINN BATATO,	)	
JULIUS BENCKO,	)	
SVEN ECHTERNACH,	)	
MATHIAS ORTMANN,	)	
ANDRUS NOMM, and	)	
BRAM VAN DER KOLK,	)	
	)	
Defendants	)	

Introduction and Summary of Evidence

As per Judge O'Grady's Order of November 22, 2013, the United States of America has been authorized to provide notice to potential victims in the criminal case. As part of that notice, the government has been permitted to release a summary of the evidence that has already been provided to the defendants in the extradition process pending in New Zealand and that would have otherwise become public at the defendants' extradition hearing (which has recently been rescheduled by the New Zealand District Court to start on July 7, 2014).

The government today has further served Judge O'Grady's chambers with the notice package (including a copy of this summary) and has informed the clerk that Judge O'Grady's Order may now be unsealed. Due to the length of the documents in the notice, the government will publish the notice through a release on a U.S. government website and will not file a copy electronically with the court clerk.

The summary reflects evidence reviewed by Assistant United States Attorneys Jay V. Prabhu and Ryan K. Dickey of the U.S. Attorney's Office for the Eastern District of Virginia for purposes of the extradition process and is not exhaustive of the evidence gathered by the government. The paragraphs are ordered based primarily on when they were submitted to the defendants. Additional information is expected to be provided in future submissions to the defendants. Personal identifying information such as bank account and passport numbers has been redacted.

1. Since March 2010, the Federal Bureau of Investigation ("FBI") has been investigating the "Mega Conspiracy," a worldwide criminal enterprise, which operates and administers several Internet websites that reproduce and distribute infringing copies of copyrighted works, including motion pictures, television programs, musical recordings, electronic books, images, video games, and other computer software. KIM DOTCOM ("DOTCOM"), MATHIAS ORTMANN ("ORTMANN"), BRAM VAN DER KOLK ("VAN DER KOLK"), FINN BATATO ("BATATO"), JULIUS BENCKO ("BENCKO"), SVEN ECHTERNACH ("ECHTERNACH"), ANDRUS NOMM ("NOMM"), and the companies MEGAUPLOAD LIMITED and VESTOR LIMITED (collectively, the "defendants"), as well as other individuals and companies, were members of the "Mega Conspiracy."

2. The Internet websites operated by the Mega Conspiracy (collectively, the "Mega Sites") include but are not limited to at least the following: Megaupload.com; Megavideo.com; and Megaclick.com.

3. Throughout the investigation, the FBI has obtained millions of pieces of electronic mail ("e-mail") from accounts associated with the subject matter of this investigation, which span a time period from as early as approximately March 2006 through December 2011. The FBI has searched for and reviewed particular items and themes in these e-mails.

4. The FBI has conducted online undercover activities involving the Mega Sites. These undercover activities include identifying, viewing, and downloading copyright-infringing materials on these websites; opening "premium" accounts on these websites to analyze how these websites operate from a customer viewpoint; and performing network analysis to further analyze how these websites operate. In addition, the FBI has reviewed financial transactions to, from, and between the defendants and others; has examined computer servers belonging to the Mega Conspiracy; and has confirmed that certain files found on the servers are copyrighted works.

5. Megaupload.com is a commercial website and service operated by the Mega Conspiracy. As of January 5, 2012, Megaupload.com publicly claimed to have had more than one billion visitors in its history, more than 180 million registered users to date, and an average of 50 million daily visits, and to account for approximately four percent of the total traffic on the Internet.

6. Megaupload.com often presents itself as a "cyberlocker," which is a private data storage provider. As described below in the section entitled *Megaupload Is Not Primarily a "Cyberlocker"*, however, as part of the design of the service, the vast majority of Megaupload.com users do not have significant capabilities to store private content long-term.

7. Any Internet user who goes to the Megaupload.com website can upload a computer file. Once that user has selected a file on their computer and clicks the "upload" button, the Mega Conspiracy's automated system calculates a 32-digit unique identification number for the file (called an "MD5 hash") that is generated using a mathematical algorithm. After the MD5 hash calculation, if the system determines that the file does not exist on a server controlled by the Mega Conspiracy, then Megaupload.com reproduces the file on at least one computer server it controls and provides the uploading user with a unique Uniform Resource

Locator ("URL") link that allows anyone with the link to download the file without entering a password. The following is an example of a Megaupload.com-generated URL link: www.megaupload.com/?d=BY15XE3V.

8. After the MD5 hash calculation, if the system determines that the uploading file already exists on a server controlled by the Mega Conspiracy, then Megaupload.com does not reproduce a second copy of the file on that server. Instead, the system provides a new and unique URL link to the new user that is pointed to the original file already present on the server. Multiple URL links can therefore point to the same content file.

9. Members of the Mega Conspiracy have publicly stated that they operate the Mega Sites in compliance with the notice and takedown provisions of the Digital Millennium Copyright Act ("DMCA"), codified in part at Title 17, United States Code, Section 512. Under the DMCA, Internet providers gain a safe harbor from civil copyright infringement suits in the United States if they meet certain criteria. As an initial matter, the safe harbor applies only to civil copyright infringement suits, and does not apply to criminal prosecutions for such offenses. In any event, the safe harbor requires that an eligible provider have an agent designated with the U.S. Copyright Office to receive infringement notices, which the Mega Conspiracy failed to do until October 15, 2009, years after Megaupload.com and many of its associated sites had been operating and the DMCA had gone into effect. Furthermore, the members of the Mega Conspiracy do not meet these criteria because they are willfully infringing copyrights themselves on these systems; they have actual knowledge that the materials on their systems are infringing (or alternatively they are aware of facts or circumstances that would make infringing activity apparent, such as "red flags" indicating blatant copyright infringement); they receive a financial benefit directly attributable to the copyright-infringing activity, which is under their control; they failed to terminate repeat infringers; and they have not removed, or disabled access to, known copyright-infringing material from servers they control.

10. Members of the Mega Conspiracy provided an "Abuse Tool" to major U.S. copyright holders, which would purportedly remove copyright-infringing material from Mega Conspiracy-controlled servers. The Abuse Tool allowed copyright holders to enter specific URL links to copyright-infringing content of which they were aware, and they were told by the Mega Conspiracy that the Mega Conspiracy's systems would then remove, or disable access to, the offending material. The Mega Conspiracy's Abuse Tool did not actually function as the copyright owners were led to believe, however, because the Abuse Tool only disabled the specific URL link identified, and the Abuse Tool failed to disable access to the underlying copyright-infringing material or remove the file from the server.

11. If there are multiple links to a file, then any attempt by the copyright holder to terminate access to the file using the Abuse Tool or other DMCA takedown request will fail unless all of the URL links to the infringing file are known and submitted, because the file will continue to be available through any undisclosed URL links. The infringing copy of the copyrighted work, therefore, remains on the Mega Conspiracy's systems as long as a single link remains unknown to the copyright holder. The Mega Conspiracy maintains a record of links that have been generated by the system, but duplicative links to infringing materials are neither disclosed to copyright holders, nor are they automatically disabled or deleted when a copyright holder either uses the Abuse Tool or makes a standard DMCA copyright infringement takedown

request. During the course of the conspiracy, the Mega Conspiracy has received many millions of requests to remove infringing copies of copyrighted works, and yet the Mega Conspiracy has, at best, only deleted the particular URL of which the copyright holder complained, and purposefully left the actual infringing copy of the copyrighted work on the Mega Conspiracy-controlled server and any other access links completely intact.

12. In addition to copyrighted files, other types of illicit content have been uploaded onto the Megaupload.com servers, including child pornography and terrorism propaganda videos. As described below in the section entitled *Willful Failure to Remove Copyright-Infringing Files*, members of the Mega Conspiracy have indicated to each other that they can automatically identify and delete such materials on all of their servers by calculating MD5 hash values of known child pornography or other illicit content, searching the system for these values, and eliminating them; in fact, some such files with matching hash values have been deleted from the Mega Conspiracy's servers. The Mega Conspiracy has not implemented a similar program to actually delete or terminate access to copyright-infringing content.

13. The Mega Conspiracy attempts to mask the large percentage of infringing materials available on their sites, and attempts to mirror a true cyberlocker, by omitting complete and accurate search functionality. The content available from Megaupload.com is not searchable on the website. Instead of hosting a search function on its own site, the Mega Conspiracy business model relies on thousands of third-party "linking" sites, which contain user-generated postings of links created by Megaupload.com (as well as URL links created by other Mega Sites, such as Megavideo.com and Megaporn.com). While the Mega Conspiracy may not operate these third-party sites, for years the Mega Conspiracy offered an "Uploader Rewards" program, which promised premium subscribers transfers of cash and other financial incentives based on the number of times a file has been downloaded. The "Uploader Rewards" program provided a direct financial incentive for premium users to post URL links on linking sites. It was known in the public that the Mega Conspiracy rewarded some users who uploaded popular copyright-infringing works, even despite claims on the Mega Sites that suggested otherwise.

14. Popular linking sites that contained Mega Conspiracy-generated links include: ninjavideo.net, megaupload.net, megarelease.net, kino.to, alluc.org, peliculasyonkis.com, seriesyonkis.com, surfthechannel.com, taringa.net, thepiratecity.org, and mulinks.com. All of these linking sites maintained an index of URL links to identified copies of copyrighted content that were stored on servers directly controlled by the Mega Conspiracy, and several of these websites exclusively offered Megaupload.com links.

15. As described below in the section entitled *Affirmative Reliance on Third-Party "Linking" Sites*, the Mega Conspiracy closely monitors the Internet traffic from linking sites to the Mega Sites. The Mega Conspiracy is aware that linking sites generate a high percentage of the visits to the Mega Sites and provide the Mega Conspiracy with a direct financial benefit through advertising revenue and opportunities for new premium subscriptions. The Mega Conspiracy is also aware that linking sites facilitate the unlawful viewing and downloading of copyright-infringing materials from the Mega Sites. Members of the Mega Conspiracy have knowingly interacted with users of linking sites and have visited the sites themselves. Specifically, some of the defendants have instructed individual users how to locate links to infringing content on the Mega Sites (including recommending specific linking websites).

Several of the defendants have also shared with each other comments from Mega Site users demonstrating that they have used or are attempting to use the Mega Sites to get infringing copies of copyrighted content.

16. As described below in the section entitled *Willful Failure to Remove Copyright-Infringing Files*, in contrast to members of the public, who are required to significantly rely on third-party linking sites, members of the Mega Conspiracy have access to an internal database, which provides full listings of actual file titles that are stored on their servers (as well as the Megaupload.com-generated URL links to those files). Conspirators have searched the internal database for their associates and for themselves, so that they may directly access copyright-infringing content on servers leased by the Mega Conspiracy. The internal database contains, among other things, the following types of information: file name; file extension type (*e.g.*, .avi, .jpg, etc.); file size; date; the file's MD5 hash; whether a link to the file had been removed for abuse (including for copyright infringement); and the file's 8-digit download number for use with the Megaupload.com URL link (for example, the last eight digits of the following: ww.megaupload.com/?d=BY15XE3V).

17. Though the public-facing Megaupload.com website itself does not allow searches, it does list its purported "Top 100 files", which generally includes files that are freely available on the Internet, such as motion picture trailers and software trials. The Top 100 list, however, does not actually portray the most popular downloads on Megaupload.com. Instead, the Top 100 list has been deliberately manipulated by members of the Mega Conspiracy, which makes the website appear more legitimate and hides the popular copyright-infringing content that drives its revenue.

18. If a user uploads a video file to Megaupload.com, then the user can view the file using a "Flash" video player on the Mega Conspiracy-controlled website Megavideo.com. According to Alexa.com, a subsidiary company of Amazon.com that analyzes Internet traffic, Megavideo.com was at one point in its history estimated to be the 52nd most frequently visited website on the entire Internet. Browsing the front page of Megavideo.com does not show any obviously infringing copies of any copyrighted works; instead, the page contains videos of news stories, user-generated videos, and general Internet videos in a manner substantially similar to Youtube.com. Members of the Mega Conspiracy, however, have purposefully copied content directly from Youtube.com in order to populate Megavideo.com, which has the effect of making the website appear more legitimate. Megavideo.com provides a search function, but any search for a copyrighted video will not produce results that include the full-length copyrighted work, even though that copyrighted-work can be viewed and downloaded from a Mega Conspiracy-controlled server somewhere in the world.

19. On Megavideo.com, non-premium users are limited to watching only 72 minutes of any given video at a time, which, since nearly all commercial motion pictures exceed that length, provides a significant incentive for users who are seeking infringing copies of motion pictures to pay the Mega Conspiracy a fee for premium access. In addition, before any video can be viewed on Megavideo.com, the non-premium user must view an advertisement. The popularity of the infringing content on the Mega Sites has generated more than USD $25 million in online advertising revenues for the Mega Conspiracy.

20. Premium subscription fees collected during the existence of the Mega Conspiracy are estimated to be more than USD $150 million.

21. At all times relevant to the charges presented in the Superseding Indictment, the defendants and other members of the Mega Conspiracy knew that they did not have license, permission, authorization, or other authority from owners of hundreds of thousands of copyrighted works to reproduce and distribute those works, including making them available over the Internet. Members of the Mega Conspiracy are aware of the way that their websites are actually used by others; have themselves used the systems to upload, as well as reproduce and distribute, infringing copies of copyrighted content; and are aware that they have financially benefitted directly from the infringement of copyrighted works that they are in a position to control.

Nature of the Conspiracy and Individuals and Entities Involved

22. The U.S. Attorney's Office for the Eastern District of Virginia expects Michael C. Poston, Special Agent with the Federal Bureau of Investigation ("Agent Poston"), to testify to the following facts:

a. Agent Poston has been a Special Agent with the Federal Bureau of Investigation for the past five years. He is currently assigned to the National Intellectual Property Rights Coordination Center in Arlington, Virginia, United States, where his duties include the investigation of crimes involving the infringement of intellectual property rights, including criminal copyright violations.

b. Beginning in at least September 2005 and continuing until at least January 19, 2012, in the Eastern District of Virginia and elsewhere, the defendants and others were members of the Mega Conspiracy. As described below, these conspirators formed a number of businesses, which operate and administer several Internet websites that reproduce and distribute infringing copies of copyrighted works, including motion pictures, television programs, musical recordings, electronic books, images, video games, and other computer software. Each of the defendants played a significant role in the business, and so furthered the objectives of the Mega Conspiracy. As described below in the sections entitled *DOTCOM's Knowledge of Copyright Infringement* and *Co-Conspirators' Knowledge of Copyright Infringement*, DOTCOM and the other defendants knew that the business depended on the knowing reproduction and distribution of copyrighted works.

c. Throughout the investigation, which began in approximately March 2010, the FBI has obtained e-mails from numerous different e-mail accounts associated with the subject matter of this investigation. In total, these accounts contain millions of e-mails, which span a time period from as early as approximately March 2006 through December 2011, including

e-mails from DOTCOM's accounts. Agent Poston has personally searched for and reviewed particular items and themes in these e-mails.

d. **KIM DOTCOM.** Agent Poston has reviewed copies of the following identification documents associated with DOTCOM:

i. DOTCOM's German driver's license no. [REDACTED], issued May 12, 2000, which lists his name as "Kim Schmitz";

ii. DOTCOM's German passport no. [REDACTED], issued May 31, 2002, which lists his name as "Kim Schmitz";

iii. DOTCOM's Finland passport no. [REDACTED], issued July 4, 2005, which lists his name as "Kim Tim Jim Vestor";

iv. DOTCOM's Finland passport no. [REDACTED], issued February 12, 2010, which lists his name as "Kim Dotcom"; and

v. DOTCOM's Hong Kong Identity Card no. [REDACTED], issued February 22, 2010, which lists his name as "Kim Dotcom".

These identification documents all contain a photograph of DOTCOM and list his date of birth as [REDACTED] demonstrating that DOTCOM has been known by at least the following aliases: Kim Schmitz and Kim Tim Jim Vestor. In addition, these identification documents show that DOTCOM is a dual citizen of Finland and Germany, and a resident of Hong Kong. DOTCOM is also a resident of New Zealand, as demonstrated by e-mails sent between conspirators and documents filed with the New Zealand government.

In a sworn declaration, dated December 14, 2011, DOTCOM declared as follows: "I am the Chief Innovation Officer of Plaintiff Megaupload Ltd. ('Megaupload'), and have been employed at Megaupload since September 2005."[1] E-mails sent between conspirators demonstrate that prior to becoming the Chief Innovation Officer, DOTCOM was the Chief Executive Officer for MEGAUPLOAD LIMITED between September 2005 and August 2011. E-mails between conspirators further show that DOTCOM is the head of the Mega Conspiracy, which employs more than 30 people residing in approximately nine countries; he has supervised the development of the websites and companies utilized in the Mega Conspiracy; he has directed the creation of the network infrastructure behind the Mega Sites; he has negotiated contracts with Internet Service Providers and advertisers; he has administered the domain names used by the Mega Conspiracy; and he exercises ultimate control over all major

[1] DOTCOM's sworn declaration, entitled "Declaration of Kim Dotcom in Support of Plaintiff's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction," was filed on December 14, 2011, with the United States District Court for the Northern District of California, in the matter of Megaupload Ltd. v. Universal Music Group, Inc. (Case No. 11-cv-6216, Doc. 6).

decisions in the Mega Conspiracy. E-mails show that DOTCOM has arranged millions of dollars in payments for the computer servers utilized by the Mega Sites around the world, and has also distributed proceeds of the Mega Conspiracy to his co-conspirators. As described below, DOTCOM owns approximately 68% of Megaupload.com and all of Megavideo.com. Additionally, as described below in the section entitled *DOTCOM's Knowledge of Copyright Infringement*, e-mails show that on numerous instances, DOTCOM received DMCA copyright infringement takedown notices from third-party companies, and further, that DOTCOM has personally received at least one infringing copy of a copyrighted work on a Mega Site. According to an internal financial statement for MEGAUPLOAD LIMITED, DOTCOM received more than USD $42 million from the Mega Conspiracy in calendar year 2010 alone.

e. **VESTOR LIMITED.** According to documents obtained from The Government of the Hong Kong Special Administrative Region Companies Registry, on or about September 6, 2005, DOTCOM registered the company VESTOR LIMITED in Hong Kong with company registry number 0994358. At that time, the company director was listed as Kim Tim Jim Vestor, with Finland passport no. [REDACTED], and Kim Tim Jim Vestor was listed as the sole director and shareholder. As described below, through VESTOR LIMITED, DOTCOM owns 68% of MEGAUPLOAD LIMITED (which is the registered owner of Megaupload.com) and all of Megavideo Limited (which is the registered owner of Megavideo.com).

f. **MEGAUPLOAD LIMITED.** According to documents obtained from The Government of the Hong Kong Special Administrative Region Companies Registry, on or about September 7, 2005, DOTCOM registered the company MEGAUPLOAD LIMITED in Hong Kong with company registry number 0835149. At that time, the company director was listed as Kim Tim Jim Vestor, with Finland passport no. [REDACTED]. According to publicly available information, MEGAUPLOAD LIMITED is the registered owner of Megaupload.com and Megaclick.com. In addition, according to the business registration documents, the following individuals and entities are shareholders of MEGAUPLOAD LIMITED:

i. VESTOR LIMITED – and therefore DOTCOM himself – is a 68% shareholder;

ii. Netplus International Limited LLC – of which MATHIAS ORTMANN is the sole shareholder – is a 25% shareholder;

iii. Basemax International Limited – of which JULIUS BENCKO is the sole shareholder – is a 2.5% shareholder;

iv. Mindpoint International Limited LLC – of which BRAM VAN DER KOLK is the sole shareholder – is a 2.5% shareholder;

v. SVEN ECHTERNACH is a 1% shareholder; and

vi. An investor in Hong Kong is the remaining 1% shareholder.

g. **Megaupload.com.** Megaupload.com is a commercial website and service operated by the Mega Conspiracy. According to Alexa.com, a subsidiary company of Amazon.com that analyzes Internet traffic, Megaupload.com was at one point in its history estimated to be the 13th most frequently visited website on the entire Internet. As of January 5, 2012, Megaupload.com publicly claimed to have had more than one billion visitors in its history, more than 180 million registered users to date, an average of 50 million daily visits, and accounted for approximately four percent of the total traffic on the Internet.

h. **Megavideo.com.** If a user uploads a video file to Megaupload.com, then the user can view the file using a "Flash" video player on the Mega Conspiracy-controlled website Megavideo.com. According to Alexa.com, Megavideo.com was at one point in its history estimated to be the 52nd most frequently visited website on the entire Internet. Browsing the front page of Megavideo.com does not show any obviously infringing copies of any copyrighted works; instead, the page contains videos of news stories, user-generated videos, and general Internet videos in a manner substantially similar to Youtube.com. As discussed below in the section entitled *Copying Videos from Youtube.com*, however, members of the Mega Conspiracy, including VAN DER KOLK and ORTMANN, at the explicit direction of DOTCOM, purposefully copied content directly from Youtube.com in order to populate Megavideo.com, which has the effect of making the website appear more legitimate. On Megavideo.com, non-premium users are limited to watching only 72 minutes of content at a time, which, since nearly all commercial motion pictures exceed that length, provides a significant incentive for users who are seeking infringing copies of motion pictures to pay the Mega Conspiracy a fee for premium access. In addition, before any video can be viewed on Megavideo.com, the user must view an advertisement. Financial records, including a MEGAUPLOAD LIMITED income statement and balance sheet, show that the Mega Sites have generated more than USD $25 million in online advertising revenues for the Mega Conspiracy.

i. **MATHIAS ORTMANN.** According to e-mails sent between conspirators, ORTMANN is the Chief Technical Officer and head of the Technical Department for MEGAUPLOAD LIMITED. Business registration documents attached to e-mails show that he is the sole shareholder of Netplus International Limited LLC, which, as described above, makes him a 25% shareholder of MEGAUPLOAD LIMITED.

According to e-mails, some of which include attached identification documents, ORTMANN is a citizen of Germany and a resident of Germany and Hong Kong. E-mails sent between conspirators further show that ORTMANN has overseen software programmers that developed the Mega Conspiracy's websites, has handled technical issues with the Internet Service Providers, and had authority to distribute funds from one of the Mega Conspiracy's main financial accounts. Additionally, e-mails show that on numerous instances, ORTMANN received DMCA copyright infringement takedown notices from other conspirators and third-party companies. According to an internal financial statement for MEGAUPLOAD LIMITED, ORTMANN received more than USD $9 million from the Mega Conspiracy in calendar year 2010 alone.

j. **JULIUS BENCKO.** According to e-mails sent between conspirators, BENCKO is the Graphic Director for MEGAUPLOAD LIMITED. Business registration documents attached to e-mails show that he is the sole shareholder of Basemax International Limited, which, as described above, makes him a 2.5% shareholder of MEGAUPLOAD LIMITED. According to e-mails, some of which include attached identification documents, BENCKO is a citizen and resident of Slovakia. E-mails sent between conspirators further show that BENCKO designed the Megaupload.com logos, the layouts of advertisement space, and the integration of the online video player. Additionally, BENCKO has requested and received at least one infringing copy of a copyrighted work stored on a Mega Site. According to an internal financial statement for MEGAUPLOAD LIMITED, BENCKO received more than USD $1 million from the Mega Conspiracy in calendar year 2010 alone.

k. **BRAM VAN DER KOLK.** According to e-mails sent between conspirators, VAN DER KOLK is the Programmer-in-Charge for MEGAUPLOAD LIMITED. Business registration documents attached to e-mails show that he is the sole shareholder of Mindpoint International Limited LLC, which, as described above, makes him a 2.5% shareholder of MEGAUPLOAD LIMITED. According to e-mails, some of which include attached identification documents, VAN DER KOLK is a citizen of the Netherlands and a resident of New Zealand. E-mails sent between conspirators show that VAN DER KOLK has overseen software programming on the Mega Conspiracy websites, as well as the underlying network infrastructure and administration of the "Uploader Rewards" program. Additionally, in a sworn declaration, VAN DER KOLK declared as follows:

> I am an employee of MEGAUPLOAD LIMITED ("Megaupload"), which operates a virtual locker service at <megaupload.com>. I am responsible for taking down content in response to Digital Millennium Copyright Act (DMCA) takedown notices which are sent to Megaupload. As such, I am familiar with and have personal

knowledge regarding its practices for receiving and acting on takedown notices, including those sent to the email address legal@megaupload.com.[2]

E-mails between conspirators show that VAN DER KOLK has personally uploaded multiple infringing copies of copyrighted works to the Mega Sites and has searched internal servers controlled by the Mega Conspiracy for infringing copies of copyrighted works at the request of other conspirators. According to an internal financial statement for MEGAUPLOAD LIMITED, VAN DER KOLK received more than USD $2 million from the Mega Conspiracy in calendar year 2010 alone.

l. **SVEN ECHTERNACH.** According to e-mails sent between conspirators, ECHTERNACH is the Head of Business Development for MEGAUPLOAD LIMITED. E-mails further show that he is a 1% shareholder of MEGAUPLOAD LIMITED. According to e-mails, some of which include attached identification documents, ECHTERNACH is a citizen and resident of Germany. E-mails sent between conspirators show that ECHTERNACH leads the Mega Team company, registered in the Philippines, which is tasked with removing illegal or abusive content from the Mega Conspiracy websites, reviewing advertising campaigns for inappropriate content, and responding to customer support e-mails. Additionally, e-mails show that on numerous instances, ECHTERNACH received DMCA copyright infringement takedown notices from third-party companies. According to an internal financial statement for MEGAUPLOAD LIMITED, ECHTERNACH received more than USD $500,000 from the Mega Conspiracy in calendar year 2010 alone.

m. **FINN BATATO.** According to e-mails sent between conspirators, BATATO is the Chief Marketing and Sales Officer for MEGAUPLOAD LIMITED; he is in charge of selling advertising space and supervises a sales team of approximately ten people around the world. He is not a shareholder of MEGAUPLOAD LIMITED. According to e-mails, some of which include attached identification documents, BATATO is a citizen and resident of Germany. Additionally, e-mails show that on numerous instances, BATATO received DMCA copyright infringement takedown notices from third-party companies, and further, that he has personally distributed a link to at least one infringing copy of a copyrighted work stored on a Mega Site to DOTCOM. According to an internal financial statement for MEGAUPLOAD LIMITED, BATATO received more than USD $400,000 from the Mega Conspiracy in calendar year 2010 alone.

[2] VAN DER KOLK's sworn declaration, entitled "Declaration of Bram van der Kolk in Support of Defendant Megaupload Limited's Motion to Dismiss," was filed on March 28, 2011, with the United States District Court for the Southern District of California, in the matter of Perfect 10, Inc. v. Megaupload Limited and Kim Schmitz (Case No. 11-cv-0191, Doc. 7-6).

n. **ANDRUS NOMM.** According to e-mails sent between conspirators, NOMM is a software programmer and Head of the Development Software Division for MEGAUPLOAD LIMITED. He is not a shareholder of MEGAUPLOAD LIMITED. According to e-mails, some of which include attached identification documents, NOMM is a citizen of Estonia and a resident of both Estonia and Turkey. Additionally, e-mails show that NOMM has accessed at least one infringing copy of a copyrighted work stored on a Mega Site. According to an internal financial statement for MEGAUPLOAD LIMITED, NOMM received more than USD $100,000 from the Mega Conspiracy in calendar year 2010 alone.

o. **Megamedia Limited.** According to documents obtained from The Government of the Hong Kong Special Administrative Region Companies Registry, on or about May 20, 2006, DOTCOM registered the company Megamedia Limited in Hong Kong with company registry number 1046613. At that time, the company director was listed as Kim Tim Jim Vestor, with Finland passport no. [REDACTED], and VESTOR LIMITED was listed as and remains the sole shareholder.

p. **Megavideo Limited.** According to documents obtained from The Government of the Hong Kong Special Administrative Region Companies Registry, on or about May 20, 2006, DOTCOM registered the company Megavideo Limited in Hong Kong with company registry number 1046619. At that time, the company director was listed as Kim Tim Jim Vestor, and Megamedia Limited was listed as and remains the sole shareholder. According to publicly available information, Megavideo Limited is the registered owner of Megavideo.com.

q. **Carpathia Hosting, Inc.** According to publicly available information, Carpathia Hosting, Inc. ("Carpathia") is an Internet hosting provider founded in 2003 that is headquartered in Dulles, Virginia, United States, in the Eastern District of Virginia. According to e-mails sent between members of the Mega Conspiracy and representatives of Carpathia, the Mega Conspiracy leases approximately twenty-five petabytes of data storage from Carpathia to store and manage content associated with the Mega Sites (a single petabyte contains more than one million gigabytes). These e-mails further show that more than 1,000 computer servers in North America are owned and operated by Carpathia for the benefit of the Mega Conspiracy; more than 525 of these computer servers are located in Ashburn, Virginia, which is in the Eastern District of Virginia.

r. **Cogent Communications.** According to publicly available information, Cogent Communications ("Cogent") is a multinational Internet hosting provider that is headquartered in Washington, D.C., United States. Cogent is one of the largest carriers of Internet traffic worldwide. According to e-mails sent between members of the Mega Conspiracy and representatives of Cogent, the Mega Conspiracy leases approximately

thirty-six computer servers in Washington, D.C., and France from Cogent to store and manage content associated with the Mega Sites.

s. **Leaseweb.** According to publicly available information, Leaseweb is a multinational Internet hosting provider founded in 1997 that is headquartered in the Netherlands. According to e-mails sent between members of the Mega Conspiracy and representatives of Leaseweb, the Mega Conspiracy leases or owns approximately 690 computer servers from Leaseweb to store and manage content associated with the Mega Sites. These e-mails further show that Leaseweb manages approximately nineteen petabytes of data dedicated to content associated with the Mega Sites.

t. **PayPal, Inc.** Accordingly to publicly available information, PayPal, Inc. ("PayPal") is a U.S.-based global e-commerce business allowing payments and money transfers over the Internet; in fact, PayPal indicates that it is involved in approximately 15% of global e-commerce. Financial records show that the Mega Conspiracy's PayPal account has been utilized to receive payments from the Eastern District of Virginia and elsewhere for premium Megaupload.com subscriptions, which have included fees of USD $9.99 for monthly subscriptions, USD $59.99 for yearly subscriptions, and USD $199.99 for lifetime subscriptions. The same PayPal account has been used by the Mega Conspiracy to pay Carpathia in the United States and Leaseweb in the Netherlands, and to make other payments, including, but not limited to, direct financial rewards to uploaders of popular content in the Eastern District of Virginia and elsewhere. From on or about November 25, 2006, through on or about July 2011, the PayPal account for the Mega Conspiracy has received in excess of USD $110 million from subscribers and other persons associated with the Mega Conspiracy.

u. **Moneybookers Limited.** According to publicly available information, Moneybookers Limited ("Moneybookers") is a United Kingdom-based global e-commerce business allowing payments and money transfers over the Internet. The Mega Conspiracy has charged various rates through Moneybookers for premium subscriptions on its websites, including €9.99 for monthly subscriptions, €59.99 for yearly subscriptions, or €199.99 for lifetime subscriptions, as well as payments for advertising. Financial records and e-mails between conspirators demonstrate that between August 1, 2010, and July 31, 2011, the Moneybookers accounts for the Mega Conspiracy have collected in excess of USD $5 million from subscribers of and advertisers on Mega Sites.

Megaupload Is Not Primarily a "Cyberlocker"

23. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. Services on the Mega Sites were offered to three broad categories of users: unregistered, non-paying, anonymous users; registered, non-paying users; and registered, paying, premium users. Megaupload.com often presents itself as merely a "cyberlocker," which is a private data storage provider. Any Internet user who goes to the Megaupload.com website can upload a computer file. However, according to the website's "Frequently Asked Questions" and "Terms of Service", as part of the design of the service, only paid premium subscribers have a realistic chance of having any private long-term storage, since their files are not regularly deleted due to non-use. Unregistered anonymous users (referred to as "Non-Members" by the Mega Conspiracy) are allowed to upload and download content files, but any Non-Member-uploaded content that is not downloaded within 21 days is permanently deleted. Similarly, registered free users (or "Members") are allowed to upload and download content files, but each uploaded file must be downloaded every 90 days in order to remain on the system.

b. In addition, all users are warned on the website's "Frequently Asked Questions" and "Terms of Service" that they should not keep the sole copy of any file on Megaupload.com, and that users bear all risk of data loss. The Mega Conspiracy's duty to retain any data for even a premium user explicitly ends when either the premium subscription runs out or Megaupload.com decides, at its sole discretion and without any required notice, to stop operating.

c. As described below in the section entitled *Undercover Activity of Special Agent Poston*, after uploading a file, Megaupload.com reproduces the file on at least one computer server it controls and provides the uploading user with a unique URL link that allows anyone with the link to download the file without entering a password. Many of these URL links are widely distributed throughout the Internet on third-party "linking" sites.

d. As described below in the section entitled *Uploader Rewards Program*, between September 2005 and July 2011, the Mega Conspiracy offered an "Uploader Rewards" program, which offered premium subscribers financial incentives to upload popular works. Initially, in September 2005, the program offered bonus payments to users whose files were downloaded 50,000 times within a three-month period. Near its conclusion in July 2011, the program offered to pay up to USD $10,000 to users whose files were downloaded 5,000,000 times. As part of this program, members of the Mega Conspiracy knowingly and purposefully paid rewards to many users who uploaded copyright-infringing content,

despite public claims that the Mega Sites would not pay and would in fact block such users.

e. As described below in the section entitled *Co-Conspirators' Knowledge of Copyright Infringement*, members of the Mega Conspiracy have searched the internal Megaupload.com database on behalf of their associates and on their own behalf, so that they may directly access copyright-infringing content stored in the personal accounts of Megaupload.com users.

24. The U.S. Attorney's Office for the Eastern District of Virginia expects a computer specialist with the Federal Bureau of Investigation to testify to the following facts:

a. On or about January 19, 2012, the Federal Bureau of Investigation executed search warrants in Virginia and Washington, D.C., at locations where the Mega Conspiracy leased computer servers for the Mega Sites. Computer specialists with the Federal Bureau of Investigation copied data from these servers, including multiple databases containing information about the files contained on the Mega Sites.

b. A preliminary analysis shows that the databases contain information about users of the Mega Sites. One of the databases shows that on or about January 19, 2012, the Mega Sites had approximately 66.6 million total registered users. Of these, approximately 800,000, or roughly 1.2%, were premium subscribers. Therefore, approximately 98.8% of users did not have significant capabilities to store private content long-term. In addition, of the 66.6 million total registered users, at most, only 5.86 million registered users, or less than 9%, had ever uploaded a file to either Megaupload.com or Megavideo.com. Therefore, the vast majority of users accessed the Mega Sites to view and download content.

c. The preliminary analysis further shows that the Mega Conspiracy measured the throughput, or bandwidth, that files on the Mega Sites were consuming. Files that demanded higher throughput, which meant that more users were accessing those files simultaneously, were stored on faster servers located in Washington, D.C. The preliminary analysis of the databases shows that the vast majority of files on these computers are infringing copies of copyrighted works, and the Mega Conspiracy has purposefully made their rapid and repeated distribution a primary focus of their infrastructure.

Uploader Rewards Program

25. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the Federal Bureau of Investigation to testify to the following facts:

a. According to publicly available information, an early version of the "Uploader Rewards" program for premium users of 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

b. According to publicly available information, 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

c. According to publicly available information, 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

d. On or about March 29, 2006, VAN DER KOLK sent an e-mail to DOTCOM entitled "payment batch file". In the e-mail, VAN DER KOLK wrote, "Here the payment batch file of the second megaupload rewards quarter." He further wrote, ". . . there are 3 payments in there from people that were marked as mass downloaders but got the benefit of the doubt after investigation by Mathias [ORTMANN]."

e. 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 proposed reward amounts, which ranged from USD $100 to USD $1,500, the Megaupload.com username, and a description of the uploaded content. For one user, who had a proposed reward amount of USD $100, VAN DER KOLK described the uploaded content as, "10+ Full popular DVD rips (split files), a few small porn movies, some software with keygenerators (warez)." The term "DVD rips" commonly refers to infringing copies of copyrighted motion pictures and television shows contained on DVDs. The term "warez" commonly refers to infringing copies of copyrighted computer software. VAN DER KOLK described the uploaded content of another user, who also had a proposed reward amount of USD $100, as "Popular DVD rips."

f. 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 text file listing proposed reward amounts, which ranged from USD $100 to USD $500, the Megaupload.com username, and a description of the uploaded content. For one user, who had a proposed reward amount of USD $300, VAN DER KOLK wrote, "30849 files, mainly Mp3z, some copyrighted but most of them have a very small number of downloads per file." The term "Mp3" refers to an audio or music file, and the term "Mp3z" commonly refers to copyrighted musical recordings. For other users, all of which were selected for reward payments of USD $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"; and "This user was paid last time has mainly split RAR files, however more than 50% deleted through abuse reports."

g. 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 USD $100 to USD $1,500.

h. On or about December 2, 2007, DOTCOM sent an e-mail entitled "Feedback, opinions and improvements please!" to ORTMANN, VAN DER KOLK, BENCKO, and ECHTERNACH, with a draft press release regarding an "Xmas Special" for the "Uploader Rewards" program. In the e-mail, DOTCOM wrote:

> For the whole month of December & January you will earn DOUBLE reward points for downloads of your files.
> Say good bye to the competition. Our Rewards program was already the best before this special. But now you must be crazy if you still upload to other sites :-)

ECHTERNACH responded with comments, and on or about December 3, 2007, DOTCOM ordered BENCKO to "put the text I emailed first in the xmas special landing page and send me a link today. Also let me see the animated top and bottom."

i. In or about late June 2011, e-mails between conspirators show that the Mega Conspiracy ended the "Uploader Rewards" program. For example, on or about June 30, 2011, VAN DER KOLK sent an e-mail to DOTCOM and ORTMANN entitled "rewards". In the e-mail, VAN DER KOLK wrote, "We've removed the rewards from all the sites."

j. On or about October 14, 2011, just approximately three months after ending the Mega Conspiracy's "Uploader Rewards" program that offered payments through PayPal and other things of value to reward uploaders (including known and repeat infringers), DOTCOM sent an e-mail to a PayPal representative, stating:

> 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.

In direct contrast to DOTCOM's statements in his e-mail, for over six years as part of the "Uploader Rewards" program, the Mega Conspiracy paid users who had uploaded "pirated" content, and as demonstrated in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Misrepresentations to Copyright Owners*, the Mega Conspiracy failed to terminate repeat infringers.

Copying Videos from Youtube.com

26. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative from Google Inc. to testify to the following facts:

a. Google Inc. is the parent company of YouTube.

b. According to the YouTube "Terms of Service," users who upload content to YouTube retain all of their ownership rights in their content. By uploading their content to YouTube, however, such users grant YouTube a license to use, reproduce, and distribute such content.

c. In general, the further reproduction and distribution of videos that are taken from the Youtube.com platform violates the copyright of the individual who uploaded that video to Youtube.com.

27. The U.S. Attorney's Office for the Eastern District of Virginia expects users who uploaded content to Youtube.com, and who retained copyright ownership in such uploaded content, to testify that the infringing copies of their copyrighted works were reproduced and distributed for commercial advantage and private financial gain by the Mega Conspiracy on the Mega Sites without authorization.

28. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the Federal Bureau of Investigation to testify to the following facts:

a. According to e-mails sent between conspirators, in approximately April 2006, members of the Mega Conspiracy copied videos directly from Youtube.com to make them available on Megavideo.com.

b. 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." In addition, VAN DER KOLK wrote, "Hope [Youtube.com is] not implementing a fraud detection system now… * praying *". VAN DER KOLK also wrote: "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."

c. 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."

d. On or about August 12, 2007, sales@megaupload.com received an e-mail from a copyright owner, who complained that a video from his Youtube.com account appeared to have been infringed by a user on Megavideo.com. The copyright owner wrote, "My YouTube video, in which I had to get permission to upload, seems to be included in your megavideo clips . . . It's not just that the clip is on your service, MY clip is on your service, meaning the exact same title, same tags, same description, and the same typo." In addition, the copyright owner asked, "The clip was uploaded [to Megavideo.com] 11 days ago, but that user's profile says he hasn't even logged in for SIXTEEN days. How is that possible?"

e. On or about August 14, 2007, an e-mail was sent from "Megavideo Support" to a copyright holder (who complained that videos from his Youtube.com channel appeared to have been infringed by two users on Megavideo.com) that falsely represented that the Mega Conspiracy had blocked the two users' accounts, when these two accounts were still active on January 19, 2012.

f. On or about August 15, 2007, an e-mail was sent from "Megavideo Support" to a copyright holder (who complained that videos from his Youtube.com channel appeared to have been infringed by a user on Megavideo.com) that falsely represented that the Mega Conspiracy had blocked the user's account, when the account was still active on January 19, 2012.

g. On or about August 15, 2007, an e-mail was sent from "Megavideo Support" to a copyright holder (who complained that videos from his Youtube.com channel – as well as those of other Youtube.com users - appeared to have been infringed by a user of Megavideo.com) that falsely represented that the Mega Conspiracy had blocked the user's account, when the account was still active on January 19, 2012.

h. On or about January 27, 2011, ECHTERNACH received an e-mail from an unindicted co-conspirator confirming that Youtube.com remained a "video resource" site that they used as "our source for videos which we upload to megavideo."

29. The U.S. Attorney's Office for the Eastern District of Virginia expects a computer specialist with the Federal Bureau of Investigation to testify to the following facts:

a. On or about January 19, 2012, the Federal Bureau of Investigation executed search warrants in Virginia and Washington, D.C., at locations where the Mega Conspiracy leased computer servers for the Mega Sites. Computer specialists with the Federal Bureau of Investigation copied data from these servers, including multiple databases containing information about the files contained on the Mega Sites.

b. A preliminary investigation of the databases and associated software code shows that the Mega Conspiracy implemented a software tool to copy videos from Youtube.com. After copying a video from Youtube.com, the tool would import the video into the account of a randomly-selected, already-existing user of the Mega Sites. In addition, the tool would assign the video a random, false "view" count. This is consistent with what is discussed in Paragraph 28(d), which describes an August 12, 2007 e-mail, where a copyright owner complains that a video from his Youtube.com account appeared to have been infringed by a user on Megavideo.com, but that the Megavideo.com user had not logged on during that time period.

Manipulation of the "Top 100"

30. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the Federal Bureau of Investigation to testify to the following facts:

a. On or about July 18, 2008, DOTCOM received an e-mail from a web designer, regarding the development of the Megaupload.com "Top 100." That same day, DOTCOM forwarded the e-mail to ORTMANN and VAN DER KOLK, writing: "Number 1 dowload will of course be Mega Manager :-)".

b. On or about October 25, 2009, VAN DER KOLK instructed a Mega Conspiracy employee through an e-mail, written in Dutch, how to alter the "featured" videos list on Megavideo.com and the "Top 100" list on Megaupload.com. VAN DER KOLK wrote, among other things, that the Top 100 should not list any copyrighted files, but instead should list game demos, software demos, and movie trailers. VAN DER KOLK instructed the employee to track what was currently popular on the Internet and to download material from websites such as download.com, apple.com/trailers, and gamespot.com. VAN DER KOLK further instructed the employee to create fake accounts on Megaupload.com and Megavideo.com and to upload the files to those accounts, so that it would appear that the files were uploaded by active users instead of Mega Conspiracy employees.

Willful Failure to Remove Copyright-Infringing Files

31. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. E-mails sent to the conspirators show that the Mega Conspiracy has received many millions of requests, including DMCA takedown requests, to remove infringing copies of copyrighted works from the Mega Sites. Public records from the U.S. Copyright Office show that the Mega Conspiracy failed to designate an agent with the U.S. Copyright Office to receive infringement notices until on or about October 15, 2009, years

after Megaupload.com and many of its associated sites had been operating and the DMCA had gone into effect.

b. As part of the administration of Megaupload.com and Megavideo.com, members of the Mega Conspiracy have access to an internal database, which contains, among other things, the following information: file name; file extension type (*e.g.*, .avi, .jpg, etc.); file size; date; the file's MD5 hash; whether a link to the file had been removed for abuse (including for copyright infringement); 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). On or about August 12, 2007, VAN DER KOLK sent an e-mail to ORTMANN regarding a particular file located on Megaupload.com. In the e-mail, VAN DER KOLK copied information about the file from the Megaupload.com internal database, containing many of the categories of information described above.

c. 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." This e-mail confirms that the Mega Conspiracy has the ability, from the moment a file is uploaded, to locate identical files within the system, based on a unique identifier, such as the MD5 hash.

d. 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." The term "public forums" likely refers to third-party linking sites. 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", demonstrating that the Mega Conspiracy arbitrarily limited the ability of copyright owners to remove infringing content from the Mega Sites. This is discussed further in the section below entitled *DOTCOM's Knowledge of Copyright Infringement.*

e. 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 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 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.

f. E-mails between conspirators demonstrate that the Mega Conspiracy has eliminated known child pornography and other illicit content, including terrorist propaganda videos, by searching the system for identical MD5 hash values and deleting files with matching hash values. Members of the Mega Conspiracy have failed to implement a similar program to actually delete or terminate access to copyright-infringing content.

i. On or about April 8, 2007, DOTCOM sent an e-mail to PayPal, in which he stated that Megaupload.com was working toward "preventing pedophiliac materials from being distributed through our service[.]" DOTCOM outlined their "key procedures", which included the following:

> 1. Keyword-based upload alerting. We maintain a list of patterns/words commonly used in relevant file names and descriptions. Whenever a new file is uploaded whose file name or description matches, the file is forwarded to our content auditing team for further inspection.
>
> 2. Recursive tracking of uploaders and files. When our team of content auditors receives a notification of an upload related to child exploitation either through (1), or from a 3rd party source, they verify the file's nature, then cross-match related uploads by IP, by the file's hash fingerprint, and by the supplied uploader credentials (user ID, e-mail addresses). This procedure is effective, because the same uploader often uploads more than one file, and the same file is typically uploaded more than once by different, unrelated persons. The process is applied repeatedly, leading to a step-by-step compromise of most file portfolios containing pedophiliac material. Existing fingerprints are

stored permanently and will immediately trigger an alarm if they match a new upload.

The Mega Conspiracy failed to implement any similar procedures for copyright-infringing works.

ii. On or about August 14, 2007, DOTCOM and VAN DER KOLK received an e-mail, in which the author stated, "Apparently, there are questionable (possibly bestiality) videos on your site. Can you please have some over there remove the following videos which are shown on this screen shot?" VAN DER KOLK responded to the e-mail, copying DOTCOM and ORTMANN, as follows: "I cleaned up most bestiality[.]"

iii. On or about August 14, 2010, DOTCOM sent an e-mail to hosting company executives DS and JK, and to ORTMANN.[3] In the e-mail, DOTCOM addressed the Mega Conspiracy's treatment of "Content that is illegal per se, most notably pedophilia material." DOTCOM stated, "A specialized team of auditors is continuously putting great efforts into the discovery and elimination this type of content by looking at upload sources (user accounts, IP addresses) of newly reported files, then identifying similar items uploaded from the same source, leading to further upload sources. This process is applied recursively and exhaustively[.]" DOTCOM further stated, "As a result, the frequency of notices coming from established monitoring bodies such as 'Telefono Arcobaleno' has decreased to near-zero as it is now well known in the criminal scene that abusing Megaupload for storing their appalling material would pose great risks to them."

g. 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."

[3] Pursuant to normal procedures at this stage in the proceedings, the identities of the non-law enforcement witnesses are being kept confidential. In compliance with U.S. law, the identities of the witnesses, as well as information useful to prepare the defendants' defense, may be disclosed to the defense prior to trial in the United States.

32. The U.S. Attorney's Office for the Eastern District of Virginia expects a computer specialist with the Federal Bureau of Investigation to testify to the following facts:

a. On or about January 19, 2012, the Federal Bureau of Investigation executed search warrants in Virginia and Washington, D.C., at locations where the Mega Conspiracy leased computer servers for the Mega Sites. Computer specialists with the Federal Bureau of Investigation copied data from these servers, including multiple databases containing information about the files contained on the Mega Sites.

b. A preliminary analysis shows that the databases contain information about the files uploaded to the Mega Sites, including, among other things, the following: file name; file extension type (*e.g.*, .avi, .jpg, etc.); file size; date; the file's MD5 hash; whether a link to the file had been removed for abuse (including for copyright infringement); and the file's 8-digit download number for use with the URL link (for example, the last eight digits of the following: www.megaupload.com/?d=BY15XE3V). The database permitted the Mega Conspiracy to identify and track files.

c. The preliminary analysis of the databases further shows that as of on or about January 19, 2012, Megavideo.com contained approximately 14.9 million total unique video files. Of these 14.9 million files, the internal database reflects that approximately 6.3 million, or roughly 42%, had never been viewed. Of the 8.6 million files that had been viewed at least once, the database reflects approximately 33 million total URL links pointing to these files, and 34.9 billion recorded views of these links. The number of URL links is greater than the number of files because multiple URL links point to the same file. Furthermore, of the 8.6 million files that had been viewed at least once, at least approximately 1.1 million files, or roughly 12.8%, had received a copyright take-down request, and of the 33 million URL links pointing to the 8.6 million files, at least approximately 4.2 million links, or roughly 12.7%, had received a copyright take-down request. In addition, approximately 12.3 million active URL links, or roughly 37.3%, pointed to files that had received a copyright take-down request through a different URL link.

d. The preliminary analysis of the database for Megavideo.com further reflects approximately 34.9 billion video streams, or views, of all files. Of these, at least approximately 15 billion streams, or roughly 43%, are of unique video files that had received at least one copyright take-down request. At least 4.3 billion streams, or roughly 12.3%, are of video files that had received at least ten copyright take-down requests through different URL links. Though the Mega Conspiracy had actual knowledge that it was reproducing and distributing infringing copies of copyrighted works, it failed to delete the infringing files or terminate access to them.

e. The preliminary analysis further shows that for approximately 94,000 users, who were active on or about January 19, 2012, the Mega Conspiracy received at least one DMCA copyright infringement takedown request; for approximately 19,000 active users, the Mega Conspiracy received at least ten takedown requests; for approximately 4,438 active users, the Mega Conspiracy received at least 100 takedown requests; and for approximately 642 active users, the Mega Conspiracy received at least 1,000 takedown requests.

f. Of the approximately 34.9 billion total recorded views of URL links on Megavideo.com, the URL links uploaded by active users who had received at least 1,000 takedown requests accounted for approximately 5.1 billion views, or roughly 15%; the URL links uploaded by active users who had received at least 100 takedown requests accounted for 12.8 billion views, or roughly 37%; the URL links uploaded by active users who had received at least ten takedown requests accounted for 19.9 billion views, or roughly 57%; the URL links uploaded by active users who had received at least one takedown request accounted for 27.2 billion views, or roughly 78%, of the total recorded views of active URL links on Megavideo.com. This preliminary analysis is based on DMCA copyright infringement takedown requests submitted to the Mega Conspiracy, as reflected in the internal database. The actual number of copyright-infringing video files stored on Megavideo.com significantly exceeds these figures, because copyright owners were unable to locate and identify many URL links to infringing content.

g. The preliminary analysis of the databases and associated software code shows that Megavideo.com maintained a "blacklist" of 221 unique files, which were identified by MD5 hash. URL links to files on the blacklist were supposedly automatically disabled by the system.

h. The preliminary analysis of the databases further shows that on or about January 19, 2012, Megaupload.com contained up to approximately 206 million total unique files.

Affirmative Reliance on Third-Party "Linking" Sites

33. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. Megaupload.com does not provide a search function, and although Megavideo.com does provide a search function, any search for a full-length copyrighted video will not produce any relevant results. Instead, the Mega Conspiracy business model relies on thousands of third-party "linking" sites, which contain user-generated postings of links created by Megaupload.com (as well as URL links created by other Mega Sites, such as Megavideo.com and Megaporn.com). While the Mega Conspiracy may

not operate these third-party sites, for years the Mega Conspiracy offered the program described above in the section entitled *Uploader Rewards Program*, which provided a direct financial incentive for premium users to post URL links on linking sites.

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

c. 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 is a linking site that 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.

d. 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.

e. 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…"

f. 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.

g. 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.

h. 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”.

i. 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.”

j. 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 ;-)”

k. 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.

l. 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 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.

Misrepresentations to Copyright Owners

34. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. Members of the Mega Conspiracy provided an "Abuse Tool" to major U.S. copyright holders to purportedly remove copyright-infringing material from Mega Conspiracy-controlled servers. The Abuse Tool allowed copyright holders to enter specific URL links to copyright-infringing content of which they were aware, and they were told by the Mega Conspiracy that the Mega Conspiracy's systems would then remove, or disable access to, the offending material. The Mega Conspiracy's Abuse Tool did not actually function as copyright owners were led to believe, however, because the Abuse Tool only disabled the specific URL link identified, and the Abuse Tool failed to disable access to the underlying copyright-infringing material or remove the file from the server.

b. On or about May 2, 2006, an e-mail was sent from the "Megaupload Abuse Desk" to a representative of a copyright holder falsely representing that the representative could "remove a batch of files from our servers" by using the Abuse Tool. The Abuse Tool, however, did not actually "remove a batch of files" from the servers, because, as described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

c. On or about January 25, 2008, an e-mail was sent from the "Megaupload Abuse Department" to a representative of a copyright holder falsely representing that the "takedown tool" would "remove" videos and/or files "from our system immediately." The "takedown tool" (referred to here as the Abuse Tool), however, did not actually "remove" videos or files from the Mega system, because, as described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

d. On or about May 6, 2008, an e-mail was sent from the "Megaupload Abuse Desk" to a representative of a copyright holder falsely representing that Megavideo was "one of the few online video communities that ma[de] it impossible to fraudulently host full-length feature movies due to a human-assisted automatic detection/deletion mechanism." As described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, however, it was not

"impossible to fraudulently host full-length feature movies" on the Mega Sites because the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

e. On or about May 6, 2008, an e-mail was sent from the "Megaupload Abuse Desk" to a representative of a copyright holder falsely representing that the use of the Abuse Tool would provide "direct deletion rights, which will completely bypass our abuse team and take files and films offline immediately." The Abuse Tool, however, did not actually "take files and videos offline immediately" because, as described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

f. On or about May 12, 2008, an e-mail was sent from "megsupp@googlemail.com On Behalf Of Megaupload Support" to a representative of a copyright holder falsely representing, "We are taking great care in expeditiously deleting any material reported to us through DMCA takedown notices." The Mega Conspiracy did not actually "delet[e] any material reported to us through DMCA takedown notices" because, as described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

g. On or about June 19, 2008, a representative of various copyright owners sent an e-mail to dmca@megavideo.com, stating that a particular premium user (herein "VV") was "currently hosting at least 57 full content movies without the authorization from the copyright holders," and that VV "appears to be using your services to profit from our clients' intellectual property." In addition, the representative stated that "we have already sent over 85 notices of copyright infringement to MegaVideo.com" regarding VV, and that VV should be considered a "Repeat infringer[]." As early as February 2008, the Mega Conspiracy had received notices from copyright holders indicating that there were at least 127 URL links to content uploaded by VV that was infringing and, after receiving the June 19, 2008 e-mail, the Mega Conspiracy received additional notices from copyright holders indicating that at least 107 URL links to content uploaded by VV were infringing. Despite these repeated infringement notifications, the Mega Conspiracy did not terminate VV's account; furthermore, PayPal records show that the Mega Conspiracy made five payments totaling $3,400 to VV, starting in mid-March 2008 and continuing into late 2009, as part of the "Uploader Rewards" program. During the nearly six years that VV has been a registered user of the Mega Sites, VV has uploaded

approximately 16,950 files to Megavideo.com and Megaupload.com, which generated more than 34 million views. VV's uploads included many infringing copies of copyrighted motion pictures, including Ocean's Thirteen, Ratatouille, and Evan Almighty. Repeat infringer VV last uploaded a file to a Mega Site on or about January 7, 2012, and VV's account was still active on or about January 19, 2012.

h. On or about July 10, 2008, an e-mail was sent from "megsupp@googlemail.com On Behalf Of Megaupload Support" to a representative of a copyright holder falsely representing that the use of the Abuse Tool would "take down illegal content in real time." The Abuse Tool, however did not actually "take down illegal content in real time" because, as described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

i. On or about November 23, 2010, members of the Mega Conspiracy caused a communication to be sent from a computer server in the Eastern District of Virginia to a representative of a copyright holder stating "1 file and 1 video removed from our system" in response to a takedown request that included a link to the 2010 version of the copyrighted film "A Nightmare on Elm Street." This representation was false because the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

j. On or about March 9, 2011, members of the Mega Conspiracy caused a communication to be sent from a computer server in the Eastern District of Virginia to a representative of a copyright holder stating "2 files removed from our system" in response to a takedown request that included links to the 2009 version of the copyrighted film "Friday the 13th" (in two parts). This representation was false because the Mega Conspiracy only disabled the specific URL links identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

k. On or about March 11, 2011, members of the Mega Conspiracy caused a communication to be sent from a computer server in the Eastern District of Virginia to a representative of a copyright holder stating "2 files removed from our system" in response to a takedown request that included links to copies of episodes of the copyrighted television show "Modern Family." This representation was false because the Mega Conspiracy only disabled the specific URL links identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

l. On or about April 30, 2011, members of the Mega Conspiracy caused a communication to be sent from a computer server in the Eastern District of Virginia to a representative of a copyright holder in response to a takedown request that included a link to the copyrighted motion picture "Fast Five." This representation was false because the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

m. On or about May 13, 2011, an e-mail was sent from the "Megaupload Abuse Desk" to a representative of a copyright holder falsely representing that the use of the Abuse Tool would "take down material from Megavideo." The Abuse Tool, however, did not actually "take down material from Megavideo" because, as described in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Undercover Activity of Special Agent Poston*, the Mega Conspiracy only disabled the specific URL link identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

n. On or about August 10, 2011, members of the Mega Conspiracy caused a communication to be sent from a computer server in the Eastern District of Virginia to a representative of a copyright holder stating "6 files and 6 videos removed from our system" in response to a takedown request that included links to the 2010 version of the copyrighted motion picture "A Nightmare on Elm Street." This representation was false because the Mega Conspiracy only disabled the specific URL links identified, and failed to disable access to the underlying copyright-infringing material or remove the file from the server.

Infringement of the Copyrighted Motion Picture "Taken"

35. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. According to an e-mail obtained through the investigation, on or about October 25, 2008, VAN DER KOLK uploaded an infringing copy of the copyrighted motion picture "Taken" to Megaupload.com. The exact file name was "Taken 2008 DVDRip Repack [A Release Lounge H264 By Micky22].mp4." On that same date, VAN DER KOLK e-mailed the URL link for the file to another individual. The motion picture "Taken" would not be released in United States movie theaters until on or about January 30, 2009, and would not be commercially distributed in the United States until on or about May 12, 2009.

b. In an undercover capacity, Agent Poston viewed and downloaded the motion picture "Taken" on or about November 27, 2011, from Megaupload.com's servers at Carpathia in Ashburn, Virginia.

Copyright-Infringing Works Available on the Mega Sites

36. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the copyright-infringing works that were reproduced and distributed on the Mega Sites during the 180 days up to and including January 19, 2012, as described in the section entitled *Undercover Activity of Special Agent Poston*.

37. The U.S. Attorney's Office for the Eastern District of Virginia expects a computer specialist with the Federal Bureau of Investigation to testify to the following facts:

a. On or about January 19, 2012, the Federal Bureau of Investigation executed search warrants in Virginia and Washington, D.C., at locations where the Mega Conspiracy leased computer servers for the Mega Sites. Computer specialists with the Federal Bureau of Investigation copied data from these servers, including multiple databases containing information about the files contained on the Mega Sites.

b. A preliminary analysis of the databases shows that for the 180 days up to and including August 31, 2010, the following copyright-infringing works were reproduced and distributed on a Mega Site:

i. The copyrighted motion picture "Ip Man 2", which was downloaded up to 443,400 times from the Mega Sites.

ii. The copyrighted motion picture "Kick-Ass", which was downloaded up to 395,320 times from the Mega Sites.

iii. The copyrighted motion picture "Prince of Persia", which was downloaded up to 268,254 times from the Mega Sites.

c. A preliminary analysis of the databases shows that for the 180 days up to and including August 16, 2008, the following copyright-infringing works were reproduced and distributed on a Mega Site:

i. The copyrighted motion picture "Cloverfield", which was downloaded up to 506,535 times from the Mega Sites.

ii. The copyrighted motion picture "Meet the Spartans", which was downloaded up to 144,174 times from the Mega Sites.

iii. The copyrighted motion picture "The Forbidden Kingdom", which was downloaded up to 92,226 times from the Mega Sites.

iv. An episode of the copyrighted television series "Prison Break," which was downloaded up to 89,764 times from the Mega Sites.

d. A preliminary analysis of the databases shows that for the 180 days up to and including October 31, 2007, at least ten copies of copyright-infringing

works were reproduced and distributed from the Youtube.com platform on a Mega Site. For example, at least 80 videos from a single Youtube.com user were reproduced and distributed on the Mega Sites.

DOTCOM's Knowledge of Copyright Infringement

38. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. 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." In addition, VAN DER KOLK wrote, "Hope [Youtube.com is] not implementing a fraud detection system now… * praying *". VAN DER KOLK also wrote: "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."

b. 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."

c. 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.

d. 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 involving copyright-infringing materials found on the Mega Sites, including one complaint 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 to ECHTERNACH and VAN DER KOLK, 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'."

e. 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.

f. On or about June 30, 2008, abuse@megaupload.com received an e-mail entitled "illegal links", in which the author wrote that Megaupload.com "is being used for violations of copyright material in video." The author was not identified as a copyright owner, but the author listed over one hundred and thirty URL links to "illegal content" on Megaupload.com. On or about July 1, 2008, DOTCOM forwarded the message to ORTMANN and VAN DER KOLK, instructing them: "Never delete files from private requests like this. I hope your current automated process catches such cases."

g. 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." The standard clause included, but was not limited to, violations regarding copyright infringement.

h. 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. "MythBusters" is a copyrighted television series on the Discovery Channel.

i. 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."

j. On or about February 4, 2009, legal@megaupload.com received an e-mail from a representative of various copyright owners, including Sony BMG Music Entertainment Mexico, Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, Twentieth Century Fox Films Corporation, and Warner Bros. Entertainment Inc. In the e-mail, the representative stated that "infringing items are being offered [on the Mega Sites] in a manner that is not authorized by our members or its agents, or the law." The representative went on to list over 6,000 URL links to copyright-infringing materials available on the Mega Sites. On or about April 23, 2009, legal@megaupload.com received another e-mail from the

same representative, listing over 6,000 URL links to copyright-infringing materials available on the Mega Sites. 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: "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."

k. 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."

l. 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." The term "HD" refers to high definition content.

m. On or about October 3, 2009, DOTCOM sent an e-mail entitled "FWD: Re: Reporter hoping to speak about copyrighted content on Megavideo" to an employee and to ORTMANN containing a series of statements purportedly from "[BL], Public Relations, Mega HQ" to a reporter for Forbes.com. In DOTCOM's original e-mail to his employee, he informs her that "I used your name in the emails below. I hope you don't mind. Please be careful. The larger we get the more people want to know more about Mega. Lets stay below the radar." The Forbes.com reporter had asked about KIM SCHMITZ and TIM VESTOR's role in the company. DOTCOM wrote in response, "I can confirm that nobody by the name of Kim Schmitz is associated with our company." DOTCOM further tells the reporter "We have a policy not to disclose details about our business performance. But I can tell you (off the record) that we are a small and humble business trying to earn enough to pay the bandwidth bill. Our site has grown to be popular but it is not easy to monetize the traffic in this economy." DOTCOM also indicates, "The vast majority of users is uploading home videos, web cam captures, content they own or have the right to copy and other legitimate content."

n. On or about July 8, 2010, DOTCOM sent an e-mail to ORTMANN and ECHTERNACH entitled "attention." In the e-mail, DOTCOM copied 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 addition to the link to the article, DOTCOM wrote, in full:

> this is a serious threat to our business.
> Please look into this and see how we can protect ourselfs.
> Is everything regarding our domain records now 100% in order?
> Should we move our domain to another country (canada or even HK?)
> Suggestions, please.

ECHTERNACH responded: "In case domains are being seized from the registrar, it would be safer to choose a non-US registrar[.]"

o. 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". "Meet Dave" is a copyrighted motion picture.

p. 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, a music-hosting service allegedly being developed by the Mega Conspiracy. 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."

q. 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."

r. 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.

s. 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." In the e-mail, the representative of the Taiwanese broadband service provider wrote, "All the IPs have the same routing path from [the Taiwanese broadband service provider] to megaupload servers[.]" The screenshots, which are clearly visible in the e-mail, visually demonstrate the download path taken by the downloaded file, from the provider's connection to Cogent to the Mega Conspiracy's servers.

t. 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. As demonstrated in the sections entitled *Willful Failure to Remove Copyright-Infringing Files* and *Misrepresentations to Copyright Owners*, the Mega Conspiracy failed to terminate repeat infringers.

u. 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?"

v. 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." "True Blood" is a copyrighted television series on the premium channel Home Box Office. "Battlestar Galactica" is a copyrighted television series that originally aired on the Sci-Fi Channel.

w. 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." As described above, Megaupload.com did not provide any search index whatsoever to the public, but had an internal index that reveals many hundreds of thousands of copyright-infringing works on the Mega Sites.

Co-Conspirators' Knowledge of Copyright Infringement

39. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following:

a. 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 the following description: "Alcohol 120, con crack!!!! By ChaOtiX!" The copyrighted software "Alcohol 120" is a CD/DVD software program sold by www.alcohol-soft.com that facilitates the copying of CDs and DVDs.

b. 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."

c. On or about August 15, 2007, BENCKO sent VAN DER KOLK an e-mail message indicating: "the sopranos is in French :((([EXPLETIVE REDACTED].. can u pls find me some again ?" "The Sopranos" is a copyrighted television series that previously aired on the premium channel Home Box Office.

d. 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?" "Seinfeld" is a copyrighted television series that remains in syndication.

e. 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!"

f. 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 :)".

g. 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 link 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.

h. 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. "My Blueberry Nights" is a copyrighted motion picture.

i. 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."

j. 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.

k. 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 successfuly and then tried to watch the 'Alphabet Killer' a day later and got the message to upgrade if we wanted to continue watching." "Taken" and "The Alphabet Killer" are copyrighted motion pictures.

l. 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 ;-)".

m. 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 e-mail 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!" "Robin Hood" is a copyrighted television series that was originally released by the British Broadcasting Corporation.

n. 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.

o. 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 e-mail, 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." Although the Mega Conspiracy routinely audits and filters uploads for efficiency purposes by checking the system for identical files, the Mega Conspiracy has refused to do so for the purpose of preventing copyright infringement.

p. 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. The website kino.to, which was particularly popular in German-speaking countries, was a linking site that indexed material stored on alleged cyberlockers, including the Mega Sites. In June of 2011, law enforcement in Germany, Spain, France, and the Netherlands arrested more than a dozen people involved in the operation of the website.

Undercover Activity of Special Agent Poston

40. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. Agent Poston conducted an online analysis of Megaupload.com and Megavideo.com. The analysis showed that these websites offer both free and premium access to their services. Premium access allows subscribers to simultaneously download an unlimited number of files from Megaupload.com and to upload an unlimited number of files of unlimited sizes. Free access limits subscribers to uploading a maximum file size of 2 Gigabytes ("GB") per file, up to a total of 200 GB. A single premium account provides premium access to Megaupload.com and Megavideo.com. In an undercover capacity, Agent Poston purchased a one-year "premium" account for USD $59.99. At that time, the rate for premium accounts varied based on location from USD $9.99 per month (or a one-year fee of USD $59.99 or a lifetime fee of USD $199.99) accepted by PayPal to €9.99 per month (with similar discounts for extended terms) accepted by Moneybookers. Financial records, including a MEGAUPLOAD LIMITED income statement and balance sheet, show that the Mega Sites have generated more than USD $150 million in premium subscription revenues for the Mega Conspiracy.

b. In an undercover capacity, Agent Poston browsed the front page of Megavideo.com, which does not show any obviously infringing copies of any copyrighted works. Instead, the page contains videos of news stories, user-generated videos, and general Internet videos in a manner substantially similar to Youtube.com. Agent Poston's analysis further showed that the Megavideo.com website allowed users to search for video files and to browse video files under categories such as "Entertainment," "Comedy," "Music," and "Video Games." While browsing under the "Entertainment" category, Agent Poston successfully viewed a number of copyright-infringing video files, including motion pictures. Conducting a search for the files' titles through the Megavideo.com search function, however, did not reveal the existence of these copyright-infringing titles in the returned search results.

c. In an undercover capacity, Agent Poston uploaded a number of files to Megaupload.com. After uploading a file, Megaupload.com reproduced the file on at least one computer server it controlled and provided the uploading user with a unique URL link that allowed anyone with the link to download the file without entering a password. The following is an example of a Megaupload.com-generated URL link: www.megaupload.com/?d=BY15XE3V.

d. In an undercover capacity, Agent Poston visited the following third-party linking sites: ninjavideo.net, megaupload.net, megarelease.net, kino.to, alluc.org, peliculasyonkis.com, seriesyonkis.com, surfthechannel.com, taringa.net, thepiratecity.org, and mulinks.com. All of these linking sites maintained an index of URL links to identified copies of copyrighted content that were stored on servers directly controlled by the Mega

Conspiracy, and several of these websites exclusively offered Megaupload.com links.

e. In an undercover capacity, Agent Poston visited sidereel.com and searched for a particular episode of the American television program Modern Family, a copyrighted work originally released by the American Broadcasting Company. Sidereel.com listed approximately sixty distinct URLs corresponding to that particular episode, all of which were then labeled as being hosted on Megavideo.com. Agent Poston successfully viewed and downloaded fifty of the sixty copyright-infringing video files, all fifty of which were hosted on Megavideo.com. Multiple unique URLs linked to the same copyright-infringing video of that particular episode.

f. In an undercover capacity, Agent Poston uploaded to Megaupload.com a copyrighted video that had been provided by the copyright owner, with the express authorization to upload the work. The upload took approximately thirty-five minutes. As described above, Megaupload.com associated this file with a unique URL link. Agent Poston uploaded additional copies of the same file, and Megaupload.com provided additional unique links, which resulted in multiple unique links to the same copyrighted video on servers operated by Megaupload.com. These additional uploads of the same exact file took only a few seconds. This confirms that Meagupload.com does not create a second copy of the file, but instead creates new URL links to the original file. After uploading the files, the copyright owner submitted to Megaupload.com a DMCA takedown notice listing only a subset of the unique URL links provided. Agent Poston confirmed that Megaupload.com disabled the link identified in the takedown notice but not the infringing video file itself, as the remaining links continued to provide access to the video. Megaupload.com did not notify the copyright owner that there were other URL links associated with the same file, and Megaupload.com did not notify Agent Poston, in his undercover capacity as the uploader, that the links had been disabled based on a DMCA takedown notice.

g. In an undercover capacity, Agent Poston searched for, identified, viewed, and downloaded ten or more copies of one or more copyrighted works, which had a total retail value of more than USD $2,500, during the six-month period up to and including January 19, 2012, all of which were publicly available over the Internet from Megaupload.com, and all of which were stored on computer web servers owned by Carpathia and located in Ashburn, Virginia, United States, which is in the Eastern District of Virginia. These copyright-infringing works included the following:

i. On or about November 20, 2011, Agent Poston viewed and downloaded an infringing copy of the high definition version of the copyrighted motion picture “Lord of the Rings: Fellowship of the Ring” from Megavideo.com. That motion picture had been

released in United States movie theaters on or about December 19, 2001, and was commercially distributed in a high definition format in the United States for the first time in April 2010.

ii. On or about November 20, 2011, Agent Poston viewed and downloaded an infringing copy of the copyrighted motion picture "The Twilight Saga: Breaking Dawn" from Megavideo.com. That motion picture had been released in United States movie theaters on or about November 18, 2011, and was commercially distributed in the United States on or about February 11, 2012.

iii. On or about November 27, 2011, Agent Poston viewed and downloaded an infringing copy of the copyrighted motion picture "Taken" from Megaupload.com. That motion picture had been released in United States movie theaters on or about January 30, 2009, and was commercially distributed in the United States on or about May 12, 2009.

iv. On or about November 29, 2011, Agent Poston viewed and downloaded an infringing copy of the copyrighted motion picture "Happy Feet Two" from Megavideo.com. That motion picture had been released in United States movie theaters on or about November 18, 2011, and would not be commercially distributed in the United States until a time period after the date of the original extradition request.

v. On or about November 29, 2011, Agent Poston viewed and downloaded an infringing copy of the copyrighted motion picture "Puss in Boots" from Megavideo.com. That motion picture had been released in United States movie theaters on or about October 28, 2011, and would not be commercially distributed in the United States until a time period after the date of the original extradition request.

vi. On or about November 29, 2011, Agent Poston viewed and downloaded an infringing copy of the copyrighted motion picture "The Adventures of Tin Tin" from Megaupload.com. That motion picture would not be released in United States movie theaters until on or about December 21, 2011, and would not be commercially distributed in the United States until a time period after the date of the original extradition request.

vii. On or about November 29, 2011, Agent Poston viewed and downloaded an infringing copy of the copyrighted television program "Bored to Death (Season 3, Episode 8)" from Megavideo.com. That television program had originally aired in

the United States on the premium channel Home Box Office on or about November 28, 2011.

viii. On or about November 29, 2011, Agent Poston downloaded an infringing copy of the copyrighted software program "Dungeon Siege III" by Square Enix, Inc., from Megaupload.com. The manufacturer's suggested retail price for this software is USD $49.99.

ix. On or about November 29, 2011, Agent Poston downloaded an infringing copy of the copyrighted software program "Ecotect Analysis 2011" by Autodesk, Inc. from Megaupload.com. The manufacturer's suggested retail price for this software is USD $1,495.00.

x. On or about December 9, 2011, Agent Poston downloaded an infringing copy of the copyrighted software program "3DS Max 2012" by Autodesk, Inc. from Megaupload.com. The manufacturer's suggested retail price for this software is USD $3,495.00.

Financial Transfers

41. The U.S. Attorney's Office for the Eastern District of Virginia expects Agent Poston to testify to the following facts:

a. According to financial records obtained through the investigation, on or about May 28, 2005, DOTCOM opened a PayPal business account for MEGAUPLOAD LIMITED (account no. [REDACTED], the "PayPal account"). DOTCOM opened the account under the name Kim Schmitz and listed his date of birth as [REDACTED].

b. According to financial records obtained through the investigation, on or about June 27, 2006, DOTCOM opened a business account for MEGAUPLOAD LIMITED at the DBS Bank (Hong Kong) Limited (account no. [REDACTED], the "DBS account"). DOTCOM signed under the name Kim Tim Jim Vestor.

c. According to financial records, from May 2005 through July 2010, MEGAUPLOAD LIMITED received approximately USD $112.6 million through the PayPal account, primarily from premium user fees and advertising revenue. Between January 2008 and July 2010, the Mega Conspiracy transferred approximately USD $63.8 million from the PayPal account into the DBS account.

d. E-mails sent between conspirators demonstrate that DOTCOM had the authority to distribute funds from the Mega Conspiracy's main financial accounts. For example, on or about June 15, 2010, and again on or about

June 1, 2011, and on or about November 11, 2011, the Chief Financial Officer ("CFO") of MEGAUPLOAD LIMITED sent e-mails to DOTCOM, asking: "Please authorize the following payments[.]" In the June 15, 2010 e-mail, the payments included the following: USD $30,292 for the purchase of new Internet domain names; and HKD $12,816.32 for an American Express business credit card. In the June 1, 2011 e-mail, the payments included the following: USD $93,621.60 to Cogent for the payment of Internet bandwidth, hosting, and support services relating to the Mega Sites; and USD $951,112 to Carpathia for the payment of hosting and support services relating to the Mega Sites. The CFO noted that the Carpathia invoice had been "approved by Mathias [ORTMANN]". In the November 11, 2011 e-mail, the payments included USD $125,000 for the services of a digital advertising agency.

e. E-mails sent between conspirators demonstrate that ORTMANN also had authority to distribute funds from the Mega Conspiracy's main financial accounts. For example, on or about June 30, 2010, the CFO sent an e-mail to ORTMANN, attaching an invoice from Carpathia for the payment of hosting and support services relating to the Mega Sites. ORTMANN responded on or about July 3, 2010, stating: "This one was also just paid through PayPal. Note that I deducted USD 4000 for a charge that very likely doesn't belong to us. A corrected version of the invoice may follow." As another example, on or about July 14, 2009, ORTMANN sent an e-mail to the CFO, attaching an invoice for "software development and consulting performances" relating to MEGAUPLOAD LIMITED. ORTMANN wrote: "For your records - the payment has been sent through PayPal." As another example, on or about October 27, 2011, a representative of Cogent sent an e-mail to ORTMANN, regarding a payment for Internet bandwidth, hosting, and support services relating to the Mega Sites, where the payment was deficient by USD $366,600. In response, ORTMANN directed the MEGAUPLOAD LIMITED CFO as follows: "Please verify that Cogent correctly states that our last wire to them is USD 366,600 short. If so, please enter the payment for immediate authorization by Kim. If we're lucky, they'll get it by Monday."

f. E-mails sent between conspirators demonstrate that BATATO requested that the Mega Conspiracy transfer funds for the payment of advertising. For example, on or about January 14, 2010, an advertiser sent an e-mail to BATATO requesting a "credit back" for what appear to be advertising services. BATATO forwards the request to CFO, stating, "Please refund the below mentioned amount to him." The CFO responds, "Is it in US$? US$2,493.00?" BATATO replies, "Yes, thanks." On or about November 22, 2010, an advertiser sent an e-mail to BATATO requesting a refund for what appear to be advertising services. BATATO forwards the request to the CFO, who responds by asking BATATO, "Please confirm the amount is US$11,109.17." BATATO responds, "Yes the amount is correct."

g. E-mails sent between conspirators demonstrate that the Mega Conspiracy transferred funds from the DBS account to an account maintained by BATATO, for the purpose of purchasing a 2009 Mercedes-Benz ML 350 CDI 4MATIC Off-Roader for DOTCOM's mother as a Christmas gift in December 2009. The receipt attached to one of the e-mails reveals that the vehicle was purchased on or about December 15, 2009, for approximately EUR €82,500, from Diamler AG Niederlassung München, Ingolstädter Straße, München, Germany.

h. E-mails sent between conspirators demonstrate that VAN DER KOLK requested that the Mega Conspiracy transfer funds for various payments relating to the Mega Sites, including for translation services. For example, on or about January 19, 2009, VAN DER KOLK sent an e-mail to ORTMANN and the CFO, attaching invoices for translation services and writing, "settle all the attached translator invoices by PayPal." On or about August 10, 2009, VAN DER KOLK e-mailed ORTMANN and the CFO, attaching invoices for translation services and writing, "Thanks for paying as soon as possible!" In addition, e-mails between conspirators demonstrate that VAN DER KOLK requested that the Mega Conspiracy transfer funds for payments as described above in the section entitled *Uploader Rewards Program*.

i. Financial records demonstrate that the Mega Conspiracy transferred funds from the DBS account to an account at HSBC, Account No. [REDACTED] (the "3833 account"), held in the name of BRAM VAN DER KOLK. These transfers included the following: EUR €100,000.00 on or about April 27, 2009; HKD $7,500,000.00 on or about January 19, 2010; EUR €5,010.00 on or about December 20, 2010; and HKD $15,885,381.00 on or about March 17, 2011. In addition, financial records demonstrate that VAN DER KOLK transferred funds from the 3833 account to another account at HSBC, held in the name of VAN DER KOLK's wife. These transfers included the following: EUR €5,000.00 on or about September 27, 2010; HKD $100,000.00 on or about December 20, 2010; and HKD $100,000.00 on or about June 6, 2011. Financial records further demonstrate that after April 27, 2009, VAN DER KOLK transferred funds from the 3833 account to an account at HSBC New Zealand, Account No. [REDACTED], held in the name of BRAM VAN DER KOLK. These transfers included the following: NZD $7,500.00 on or about April 26, 2011; NZD $150,000.00 on or about April 27, 2011; NZD $100,000.00 on or about May 3, 2011; and NZD $150,000.00 on or about May 23, 2011.

j. According to financial records, multiple transfers involving the proceeds of criminal copyright infringement and wire fraud in the Eastern District of Virginia and elsewhere, were made from the DBS account to a SunTrust Bank account in Atlanta, Georgia, held in the name of Cogent Communications (account no. [REDACTED], the "SunTrust account") for

the payment of Internet bandwidth, hosting, and support services relating to the Mega Sites. These payments included the following:

- on or about February 25, 2009, a transfer of approximately USD $625,000;
- on or about March 27, 2009, a transfer of approximately USD $875,000;
- on or about April 27, 2009, a transfer of approximately USD $875,000;
- on or about May 27, 2009, a transfer of approximately USD $1,000,000;
- on or about June 29, 2009, a transfer of approximately USD $1,000,000;
- on or about July 27, 2009, a transfer of approximately USD $1,000,000;
- on or about August 28, 2009, a transfer of approximately USD $1,000,000;
- on or about September 28, 2009, a transfer of approximately USD $1,000,000;
- on or about October 28, 2009, a transfer of approximately USD $1,000,000;
- on or about November 25, 2009, a transfer of approximately USD $1,000,000;
- on or about January 25, 2010, a transfer of approximately USD $1,000,000;
- on or about February 26, 2010, a transfer of approximately USD $1,000,000;
- on or about March 29, 2010, a transfer of approximately USD $1,000,000;
- on or about April 27, 2010, a transfer of approximately USD $1,000,000;
- on or about May 27, 2010, a transfer of approximately USD $1,000,000;

- on or about June 28, 2010, a transfer of approximately USD $1,000,000;

- on or about July 23, 2010, a transfer of approximately USD $1,450,000;

- on or about August 27, 2010, a transfer of approximately USD $1,000,000;

- on or about September 24, 2010, a transfer of approximately USD $1,000,000;

- on or about October 28, 2010, a transfer of approximately USD $1,000,000;

- on or about November 29, 2010, a transfer of approximately USD $1,000,000;

- on or about December 28, 2010, a transfer of approximately USD $1,667,500;

- on or about January 26, 2011, a transfer of approximately USD $1,475,000;

- on or about February 28, 2011, a transfer of approximately USD $1,100,000;

- on or about March 29, 2011, a transfer of approximately USD $682,600;

- on or about April 26, 2011, a transfer of approximately USD $1,000,000;

- on or about May 27, 2011, a transfer of approximately USD $1,000,000;

- on or about June 2, 2011, a transfer of approximately USD $93,600;

- on or about June 28, 2011, a transfer of approximately USD $1,093,600; and

- on or about July 26, 2011, a transfer of approximately USD $1,093,600.

k. According to financial records, multiple transfers involving the proceeds of criminal copyright infringement and wire fraud in the Eastern District of Virginia and elsewhere were made from the DBS account to a PNC

Bank N.A. account in Richmond, Virginia, held in the name of Carpathia Hosting, Inc. (account no. [REDACTED], the "PNC account") for the payment of hosting and support services relating to the Mega Sites. These payments included the following:

- on or about December 20, 2010, a transfer of approximately USD $720,000;

- on or about March 31, 2011, a transfer of approximately USD $1,060,274;

- on or about May 5, 2011, a transfer of approximately USD $950,000;

- on or about June 2, 2011, a transfer of approximately USD $950,000; and

- on or about July 5, 2011, a transfer of approximately USD $950,000.

l. According to financial records, multiple transfers involving the proceeds of criminal copyright infringement and wire fraud in the Eastern District of Virginia and elsewhere were made from the DBS account by a member of the Mega Conspiracy, and the transfers were directed to an ABN AMRO BANK NV account for Leaseweb in the Netherlands, including the following:

- on or about May 5, 2009, a transfer of approximately USD $733,000; and

- on or about December 16, 2009, a transfer of approximately USD $800,000.

m. According to financial records, multiple transfers involving the proceeds of criminal copyright infringement and wire fraud in the Eastern District of Virginia and elsewhere, were made from the PayPal account to the benefit of individuals in the Eastern District of Virginia as part of the "Uploader Rewards" program, including the following:

i. On September 29, 2007, and March 11, 2009, a member(s) of the Mega Conspiracy made transfers of USD $1,500 (totaling USD $3,000) to PA, a resident of Newport News, Virginia;

ii. Starting as early as January 27, 2008, multiple transfers were made to CB, a resident of Alexandria, Virginia. A member(s) of the Mega Conspiracy transferred a total of USD $500 to CB, including transfers of USD $100 on January 27, 2008; USD $300 on October 8, 2009; and USD $100 on February 1, 2010;

iii. Starting as early as February 11, 2008, multiple transfers were made to ND, a resident of Falls Church, Virginia. A member(s) of the Mega Conspiracy transferred a total of USD $900 to ND, including transfers of USD $100 on February 11, 2008; USD $100 on March 3, 2008; USD $300 on March 15, 2008; USD $100 on March 29, 2008; and USD $300 on April 15, 2008;

iv. Starting as early as April 29, 2009, multiple transfers were made to NA, a resident of Alexandria, Virginia. A member(s) of the Mega Conspiracy transferred a total of USD $600 to NA, including transfers of USD $100 on April 29, 2009; USD $100 on May 25, 2009; and USD $400 on July 31, 2009;

v. Starting as early as April 29, 2009, multiple transfers were made to NS, a resident of Fairfax, Virginia. A member(s) of the Mega Conspiracy transferred a total of USD $300 to NS, including transfers of USD $100 on April 29, 2009; USD $100 on April 26, 2010; and USD $100 on May 8, 2010;

vi. Starting as early as July 31, 2009, multiple transfers were made to TT, a resident of Woodbridge, Virginia. A member(s) of the Mega Conspiracy transferred a total of USD $2,700 to TT, including transfers of USD $100 on July 31, 2009; USD $100 on August 9, 2009; USD $100 on September 2, 2009; USD $200 on September 18, 2009; USD $200 on October 8, 2009; USD $200 on November 8, 2009; USD $600 on November 24, 2009; USD $1,000 on December 23, 2009; and USD $200 on February 1, 2010; and

vii. Starting as early as August 9, 2009, multiple transfers were made to CW, a resident of Moseley, Virginia. A member(s) of the Mega Conspiracy transferred a total of USD $2,900 to CW, including transfers of USD $100 and USD $600 on August 9, 2009; a payment of USD $500 on October 8, 2009; a transfer of USD $1,500 on December 23, 2009; and a payment of USD $200 on June 21, 2010.

n. According to financial records, multiple transfers involving the proceeds of criminal copyright infringement and wire fraud in the Eastern District of Virginia and elsewhere, were made by the Mega Conspiracy for yacht rentals in the Mediterranean Sea, including the following: on or about April 8, 2011, VESTOR LIMITED transferred approximately USD $616,000 to NBS for yacht rental; on or about April 18, 2011, VESTOR LIMITED transferred approximately USD $3,606,000 to ECL for yacht rental; on or about May 27, 2011, MEGAUPLOAD LIMITED transferred approximately USD $212,000 to ECL for yacht rental; on or about June 22, 2011, VESTOR LIMITED transferred approximately USD $1,127,000 to

NBS for yacht rental; and on or about June 24, 2011, VESTOR LIMITED transferred approximately USD $2,394,000 to SYM for yacht rental.

Victim Testimony

42. The U.S. Attorney's Office for the Eastern District of Virginia expects representatives from the Motion Picture Association of America ("MPAA"), the Recording Industry Association of America ("RIAA"), and the Business Software Alliance ("BSA"), as well as other copyright owners, to testify to the following facts:

a. The MPAA representative will testify regarding infringing copies of copyrighted motion pictures and television programs that were available on the Mega Sites.

b. The RIAA representative will testify regarding infringing copies of copyrighted musical recordings that were available on the Mega Sites.

c. The BSA representative will testify regarding infringing copies of copyrighted computer software that were available on the Mega Sites.

d. The MPAA, RIAA, and BSA representatives, as well as other copyright owners, will testify that the infringing copies of copyrighted works that were available on the Mega Sites, and that were downloaded by third parties and Agent Poston, in an undercover capacity, were copyrighted at the time they were downloaded. In addition, these representatives will testify that the Mega Sites were not authorized by the copyright owners to reproduce or distribute these copyrighted works. They will also testify regarding the suggested retail price of legitimate copies of their copyrighted works.

e. These representatives will further testify that the estimated value of the copyright-infringing works that were reproduced or distributed in each alleged 180-day period, in aggregate (with respect to each alleged 180-day period), exceeds USD $2,500.

f. These representatives will further testify regarding the dates upon which particular works were commercially distributed.

43. The U.S. Attorney's Office for the Eastern District of Virginia expects representatives from the various copyright owners to testify that they relied on representations made by the Mega Conspiracy that proper DMCA copyright takedown notices submitted through the Abuse Tool or otherwise would disable access to the underlying copyright-infringing material or would remove the file from the Mega Sites, rather than merely disabling the specific URL link identified.

44. Agent Poston has viewed photographs of DOTCOM, ORTMANN, BATATO, and VAN DER KOLK and has identified the persons depicted in the photographs as the defendants. Agent Poston can state that the individuals in the photographs are the defendants based on

having reviewed e-mails sent by or to the defendants, such e-mail including identification documents containing photographs, as described in Paragraph 22.

Contents and Functionality of the Mega Sites' Databases

45. The U.S. Attorney's Office for the Eastern District of Virginia expects a computer specialist with the Federal Bureau of Investigation ("FBI") to testify to the following facts:

a. Every digital file has a "fingerprint," which can be generated by applying a mathematical algorithm to the file. Though a variety of algorithms exist, a particular algorithm, known as Message-Digest 5 ("MD5"), produces an effectively unique 32-digit identification value, commonly called an "MD5 hash." Altering a file, for example by changing the length of the file, will change its MD5 hash. If two users, using the most prevalent techniques, each create a compressed digital back-up copy of the same motion picture DVD on different computers, the two back-up copies will have different MD5 hashes. Even if a single user creates two compressed digital back-up copies of the same motion picture DVD on the same computer, the two back-up copies will have different MD5 hashes because they were created at different times.

b. On or about January 19, 2012, the FBI executed search warrants in Virginia and Washington, D.C., at locations where the Mega Conspiracy leased computer servers for the Mega Sites.[4] Computer specialists with the FBI copied data from these servers, including multiple databases containing information about the Mega Sites. As stated in Paragraphs 31 and 32, these databases contain information about the files uploaded to the Mega Sites, including, among other things, the following: file name; file extension type (*e.g.*, .avi, .jpg, etc.); file size; date; the file's MD5 hash; whether a link to the file had been removed for abuse (including for copyright infringement); and the file's 8-digit download identifier for use with the URL link (for example, the last eight digits of the following: www.megaupload.com/?d=BY15XE3V). In addition, the databases contain information about who uploaded a particular file, including, with respect to registered users, the user's name, address, e-mail address, and username.

c. A preliminary analysis shows that the databases contain records of virtually every file available on Megavideo.com and Megaupload.com on or about January 19, 2012, the URL links associated with those files, and information about which users uploaded the files and associated links. Where multiple URL links pointed to the same file, the databases identify

[4] As stated in Paragraph 2, the Internet websites operated by the Mega Conspiracy (collectively, the "Mega Sites") include but are not limited to at least the following: Megaupload.com; Megavideo.com; and Megaclick.com.

which user created each link and whether that link has been the subject of a copyright takedown request. For any given registered user, the databases identify every file and link uploaded by that user, including files and links that have been the subject of a copyright takedown request. The databases therefore provided the Mega Conspiracy with sufficient information to identify repeat infringers.

Failure to Terminate Repeat Infringers

46. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to financial records, beginning in 2006 up to and including 2011, the Mega Conspiracy made more than $3 million[5] in payments to premium users as part of the Uploader Rewards program. The approximate yearly payments are as follows:

2006: $25,000

2007: $195,000

2008: $830,000

2009: $1,180,000

2010: $1,120,000

2011: $340,000

b. As stated in Paragraph 25(e), 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 users whom VAN DER KOLK had selected for reward payments. The file contained the users' e-mail addresses, usernames, and amounts of reward payments for that time period. For one user, who had a proposed reward amount of $100, VAN DER KOLK described the uploaded content as, "10+ Full popular DVD rips (split files), a few small porn movies, some software with keygenerators (warez)." The term "DVD rips" commonly refers to infringing copies of copyrighted motion pictures and television shows originally contained on commercial DVDs. The term "warez" commonly refers to infringing copies of copyrighted computer software. VAN DER KOLK described the uploaded content of another user, who also had a proposed reward amount of $100, as "Popular DVD rips." Repeat infringer TH, discussed below, was among those listed as being entitled to a $1,500 payment. VAN DER KOLK described TH as a "known paid user (vietnamese content)."

[5] Unless otherwise noted, all monetary amounts are in United States Dollars.

c. As stated in Paragraph 25(g), 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. Thanks for paying! :)" In the attached reward payment file, repeat infringer TH, discussed below, was among those listed as being entitled to a $1,500 payment.

d. On or about June 7, 2007, VAN DER KOLK sent an e-mail to ORTMANN and DOTCOM entitled "Reward batch payment file." In the e-mail, VAN DER KOLK wrote:

> Hi Mathias,
>
> Hereby the reward batch payment for the past 10 days:
> - I caught one fraudster with three 100 USD redemptions.
> - One 1500 USD redemption from our friend [TH].
> - Two 1500 USD redemptions from MRV [Megarotic.com] users, with mainly Asian videos in their portfolio: [user portfolios redacted]
>
> I think we should really consider implementing a "silent slider" for MRV reward points, I think it's a bit too easy now.
> - I didn't add four 100 USD redemptions for [username redacted], a Belgian guy that uploads gay porn to MRV, he also e-mailed us that his PayPal is blocked and he wanted to use Google checkout.
> - The rest is standard 100 USD redemptions
>
> Total costs: 5900 USD (which more than half is generated through MRV)
>
> Thanks for paying!
>
> Bram

In the attached reward payment file, repeat infringer TH, discussed below, was among those listed as being entitled to a $1,500 payment.

e. On or about July 3, 2007, VAN DER KOLK sent an e-mail entitled "Reward payments" to ORTMANN. In the e-mail, VAN DER KOLK wrote: "Hi Mathias, Hereby the batch payment file for the rewards over the last 15 days. Total costs: 6200 USD. Two 1500 USD redemptions from famous Vietnamese users again. Other than that only one hundred dollar redemptions, mainly MU [Megaupload.com] users. I banned

around 25% and caught some fraudsters as well. Time for sliders for MU & M(R)V I'd say . . . Bram." In the attached reward payment file, repeat infringer TH, discussed below, was among those listed as being entitled to a $1,500 payment.

f. On or about August 24, 2007, VAN DER KOLK sent an e-mail to ORTMANN, entitled "Reward payments." In the e-mail, VAN DER KOLK wrote, "Hereby the rewards batch payment file. Total costs: $12,800 USD. Lot's of 1500 dollar redemptions from Vietnamese uploaders again…" VAN DER KOLK also wrote, "I checked every file / video portfolio; however let me know if it's too much, then I'll check who else we can disqualify for whatever reason ☺" In the attached reward payment file, repeat infringer TH, discussed below, was among those listed as being entitled to a $1,500 payment.

g. On or about October 24, 2007, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote: "Hi Mathias, Hereby the reward batch payment file. I was a bit more strict now, but still the total amount is $8900. It's really too easy to make rewards with split archive files, and we should really implement the IP limitation per X files per day as soon as possible. Thanks! Bram[.]" The term "IP" appears to refer to "Internet Protocol" address. In the attached reward payment file, repeat infringer TH, discussed below, was among those listed as being entitled to a $1,500 payment.

h. On or about December 19, 2007, VAN DER KOLK sent several test e-mails to himself entitled "Megaupload Rewards" or "Megaupload Rewards [test]." In each e-mail, VAN DER KOLK wrote, "Our rewards desk verifies each user's portfolio prior to authorizing an award payment."

i. Prior to November of 2010, Megavideo.com displayed the identity of the uploader together with the corresponding video. In or about November of 2010, the Mega Conspiracy made it more difficult for copyright holders to identify repeat infringers by removing the identity of the infringing file's uploader from public parts of the Mega Sites. The Mega Conspiracy had the ability to identify all users — including repeat infringers — simply by accessing their own internal database.

j. According to a preliminary review of the Megavideo.com databases, as of January 19, 2012, there were 33 active user accounts that had more than 10,000 URL links disabled through copyright-infringement takedown notices. In total, links created and distributed by these repeat infringer accounts attracted more than 475 million views on Megavideo.com. Had the Mega Conspiracy terminated the accounts of these repeat infringers, for which they had actual knowledge, the Mega Sites would have lost these millions of views. There were 641 user accounts that had at least 1,000 URL links disabled through copyright-infringement takedown

notices. Links created and distributed by these repeat infringer accounts attracted more than 5 billion recorded views. There were 4,437 user accounts that had at least 100 URL links disabled through copyright-infringement takedown notices. Links created and distributed by these accounts attracted more than 12.8 billion views (roughly 36% of the total views ever recorded on Megavideo.com). There were 19,091 user accounts that had at least 10 URL links disabled through copyright-infringement takedown notices. Links created and distributed by these accounts, which included copyright-infringing materials, attracted more than 19.8 billion views (roughly 57% of the total views ever recorded on Megavideo.com). There were 93,878 user accounts that had at least 1 URL link disabled through copyright-infringement takedown notices. Links created and distributed by these accounts, which included copyright-infringing materials, attracted more than 27.2 billion views (roughly 77% of the total views ever recorded on Megavideo.com).

Repeat Infringer and Unindicted Conspirator "RK"

47. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from December of 2008 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "RK")[6] maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received over 300,000 takedown requests for URL links to infringing materials uploaded by RK through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 41 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated RK and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between July of 2009 and April of 2011, the Mega Conspiracy made 40 separate payments totaling $5,500 to RK as part of the Uploader Rewards program. For example, on or about June 21, 2010, the Mega Conspiracy paid $200 to RK as part of the Uploader Rewards program. Between June 21 and July 14, 2010, RK uploaded for distribution more than 30,000 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 30,000 takedown requests for URL links to infringing content created by RK. Even after processing these takedown requests, the Mega Conspiracy paid him an

[6] As previously provided in footnote 3, pursuant to normal procedures at this stage in the proceedings, the identities of the non-law enforcement witnesses are being kept confidential. In compliance with U.S. law, the identities of the witnesses, as well as information useful to prepare the defendants' defense, may be disclosed to the defense prior to trial in the United States.

additional $700 on July 14, 2010, and continued to pay him through April of 2011. A preliminary review indicates that more than 98% of the files uploaded by RK are copyright-infringing works. These infringing works included entire seasons of copyrighted television programs, such as 24, 30 Rock, Big Love, Bones, Burn Notice, Cold Case, Dexter, Entourage, Family Guy, Friday Night Lights, Friends, Gilmore Girls, Gossip Girl, Heroes, House M.D., How I Met Your Mother, Lie to Me, Lost, One Tree Hill, Prison Break, Smallville, Sons of Anarchy, South Park, Supernatural, The Big Bang Theory, The West Wing, True Blood, and Two and a Half Men. Other uploads by RK that were not detected by copyright holders and yet were uploaded to RK's account with the Mega Conspiracy included copyrighted motion pictures, such as Alice in Wonderland, Avatar, Braveheart, Forrest Gump, Gladiator, Harry Potter and the Philosopher's Stone, Harry Potter and the Chamber of Secrets, Harry Potter and the Prisoner of Azkaban, Harry Potter and the Goblet of Fire, Harry Potter and the Order of the Phoenix, Harry Potter and the Half-Blood Prince, Inception, Iron Man 2, Monsters vs Aliens, O Brother, Where Art Thou?, Pulp Fiction, Saving Private Ryan, Star Wars: Episode I — The Phantom Menace, Star Wars: Episode II — Attack of the Clones, Star Wars: Episode III — Revenge of the Sith, Star Wars: Episode IV — A New Hope, Star Wars: Episode VI — Return of the Jedi, The Curious Case of Benjamin Button, The Dark Knight, The Green Mile, The Last King of Scotland, The Lord of the Rings: The Fellowship of the Ring, The Lord of the Rings: The Two Towers, The Lord of the Rings: The Return of the King, Toy Story 3, and Transformers. This evidence shows that despite receiving more than 300,000 notices of copyright infringement associated with the conduct of RK, more than half of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay RK on at least 40 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 41 million site visits and infringements coming as a result of financial incentives made directly to RK.

b. On or about September 17, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer RK was among those listed as being entitled to a payment of $100.

c. On or about November 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment for the last 2 weeks+. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer RK was among those listed as being entitled to two separate payments, one for $200, and another for $100.

d. Between on or about March 4, 2010, and August 31, 2010, RK created for distribution more than 140,000 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Prison Break, Nip/Tuck, Lie to Me, In Plain Sight, Heroes, Gossip Girl, Human Target, How I Met Your Mother, Gilmore Girls, Entourage, White Collar, Desperate Housewives, Veronica Mars, The Vampire Diaries, True Blood, Supernatural, Sons of Anarchy, Saving Grace, One Tree Hill, Lost, Justified, Hung, Glee, Fringe, Dexter, The Closer, The Cleveland Show, Chuck, Burn Notice, Bones, Big Love, 30 Rock, Better Off Ted, and 24.

e. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer RK was among those listed as being entitled to two separate payments of $100 each. Prior to April 8, 2011, the Mega Conspiracy had received and processed copyright-infringement takedown notices identifying more than 200,000 URL links to infringing content uploaded and distributed by RK, and had already paid RK at least $3,300 as part of the Uploader Rewards program. On or about April 8, 2011, the Mega Conspiracy made at least two separate payments of $100 each to RK through PayPal.

Repeat Infringer and Unindicted Conspirator "MB"

48. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from June of 2009 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "MB") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received over 46,000 takedown requests for URL links to infringing materials created by MB through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 14 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated MB and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between September of 2009 and May of 2011, the Mega Conspiracy made 27 separate payments totaling $4,200 to MB as part of the Uploader Rewards program. For example, on or about December 23, 2009, the Mega Conspiracy paid $500 to MB as part of the Uploader Rewards program. Between December 23, 2009, and February 1, 2010, MB uploaded for distribution more than 10,000 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 1,500 takedown requests for

URL links to infringing content created by MB. Even after processing these takedown requests, the Mega Conspiracy paid him an additional $500 on February 1, 2010, and continued to pay him through May of 2011. A preliminary review indicates that more than 96% of the non-pornography files uploaded by MB to Megavideo.com are copyright-infringing works. These infringing works included entire seasons of copyrighted television programs, including 24, 30 Rock, Ally McBeal, Arrested Development, Babylon 5, Battlestar Galactica, Bones, Breaking Bad, Buffy the Vampire Slayer, Burn Notice, Chuck, Curb Your Enthusiasm, Dark Angel, Deadwood, Desperate Housewives, Entourage, Family Guy, Friday Night Lights, Fringe, Futurama, Gilmore Girls, Gossip Girl, Heroes, House M.D., How I Met Your Mother, Law & Order, Law & Order: Criminal Intent, Law & Order: Special Victims Unit, Mad Men, Monk, My Name Is Earl, Nip/Tuck, One Tree Hill, Oz, Prison Break, Psych, Pushing Daisies, Robot Chicken, Rome, Smallville, Sons of Anarchy, The Big Bang Theory, The O.C., The Simpsons, The Wire, The X-Files, True Blood, Two and a Half Men, Veronica Mars, White Collar, Will & Grace, and Xena: Warrior Princess. This evidence shows that despite receiving more than 46,000 notices of copyright infringement associated with the conduct of MB, more than half of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay MB on at least 27 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 14 million site visits and infringements coming as a result of financial incentives made directly to MB.

b. On or about September 17, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer MB was among those listed as being entitled to a payment of $100. On September 18, 2009, the Mega Conspiracy paid $100 to MB through PayPal.

c. On or about November 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment for the last 2 weeks+. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer MB was among those listed as being entitled to a payment of $100. Between September 18, 2009, and November 23, 2009, the Mega Conspiracy received and processed copyright-infringement takedown notices identifying more than 2,000 URL links to infringing content uploaded and distributed by MB, and during that time period paid MB at least $600 as part of the Uploader Rewards program. On or about November 24, 2009, the Mega Conspiracy paid $100 to MB through PayPal.

d. Between on or about March 4, 2010, and August 31, 2010, MB created for distribution more than 16,000 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs The Closer, Cold Case, The Cleveland Show, 24, Burn Notice, The Big Bang Theory, True Blood, Visitors, The Wire, The Vampire Diaries, Two and a Half Men, Veronica Mars, South Park, Smallville, Prison Break, NCIS, Lost, Gossip Girl, La Femme Nikita, Gilmore Girls, Family Guy, Fringe, Desperate Housewives, Dexter, and CSI: New York.

e. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer MB was among those listed as being entitled to two separate payments of $100 each. Prior to April 8, 2011, the Mega Conspiracy had received and processed copyright-infringement takedown notices identifying more than 35,000 URL links to infringing content uploaded and distributed by MB, and had already paid MB at least $3,800 as part of the Uploader Rewards program. On or about April 8, 2011, the Mega Conspiracy made two separate payments of $100 each to MB through PayPal.

Repeat Infringer and Unindicted Conspirator "BM"

49. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, on September 7, 2009, a particular repeat infringer, premium user, and unindicted conspirator (herein referred to as "BM"), created a URL link to an infringing copy of the copyrighted computer software The Sims 2. The exact file name was "(PC GAME ITA) The Sims 2 CD1.iso." BM's description of the file included the Internet website baixemuito.com, a third-party linking site that featured copyright-infringing computer software and television programs. That infringing software was downloaded more than 7,300 times through BM's link prior to December 17, 2009, when the Mega Conspiracy processed a takedown request for the file. The takedown request was processed manually by defendant VAN DER KOLK, who disabled access only to the link and not to the infringing content. The infringing file remained accessible on the Mega Sites because other links pointed to the same file. On or about December 21, 2009, four days after VAN DER KOLK processed the takedown request, BM created a second URL link to the same infringing file, again listing baixemuito.com in the description. The infringing software was downloaded more than 27,000 times through BM's second link prior to March 16, 2010, when a representative of the copyright owner submitted another takedown request through the Abuse Tool. The following day, March 17, 2010, the takedown request was processed manually by defendant VAN DER KOLK, who disabled access only to the second link and not to the

infringing content. The infringing file remained accessible on the Mega Sites through other active links. On March 17, 2010, BM created a third link to the same infringing file, again listing baixemuito.com in the description. The infringing software was downloaded more than 80,000 times through BM's third link prior to September 1, 2010, when VAN DER KOLK manually processed another takedown request for the file. VAN DER KOLK disabled access only to the third link, and the infringing file remained accessible on the Mega Sites through other active links. On September 1, 2010, BM created a fourth link to the same infringing file, again listing baixemuito.com in the description. VAN DER KOLK manually processed a takedown request for the file on an unknown date, disabling access only to the fourth link and not to the infringing content. The infringing file remained accessible on the Mega Sites through other active links. On July 1, 2011, BM created a fifth link to the same infringing file, again listing baixemuito.com in the description. This fifth link was still active as of January 19, 2012. In total, the Mega Conspiracy received over 1,500 takedown requests for URL links created by BM through his uploads of copyright-infringing content to the Mega Sites. Despite having received these takedown requests, the Mega Conspiracy never terminated BM and never purposefully and completely blocked access to the infringing content.

Repeat Infringer and Unindicted Conspirator "DD"

50. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from August of 2011 through January of 2012, a particular repeat infringer and unindicted conspirator, who was also a resident of the Eastern District of Virginia (herein referred to as "DD"), maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received at least 190 takedown requests for URL links to infringing materials created by DD through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 800,000 views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. A preliminary review indicates that between April and November of 2009, DD uploaded for distribution infringing copies of copyrighted motion pictures, including Body of Lies, Cloverfield, Eagle Eye, Fast & Furious, One Missed Call, The Incredible Hulk, Transformers, and Up In Smoke. During the same time period, he also uploaded infringing copies of copyrighted television programs, including Family Guy (more than 10 episodes), Futurama (more than 40 episodes), House M.D. (more than 35 episodes), and South Park (more than 55 episodes). Despite having received takedown requests for these copyright-infringing works, the Mega Conspiracy never terminated DD and never purposefully and completely blocked access to the infringing

content. Instead, financial records show that on or about December 23, 2009, the Mega Conspiracy paid $100 to DD as part of the Uploader Rewards program. This evidence shows that despite receiving more than 190 notices of copyright infringement associated with the conduct of DD, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to reward DD for his uploading of copyrighted works. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 800,000 site visits and infringements coming as a result of financial incentives made directly to DD.

b. Between on or about March 4, 2010, and August 31, 2010, DD created for distribution at least 3 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the musical recording "The Shady Situation" by Eminem, and the computer programs Lucion FileConvert Professional and DVDINFOPro Extreme.

Repeat Infringer and Unindicted Conspirator "CW"

51. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from January of 2009 through January of 2012, a particular repeat infringer and unindicted conspirator, who was also a resident of the Eastern District of Virginia (herein referred to as "CW"), maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received at least 1,100 takedown requests for URL links to infringing materials created by CW through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 8.2 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated CW and never purposefully and completely blocked access to the infringing content. Instead, financial records show that from August of 2009 through April of 2011, the Mega Conspiracy made eight separate payments totaling $3,400 to CW as part of the Uploader Rewards program. A preliminary review indicates that CW uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as Bleach (more than 250 episodes), Full Metal Panic! (more than 20 episodes), Kaleido Star (more than 20 episodes), and Maria-sama ga Miteru (more than 50 episodes). This evidence shows that despite receiving more than 1,100 notices of copyright infringement associated with the conduct of CW, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to reward CW on multiple occasions for his uploading of copyrighted works. The Mega Conspiracy did this to generate

advertising and subscriber interest with more than 8.2 million site visits and infringements coming as a result of financial incentives made directly to CW.

b. Between on or about March 4, 2010, and August 31, 2010, CW created for distribution at least 9 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Bleach, Naruto Shippuuden, and Angel Beats.

c. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer CW was among those listed as being entitled to a payment of $100.

Repeat Infringer and Unindicted Conspirator "RD"

52. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from February of 2009 through January of 2012, particular repeat infringer and unindicted conspirator (herein referred to as "RD") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received over 115,000 takedown requests for URL links to infringing material created by RD through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 16 million views of copyright-infringing files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated RD and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between July of 2009 and April of 2011, the Mega Conspiracy made 25 separate payments totaling $3,300 to RD and granted RD complimentary premium access to the Mega Sites, which was a commodity of value, as part of the Uploader Rewards program. For example, on or about November 5, 2010, the Mega Conspiracy paid $400 to RD as part of the Uploader Rewards program. Between November 5 and December 11, 2010, RD created more than 34,000 URL links to copyright-infringing materials on the Mega Sites, and during that same time period, the Mega Conspiracy processed over 10,000 takedown requests for URL links to infringing content created by RD. Even after receiving these takedown requests, the Mega Conspiracy paid RD an additional $500 on December 11, 2010, and continued to pay him through April of 2011. A preliminary review indicates that more than 98% of the files uploaded for distribution by RD to Megavideo.com and Megaupload.com are copyright-infringing works. These works included copyrighted television programs and motion pictures, including Glee, Gossip Girl, House M.D., How I Met Your Mother, Chuck, Dexter, 30

Rock, Spider-Man, Spider-Man 2, Spider-Man 3, True Blood, and the entire first four seasons of the television series 24. This evidence shows that despite receiving more than 115,000 notices of copyright infringement associated with the conduct of RD, the Mega Conspiracy chose to pay RD on at least 25 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 16 million site visits and infringements coming as a result of financial incentives made directly to RD.

b. Between on or about March 4, 2010, and August 31, 2010, RD created for distribution more than 30,000 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs True Blood, Jersey Shore, Entourage, Futurama, Pretty Little Liars, South Park, and The Vampire Diaries.

c. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer RD was among those listed as being entitled to a $100 payment. Prior to April 8, 2011, the Mega Conspiracy had received and processed copyright-infringement takedown notices identifying more than 57,000 URL links to infringing content uploaded and distributed by RD, and had already paid RD at least $3,300 as part of the Uploader Rewards program. On or about April 8, 2011, the Mega Conspiracy paid $100 to RD through PayPal.

Repeat Infringer and Unindicted Conspirator "LR"

53. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from March of 2007 through January of 2012, a particular infringer and unindicted conspirator (herein referred to as "LR") maintained an account, which at times included paid and lifetime premium status, on the Mega Sites. A preliminary review of the files uploaded by LR indicates that he uploaded for distribution the following copyright-infringing works: Eurotrip, Alias, Desperate Housewives, According to Jim, Weeds, Greek, Gilmore Girls, American Idol, Dawson's Creek, Dexter, The L Word, Friends, and Scrubs. In total, the Mega Conspiracy received takedown requests for over 35,000 URL links to infringing materials created by LR through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 72 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated LR and never purposefully and completely blocked access to the infringing content. Instead, financial records show

that between 2008 and 2011, the Mega Conspiracy made six separate payments totaling over $38,000 to LR and granted LR complimentary premium access to the Mega Sites as part of the Uploader Rewards program. For example, on or about September 18, 2009, the Mega Conspiracy made a $10,000 payment to LR as part of the Uploader Rewards program. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 72 million site visits and infringements coming as a result of financial incentives made directly to LR.

Repeat Infringer and Unindicted Conspirator "JV"

54. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from January of 2009 through January of 2012, a particular infringer and unindicted conspirator (herein referred to as "JV") maintained an account, which at times included paid and lifetime premium status, on the Mega Sites. A preliminary review indicates that JV uploaded copyright-infringing works, including Glee, Gossip Girl, Desperate Housewives, The Mentalist, True Blood, Lie to Me, Medium, Lost, and Bones. In total, the Mega Conspiracy received takedown requests for over 11,000 URL links to infringing materials created by JV through uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 140 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated JV and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between 2009 and 2011, the Mega Conspiracy made more than 35 separate payments totaling more than $20,000 to JV and granted JV complimentary premium access to the Mega Sites as part of the Uploader Rewards program. For example, on or about April 26, 2010, the Mega Conspiracy granted lifetime premium status on JV and made a $500 payment to JV. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 140 million site visits and infringements coming as a result of financial incentives made directly to JV.

Repeat Infringer and Unindicted Conspirator "AD"

55. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to the preliminary review of the databases, from September of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "AD") maintained an account, which at

times included paid and lifetime premium status, on the Mega Sites. A preliminary review of the files uploaded by AD indicates that he uploaded copyright-infringing works, such as Lost, Smallville, Heroes, Prison Break, and Kyle XY. In total, the Mega Conspiracy received takedown requests for over 2,900 URL links to infringing materials created by AD through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 10 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. In addition, on or about April 28, 2008, DOTCOM received an e-mail addressed to dmca@megaupload.com from Warner Brothers Entertainment identifying infringing content made available by AD and requesting that his account be suspended. Despite having received these takedown requests and this notification, the Mega Conspiracy never terminated AD and never purposefully and completely blocked access to the infringing content. Following the April 28, 2008 notification, AD continued to upload infringing content, such as an infringing episode of Lost in May of 2010, which generated more than 18,000 copyright-infringing views before representatives of the copyright owner submitted a takedown notice for that infringing content. Financial records show that instead of terminating the identified account, between 2008 and 2011, the Mega Conspiracy made 17 separate payments totaling more than $3,500 to AD and granted AD complimentary premium access to the Mega Sites as part of the Uploader Rewards program. For example, on or about July 31, 2009, the Mega Conspiracy paid $1,500 to AD. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 10 million site visits and infringements coming as a result of financial incentives made directly to AD.

Repeat Infringer and Unindicted Conspirator "IS"

56. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from May of 2010 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "IS") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received at least 39,000 takedown requests for URL links to infringing content created by IS through her uploads of copyright-infringing content to the Mega Sites, and these links generated more than 4 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated IS and never purposefully and completely blocked access to the infringing content. From May of 2010 through January of 2012, IS uploaded for distribution infringing copies of television programs, including American Dad, Desperate Housewives, Dexter, Entourage, Gossip Girl, Glee, How I Met

Your Mother, Project Runway, The Simpsons, Two and a Half Men, and Weeds. Rather than terminating IS upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make rewards payments to IS. For example, on or about August 8, 2010, the Mega Conspiracy paid $100 to IS as part of the Uploader Rewards program. Between August 8 and September 2, 2010, IS uploaded more than 5,000 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 5,000 takedown requests for URL links to infringing content created by IS. Even after receiving these takedown requests, the Mega Conspiracy paid IS an additional $200 on September 2, 2010, and continued to pay her through May of 2011. Between May of 2010 and May of 2011, the Mega Conspiracy made 16 rewards payments to IS for a total of $2,400. A preliminary review indicates that more than 99% of the files uploaded for distribution by IS to the Mega Sites are copyright-infringing works. This evidence shows that despite receiving more than 39,000 notices of copyright infringement associated with the conduct of IS, the Mega Conspiracy chose to pay IS on at least 16 separate occasions for her infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 4 million site visits and infringements coming as a result of financial incentives made directly to IS.

b. Between on or about March 4, 2010, and August 31, 2010, IS created for distribution more than 23,000 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Entourage, Lie to Me, True Blood, Futurama, Burn Notice, Weeds, Jersey Shore, Family Guy, Pretty Little Liars, and The Big Bang Theory.

c. Between on or about July 23, 2011, and January 19, 2012, IS created for distribution at least 100 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Gossip Girl, Boardwalk Empire, Desperate Housewives, The Vampire Diaries, House M.D., Grey's Anatomy, True Blood, Entourage, and Jersey Shore.

d. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer IS was among those listed as being entitled to two separate payments, one for $300, and another for $200. Prior to April 8, 2011, the Mega Conspiracy had received and processed copyright-infringement takedown notices identifying more than 24,000 URL links to infringing content uploaded and distributed by IS, and had already paid IS at least $1,700 as part of the Uploader Rewards program. On or about April 8, 2011, the Mega

Conspiracy made two separate payments to IS through PayPal, one for $300, and another for $200.

Repeat Infringer and Unindicted Conspirator "CL"

57. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from October of 2005 through January of 2012, a particular repeat infringer and unindicted conspirator located in the Eastern District of Virginia (herein referred to as "CL") maintained an account, which at times included premium status, on the Mega Sites. The preliminary review shows that more than 500 copyright-infringing video files uploaded for distribution by CL to servers directly controlled by the Mega Conspiracy generated more than 3 million views. The Mega Conspiracy received 264 takedown requests for URL links to infringing material created by CL through his uploads of copyright-infringing content to the Mega Sites. Despite having received these takedown requests, the Mega Conspiracy never terminated CL and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between March of 2009 and February of 2010, the Mega Conspiracy made five separate payments totaling $500 to CL as part of the Uploader Rewards program. For example, between December 22, 2008, and March 11, 2009, the Mega Conspiracy processed at least 98 takedown requests for URL links to infringing materials created by CL. Notwithstanding these takedown requests, the Mega Conspiracy paid $100 to CL on March 11, 2009, and continued to pay him through February of 2010. A review of the file titles of the more than 500 copyright-infringing works uploaded by CL include a variety of copyrighted motion pictures and television programs, including multiple episodes of Family Guy, Robot Chicken, and My Name Is Earl; at least one motion picture still in theaters at the time of the upload (The Hangover); many motion pictures uploaded near the date of their commercial DVD release, including Drillbit Taylor, Miss March, Forgetting Sarah Marshall, Tropic Thunder, You Don't Mess With the Zohan, and Horton Hears a Who; and such motion pictures as The Jerk, Poltergeist, Ferris Bueller's Day Off, The Goonies, and Titanic. This evidence shows that despite receiving 264 notices of copyright infringement associated with the conduct of CL, more than 60% of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay CL on at least five separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 3 million site visits and infringements coming as a result of financial incentives made directly to CL.

b. Between on or about February 18, 2008, and August 16, 2008, CL created for distribution more than 20 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the motion pictures Forgetting Sarah Marshall, The Incredible Hulk, Jeepers Creepers 2, The Ruins, Meet the Spartans, and Drillbit Taylor.

c. Between on or about March 4, 2010, and August 31, 2010, CL created for distribution more than a dozen URL links to copyright-infringing works that were subject to copyright-takedown notices, including the motion pictures 2012, Boondock Saints 2, Avatar, The Lovely Bones, Sherlock Holmes, Shutter Island, The Goonies, The Crazies, Legion, The Chipmunks 2, Zombieland, The Tooth Fairy, and The Princess and the Frog.

Repeat Infringer and Unindicted Conspirator "DK"

58. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from January of 2009 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "DK") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received over 46,000 takedown requests for URL links to infringing materials created by DK through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 21 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated DK and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between October of 2009 and May of 2011, the Mega Conspiracy made 26 separate payments totaling $3,900 to DK as part of the Uploader Rewards program. For example, on or about December 23, 2009, the Mega Conspiracy paid $300 to DK as part of the Uploader Rewards program. Between December 23, 2009, and February 1, 2010, DK uploaded more than 6,500 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 2,800 takedown requests for URL links to infringing content created by DK. Even after receiving these takedown requests, the Mega Conspiracy paid him an additional $700 on February 1, 2010. Between February 1 and March 9, 2010, DK uploaded more than 3,800 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 4,000 takedown requests for URL links to infringing content created by DK. Even after receiving these takedown requests, the Mega Conspiracy paid him an additional $300 on March 9, 2010, and continued to pay him through May of 2011. A preliminary review indicates that more than 96%

of the files uploaded for distribution by DK are copyright-infringing works. These infringing works included voluminous collections (and in many cases entire seasons) of popular copyrighted television programs, such as 24, 30 Rock, American Dad, Angel, Battlestar Galactica, The Big Bang Theory, Big Love, Bones, Breaking Bad, Chuck, CSI: Miami, Curb Your Enthusiasm, Deadwood, Desperate Housewives, Entourage, Family Guy, Friday Night Lights, Friends, Fringe, Gilmore Girls, Glee, Gossip Girl, Grey's Anatomy, Heroes, How I Met Your Mother, House M.D., It's Always Sunny in Philadelphia, Lost, La Femme Nikita, Law & Order: SVU, Monk, The Office, Pretty Little Liars, Prison Break, Psych, Seinfeld, The Simpsons, Smallville, The Sopranos, South Park, Supernatural, True Blood, The Wire, and Xena: Warrior Princess, and a variety of copyrighted motion pictures, such as Astroboy, Atonement, Avatar, A Clockwork Orange, The Devil Wears Prada, Ghosts of Girlfriends Past, Inside Man, Lies and Illusions, Max Payne, Pineapple Express, Pirates of the Caribbean: At World's End, Quantum of Solace, and Ratatouille. This evidence shows that despite receiving more than 46,000 notices of copyright infringement associated with the conduct of DK, more than half of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay DK on at least 26 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 21 million site visits and infringements coming as a result of financial incentives made directly to DK.

b. Between on or about March 4, 2010, and August 31, 2010, DK created for distribution more than a 28,000 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Skins, Sons of Anarchy, The Office, House M.D., How I Met Your Mother, 30 Rock, Grey's Anatomy, Family Guy, Entourage, Lost, Curb Your Enthusiasm, Dexter, South Park, Cold Case, The Vampire Diaries, The Wire, and True Blood.

c. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer DK was among those listed as being entitled to two separate payments of $100 each. Prior to April 8, 2011, the Mega Conspiracy had received and processed copyright-infringement takedown notices identifying more than 40,000 URL links to infringing content uploaded and distributed by DK, and had already paid DK at least $3,600 as part of the Uploader Rewards program. On or about April 8, 2011, the Mega Conspiracy made two separate payments of $100 each to DK through PayPal.

d. Between on or about July 23, 2011, and January 19, 2012, DK created for distribution more than 40 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television

programs Jersey Shore, Dexter, True Blood and Pretty Little Liars, and the computer software Red Faction: Armageddon.

Repeat Infringer and Unindicted Conspirator "EG"

59. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from December of 2009 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "EG") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received over 30,000 takedown requests for URL links to infringing material created by EG through her uploads of copyright-infringing content to the Mega Sites, and these links generated more than 9 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated EG and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between February of 2010 and April of 2011, the Mega Conspiracy made 13 separate payments totaling $1,900 to EG as part of the Uploader Rewards program. For example, on or about February 1, 2010, the Mega Conspiracy paid $500 to EG as part of the Uploader Rewards program. Between February 1 and March 9, 2010, EG uploaded for distribution more than 5,000 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 2,000 takedown requests for URL links to infringing materials created by EG. Even after processing these takedown requests, the Mega Conspiracy paid her an additional $200 on March 9, 2010, and continued to pay her through April of 2011. A preliminary review indicates that more than 98% of the files uploaded for distribution by EG are copyright-infringing works. These infringing works included voluminous collections of episodes (and in several cases entire seasons) of popular copyrighted television programs, such as 24, Ally McBeal, American Dad, Battlestar Galactica, Big Love, Bones, Boston Legal, Buffy the Vampire Slayer, Carnivale, Entourage, Futurama, Heroes, House M.D., How I Met Your Mother, Monk, Law & Order, Law & Order: SVU, The Office, My Name Is Earl, Psych, Robot Chicken, Roswell, The Simpsons, South Park, Will & Grace, and Xena: Warrior Princess, as well as a library of more than a hundred copyrighted motion pictures. The evidence shows that, despite receiving more than 30,000 notices of copyright infringement associated with the conduct of EG, more than half of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay EG on at least 13 separate occasions for her infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 9 million site visits

and infringements coming as a result of financial incentives made directly to EG.

b. Between on or about March 4, 2010, and August 31, 2010, EG created for distribution more than 12,000 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Cold Case, 24, Chuck, CSI, CSI: Miami, CSI: New York, Burn Notice, The Big Bang Theory, Bones, Prison Break, Supernatural, The Simpsons, The Secret Life of the American Teenager, Rome, Gossip Girl, Fringe, Family Guy, Dexter, Desperate Housewives, Lie to Me, Lost, La Femme Nikita, How I Met Your Mother, and Breaking Bad.

c. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer EG was among those listed as being entitled to two separate payments of $100 each. Prior to April 8, 2011, the Mega Conspiracy had received and processed copyright-infringement takedown notices identifying more than 24,000 URL links to infringing content uploaded and distributed by EG, and had already paid EG at least $1,700 as part of the Uploader Rewards program. On or about April 8, 2011, the Mega Conspiracy made two separate payments of $100 to EG through PayPal.

Repeat Infringer and Unindicted Conspirator "JP"

60. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from approximately July of 2009 through November of 2011, a particular repeat infringer and unindicted conspirator (herein referred to as "JP") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received nearly 70,000 takedown requests for URL links to infringing materials created by JP through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 680,000 accesses of known copyright-infringing video files on servers directly controlled by the Mega Conspiracy (with hundreds of thousands of additional accesses to infringing materials uploaded by JP that were not discovered by copyright holders). Despite having received nearly 70,000 takedown requests, the Mega Conspiracy never terminated JP and never purposefully and completely blocked access to the infringing material. Instead, financial records show that between September of 2010 and December of 2010, the Mega Conspiracy made five separate payments totaling $700 to JP as part of the Uploader Rewards program. A preliminary review indicates that substantially all of the more than 100,000 files uploaded for distribution by JP are infringing copies of copyrighted television programs. These copies included often complete

seasons (often with numerous copies of the same episode) of 30 Rock, 90210, America's Next Top Model, The Big Bang Theory, Boardwalk Empire, Burn Notice, Chuck, Dexter, Entourage, Family Guy, Futurama, Glee, Gossip Girl, Grey's Anatomy, Hellcats, House M.D., How I Met Your Mother, Hellcats, Jersey Shore, Keeping Up with the Kardashians, Kourtney and Khloe Take Miami, Lie to Me, Lost, Mad Men, Modern Family, Nikita, One Tree Hill, The Office, Pretty Little Liars, The Simpsons, Smallville, Sons of Anarchy, South Park, Top Gear, Two and a Half Men, True Blood, Weeds, and The Vampire Diaries. For example, JP uploaded more than 35 copies of the premiere episode of the copyrighted television program Chuck. Many of the infringing files uploaded by JP had the words "DVDrip" or identified the specific piracy group and/or linking site that originally made them available on the Internet. On or about September 2, 2010, the Mega Conspiracy paid $100 to JP as part of the Uploader Rewards program. Prior to that time, more than 16,000 URL links to copyright-infringing materials reproduced and distributed by the Mega Sites had been created by JP, and the Mega Conspiracy processed more than 15,000 takedown requests for URL links to infringing content uploaded by JP during that time. Between September 2, 2010, and October 5, 2010, JP created more than 17,000 URL links to copyright-infringing materials to the Mega Sites, and the Mega Conspiracy processed more than 8,000 takedown requests for URL links to infringing content uploaded by JP during that time. On or about October 5, 2010, the Mega Conspiracy paid $200 to JP as part of the Uploader Rewards program. Between October 5, 2010, and November 5, 2010, JP created more than 17,000 URL links to copyright-infringing materials reproduced and distributed by the Mega Sites. Between November 5, 2010, and December 11, 2010, JP created an additional 14,613 URL links to copyright-infringing materials reproduced and distributed by the Mega Sites, and the Mega Conspiracy processed more than 2,400 takedown requests for URL links to infringing content uploaded by JP during that time. On or about December 11, 2010, the Mega Conspiracy made two separate payments of $100 each to JP as part of the Uploader Rewards program. This evidence shows that despite receiving nearly 70,000 notices of copyright infringement associated with the conduct of JP, a substantial percentage of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay JP on 5 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 680,000 site visits and infringements coming as a result of financial incentives made directly to JP.

Repeat Infringer and Unindicted Conspirator "PA"

61. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from March of 2007 through September of 2009, a particular repeat infringer, who was a resident of the Eastern District of Virginia and an unindicted conspirator (herein referred to as "PA"), maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received at least 23 takedown requests for URL links to infringing content created by PA through his uploads of copyright-infringing content to the Mega Sites. Despite having received these takedown requests, the Mega Conspiracy never terminated PA and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between September of 2007 and March of 2009, the Mega Conspiracy made two separate payments totaling $3,000 to PA as part of the Uploader Rewards program. Between April 2007 and September 28, 2007, PA uploaded for distribution more than 2,000 URL links to hundreds of what appear to be copyrighted television programs and motion pictures (primarily in Vietnamese), including one video entitled Viet Nam Ngay Nay 6, that had received a copyright takedown request that was processed by defendant VAN DER KOLK himself. In fact, the upload of that particular work by PA appeared on a third-party linking site http://mtvmediavnfilm.blogspot.com along with more than 20 additional links to the same infringing work on Megaupload.com. On September 29, 2007, the Mega Conspiracy paid PA $1,500 as part of the Uploader Rewards program. After that payment, PA made more than 4,700 uploads of mostly Vietnamese works. Also uploaded were copies of copyright-infringing motion pictures that include the phrase "DVD Rips" in the title, such as Indiana Jones and the Raiders of the Lost Ark and Why Me, Sweetie?! (Hong Kong); and copies of copyright-infringing motion pictures that include the term "CDs" in the title, such as Garoojigi (Korean) and My Mighty Princess (Korean). On March 11, 2009, the Mega Conspiracy paid PA another $1,500 as part of the Uploader Rewards program. In total, the Mega Conspiracy received at least 23 takedown notices for copyrighted works uploaded by PA. Access to these known works was never purposefully and completely blocked, and PA was never terminated as a user of the Mega Sites for repeat infringement. This evidence shows that despite receiving more than 20 notices of copyright infringement associated with the conduct of PA, all of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay PA $3,000 for his infringement of copyrighted works using Megaupload.com. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 3 million downloads coming as a result of financial incentives made directly to PA.

Repeat Infringer and Unindicted Conspirator "TH"

62. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from at least on or about February of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "TH") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received over 1,200 takedown requests for URL links to infringing material created by TH through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 1.2 million downloads of copyright-infringing files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated TH and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between October of 2006 and April of 2011, the Mega Conspiracy made 26 separate payments totaling more than $50,000 to TH as part of the Uploader Rewards program. The evidence shows that, despite receiving more than 1,200 notices of copyright infringement associated with the conduct of TH, all of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay TH on at least 26 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 1.2 million downloads and infringements coming as a result of financial incentives made directly to TH.

b. URL links created and distributed by TH between on or about February 18, 2008, and August 16, 2008, generated over 10 million downloads, more than any other user on the Mega Sites. More than 130 of these URL links received copyright-infringement takedown notices.

c. TH regularly sent e-mails to support@megaupload.com. E-mails sent to support@megaupload.com were at times (including during the times specified in the e-mails, below) automatically forwarded to DOTCOM, ORTMANN, and VAN DER KOLK's e-mail accounts.

d. On or about December 7, 2006, TH sent an e-mail to support@megaupload.com entitled "Thanks to Megaupload," thanking Megaupload.com for a recent reward payment of $1,000, based on having accumulated 1,000,000 reward points in his premium account. That same day, ORTMANN responded to support@megaupload.com, omitting TH, asking, "Wow, does he really have that many premium points? Anyway, he gets all those Nguyens scattered around the globe to sign up, so it's money well spent!" The following day, ORTMANN received from

support@megaupload.com an e-mail stating, "Yes, the guy can almost convert his third 1 Million points to another 1000 bucks[.]"

e. On or about December 20, 2006, TH sent an e-mail to support@megaupload.com entitled "The Last Note." TH complained that he had not received a $1,000 reward payment based on having accumulated 1,000,000 reward points in his premium account. TH stated that if he was not paid "within 24 hours," then he would expose the payment failure on "over 100 Vietnamese websites in the world." He further stated, "I really do not care about your payment or not. I do not give you a chance to cheat millions of user and uploaders anymore." On or about December 21, 2006, DOTCOM responded to ORTMANN and VAN DER KOLK, omitting TH, writing, "This is the fifth e-mail from this guy. WHY THE [expletive redacted] DOES NOONE CARE?" That same day, ORTMANN replied to DOTCOM and VAN DER KOLK, writing, "We do care. Bram was about to give me the final confirmation that the payment is legit, and I am sending it now."

f. On or about January 5, 2007, TH sent an e-mail to support@megaupload.com, which was nearly identical to the December 20, 2006 e-mail he previously sent. On or about January 5, 2007, ORTMANN wrote to another member of the Mega Conspiracy, "Money sent . . . with a total of over 11 million pageviews of the files in his account, he surely deserves it!"

g. As described above, VAN DER KOLK regularly e-mailed ORTMANN, and at times DOTCOM, regarding reward payments. Attached to these e-mails were reward payment files, which listed the users' e-mail addresses, usernames, and amounts of reward payments for that time period. On or about March 10, 2007, VAN DER KOLK sent an e-mail entitled "reward payments" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

h. On or about March 26, 2007, VAN DER KOLK sent an e-mail entitled "reward payment batch file" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

i. On or about May 7, 2007, VAN DER KOLK sent an e-mail entitled "Batch payment rewards" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

j. TH regularly e-mailed support@megaupload.com to notify members of the Mega Conspiracy that TH had been paid through the Uploader Rewards program. These e-mails included the date and amount of

payment. He sent more than a dozen such e-mails between June 7, 2007, and March 3, 2008.

k. On or about June 17, 2007, TH sent an e-mail to support@megaupload.com entitled "File manager." TH wrote, "I would like to get the links in my File Manager, but I can not see any links in my account. Please adjust the system as soon as possible. Thanks in advance." That same day, ORTMANN responded, "You currently have 30,000 files in your account, totaling almost 2.5 terabytes. As you know, we officially only allow 250 gigabytes of storage per premium account, and our infrastructure and file manager are designed and built around this limitation. We are amazed that your file manager has worked up to this point, actually! Anyway, we have strengthened our infrastructure to handle extreme accounts like yours. Let us know if you can see your files again."

l. On or about September 17, 2007, VAN DER KOLK sent an e-mail entitled "Reward payments" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

m. On or about October 10, 2007, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

n. On or about November 7, 2007, VAN DER KOLK sent an e-mail entitled "reward payments file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, I prepared another rewards payment today." In the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

o. On or about November 18, 2007, VAN DER KOLK sent an e-mail entitled "reward payments file" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

p. On or about December 2, 2007, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

q. On or about December 19, 2007, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

r. On or about February 9, 2008, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. The e-mail contained no text, but

in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $10,000 payment.

s. On or about January 8, 2008, VAN DER KOLK sent an e-mail entitled "Batch payment file" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $10,000 payment.

t. On or about February 27, 2008, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file. It should be about 80.000 USD. Thanks! Bram[]." In the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $1,500 payment.

u. On or about March 2, 2008, TH sent an e-mail to support@megaupload.com entitled "Reward points." TH wrote, "Please adjust the system for reward points as soon as possible. Because Available Points do not increase to match with Total Downloads that increase every hours. This problem lasts for 2 weeks. Please make a fair thing for uploaders." The following day, DOTCOM responded to ORTMANN, omitting TH, writing in German that it should give them pause when their main uploader complains. ORTMANN replied to DOTCOM that same day, writing in German that a new Uploader Reward policy was causing TH to lose points, and that TH will need to try harder if he wants to continue earning as much as $10,000 per month through the program.

v. On or about March 15, 2008, TH sent an e-mail to support@megaupload.com, writing, "I would like to inform that : I am in Vietnam now. SO, I use the internet with IP in Vietnam. Please allow me to download or upload with IP in Vietname. Thanks." That same day, ORTMANN responded, "Don't worry. We don't disable Vietnamese users."

w. On or about March 19, 2008, TH sent an e-mail to support@megaupload.com entitled "Reward Points." TH complained about a new Uploader Reward policy that was causing TH to lose points. TH stated that if the policy was not adjusted, then he would "post on over 120 websites and notify users to stop buying premium account[s] with Megaupload." On or about March 19, 2008, DOTCOM responded to TH, writing, "You and your friends are at most 1% of our traffic. So please don't overestimate your importance to us. We are thankful for your support of Megaupload in the past and I think we have always been fair to you." DOTCOM further wrote, "In the future you will also earn rewards for every premium customer that you bring to us."

x. On or about May 10, 2008, TH sent an e-mail to support@megaupload.com. TH wrote, "I just came back to USA, and now my IP for downloading or uploading from USA. I would like to start working for you now. Would you please let me know when the renovation will be done and how the new rule is? Thanks[.]" On or about May 11, 2008, ORTMANN responded, "Welcome back! The renovation is still in progress, but we can offer you a manual adjustment of your earned points according to the new standard as a special exception. Please send us a request before every redemption you plan to make." On or about May 12, 2008, DOTCOM responded to ORTMANN, omitting TH, writing: "Juhu. [TH] is back :-)" The German word "juhu" means "yay" in English.

y. On or about September 17, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer TH was among those listed as being entitled to a payment of $400.

z. On or about November 13, 2009, VAN DER KOLK sent an e-mail entitled "Files" to an unindicted conspirator and employee of the Mega Sites. VAN DER KOLK attached to the e-mail a reward payment list, similar to the type he sent to ORTMANN (as described above), which contained the individuals' user names, e-mail addresses, and payment amounts. The reward payment list included a $1,500 reward payment to TH.

aa. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. The e-mail contained no text, but in the attached reward payment file, repeat infringer TH was among those listed as being entitled to a $100 payment.

63. The U.S. Attorney's Office for the Eastern District of Virginia expects TH to testify to the following facts:

a. In early 2006, TH learned from the Megaupload.com website that he could make money through the Uploader Rewards program. TH obtained copyright-infringing versions of Vietnamese motion pictures, television programs, and musical recordings from a download website and then uploaded them to his premium account on Megaupload.com. After uploading the file to his premium account, TH would advertise the corresponding URL link, together with the poster for the motion picture or television programs, on third-party linking sites.

b. TH frequently checked these URL links to determine whether they were still active on the Mega Sites. Although some URL links created and publicized by TH were disabled, the underlying files were not disabled. In addition, TH never received notification from the Mega Sites that any of

his files had been the subject of a copyright-infringement takedown request, and TH's premium account was never suspended.

c. In 2006, prior to TH's first Uploader Rewards payment, TH received an e-mail from Megaupload.com stating that TH would not be paid because he uploaded a copyright-infringing musical recording from a Vietnamese artist. TH was unsure whether the recording was copyrighted or not, but he responded to the e-mail by stating that Vietnamese artists do not have copyrights. He did so because he thought it would help him get paid. Shortly thereafter, TH received his first Uploader Rewards payment. He continued to receive payments through 2011.

Repeat Infringer and Unindicted Conspirator "DH"

64. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from July of 2007 to January of 2012, a particular repeat infringer and unindicted conspirator, who was also a resident of the Eastern District of Virginia (herein referred to as "DH"), maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received at least 3,000 takedown requests for URL links to infringing materials created by DH through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 390,000 views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. A preliminary review shows that the copyright-infringing works uploaded by DH included multiple seasons of Family Guy, Futurama, South Park, The Simpsons, and American Dad. Despite having received takedown requests for copyright-infringing works, the Mega Conspiracy never terminated DH and never purposefully and completely blocked access to the infringing content. Instead, financial records show that the Mega Conspiracy paid $600 to DH as part of the Uploader Rewards program. This evidence shows that despite receiving more than 3,000 notices of copyright infringement associated with the conduct of DH, more than 99% of which were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to reward DH for his uploading of copyrighted works. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 390,000 site visits and infringements coming as a result of financial incentives made directly to DH.

b. Between on or about February 18, 2008, and August 16, 2008, DH created for distribution more than 600 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs The Simpsons, Family Guy, American Dad, and South Park, and

the computer software programs Call of Duty, Major League Baseball 2K8, and Need for Speed ProStreet.

c. Between on or about March 4, 2010, and August 31, 2010, DH created for distribution more than a 150 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the computer software programs Call of Duty: Modern Warfare 2, Halo 3, and Tiger Woods PGA Tour 10.

65. The U.S. Attorney's Office for the Eastern District of Virginia expects DH to testify to the following facts:

a. DH discovered the Mega Sites in approximately 2008 to 2009 while visiting online discussion forums. Users in one forum, for example, discussed downloading copyright-infringing Xbox video games on Megaupload.com. DH learned that he could make money through the Mega Sites' Uploader Rewards program. In particular, DH learned that he could earn points by uploading popular material to the Mega Sites and having users view or download the materials. The points could be redeemed for money.

b. DH signed up for a premium membership with the Mega Sites because that was a requirement for getting paid through the Uploader Rewards program. In addition, the premium membership prevented his uploads from being automatically deleted after a period of time, and DH believed that he would earn more points the longer his content was available for download and viewing. DH knowingly uploaded copyright-infringing motion pictures, television shows, and video games to the Mega Sites. DH obtained the majority of these copyright-infringing materials from other Internet sites. The reason he uploaded copyright-infringing materials to the Mega Sites was to make money, because copyrighted materials were more in demand than personal materials. The more copyright-infringing materials DH would upload, the more money he would make.

Repeat Infringer and Unindicted Conspirator "DT"

66. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from June of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator, who was also a resident of the Eastern District of Virginia (herein referred to as "DT"), maintained an account, which at times included premium status, on the Mega Sites. The Mega Conspiracy received more than 500 takedown requests for URL links to infringing material created by DT through his uploads of copyright-infringing

content to the Mega Sites. Despite having received these takedown requests, the Mega Conspiracy never terminated DT and never purposefully and completely blocked access to the infringing content. Instead, financial records show that the Mega Conspiracy paid DT $100 in January 2008 as part of the Uploader Rewards program. Records indicate that DT uploaded for distribution hundreds of copyright-infringing files to the Mega Sites, including copyrighted software such as Windows 7 Ultimate Edition, Adobe Dreamweaver, AutoDesk AutoCAD 2009, TemplateMonster, DesignProvideo Lightroom, Keosoft90, Smartsoft SmartFTP Client Professional, and Atomix Virtual DJ Pro, and copyrighted motion pictures, such as Harry Potter and the Half-Blood Prince. This evidence shows that despite receiving more than 500 notices of copyright infringement associated with the conduct of DT, the Mega Conspiracy chose to pay DT $100 for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest coming as a result of financial incentives made directly to DT.

b. Between on or about February 18, 2008, and August 16, 2008, DT created for distribution more than 75 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the computer software programs Autodesk AutoCAD 2009 and Adobe Dreamweaver.

c. Between on or about March 4, 2010, and August 31, 2010, DT created for distribution more than a dozen URL links to copyright-infringing works that were subject to copyright-takedown notices, including the computer software programs Visual Studio 2010 Premium and the books Foundation Flash CS5 for Designers and Thinking in C#.

Repeat Infringer and Unindicted Conspirator "NS"

67. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from January of 2008 through January of 2012, a particular repeat infringer and unindicted conspirator, who was also a resident of the Eastern District of Virginia (herein referred to as "NS"), maintained an account, which at times included premium status, on the Mega Sites. The Mega Conspiracy received four takedown requests for URL links to infringing material created by NS through his uploads of copyright-infringing content to the Mega Sites, and these links generated at least 11,400 views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated NS and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between April of 2009 and May of 2010, the Mega Conspiracy made

three separate payments totaling $300 to NS as part of the Uploader Rewards program. Records indicate that NS uploaded for distribution more than 12 copyright-infringing files to Megavideo.com, which resulted in more than 27,000 views of infringing files. These infringing works consisted of copyrighted television programs, including Family Guy and The Simpsons, and the motion pictures Jonah Hex and Eyes Wide Shut, the latter of which was viewed at least 15,000 times on Megavideo.com. This evidence shows that despite receiving multiple notices of copyright infringement associated with the conduct of NS, the Mega Conspiracy chose to pay NS on at least three separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 27,000 site visits and infringements coming as a result of financial incentives made directly to NS.

68. The U.S. Attorney's Office for the Eastern District of Virginia expects NS to testify to the following facts:

a. NS learned of the Mega Sites in approximately 2006 to 2007, when noticing friends watching on-line content, including copyright-infringing television programs. NS learned in 2007 that Megaupload.com and Megavideo.com would give him points when he uploaded content or when others viewed his uploaded content. The points could later be redeemed for money.

b. NS signed up for a premium membership with the Mega Sites in or around 2007, so that he could obtain unlimited access to content on the Mega Sites. Premium membership was also required to redeem points for money. NS knowingly uploaded copyright-infringing Japanese television programs to the Mega Sites. NS obtained the majority of these copyright-infringing materials from other Internet sites. NS uploaded anime, a style of animation originating in Japan, because it was popular and would assist in accruing more points more quickly. NS distributed the links to his uploaded content on popular third-party linking websites, such as Yoku.com and Allyousee.org.

Repeat Infringer and Unindicted Conspirator "TT"

69. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from August of 2007 through January of 2012, a particular repeat infringer and unindicted conspirator located in the Eastern District of Virginia (herein referred to as "TT") maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received nearly 3,000 takedown requests for URL links to infringing material created by TT

through his uploads of copyright-infringing content to Megavideo.com, and these links generated more than 7 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated TT and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between July of 2009 and February of 2010, the Mega Conspiracy made 15 separate payments totaling $2,700 to TT as part of the Uploader Rewards program. For example, on or about September 18, 2009, the Mega Conspiracy paid $200 to TT as part of the Uploader Rewards program. Between September 18 and October 8, 2009, TT uploaded more than 300 URL links to copyright-infringing materials to the Mega Sites. The Mega Conspiracy then paid TT an additional $200 on October 8, 2009, and continued to pay him through February of 2010. A preliminary review indicates that more than 98% of the files uploaded for distribution by TT were copyright-infringing works. These infringing works included voluminous collections of episodes of popular copyrighted television programs, such as 24, 30 Rock, American Dad, The Big Bang Theory, Bones, Chuck, Desperate Housewives, Entourage, Family Guy, Fringe, Glee, Gossip Girl, Grey's Anatomy, House M.D., How I Met Your Mother, Lost, The Office, One Tree Hill, The Simpsons, Smallville, Supernatural, True Blood, Two and a Half Men, and The Vampire Diaries. This evidence shows that despite receiving nearly 3,000 notices of copyright infringement associated with the conduct of TT, nearly half of which were received and processed manually by defendant VAN DER KOLK himself, the Mega Conspiracy chose to pay TT on at least 15 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 7 million site visits and infringements coming as a result of financial incentives made directly to TT.

b. On or about September 17, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer TT was among those listed as being entitled to two separate payments of $100 each.

c. On or about November 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment for the last 2 weeks+. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer TT was among those listed as being entitled to two separate payments of $300 each.

d. Between on or about March 4, 2010, and August 31, 2010, TT created for distribution more than 1,900 URL links to copyright-infringing works that

were subject to copyright-takedown notices, including episodes of the following television programs: 24, Prison Break, Nip/Tuck, Lie to Me, In Plain Sight, Heroes, Gossip Girl, Human Target, How I Met Your Mother, Gilmore Girls, Entourage, White Collar, Desperate Housewives, Veronica Mars, The Vampire Diaries, True Blood, Supernatural, Sons of Anarchy, Saving Grace, One Tree Hill, Lost, Justified, Hung, Glee, Fringe, Dexter, The Closer, The Cleveland Show, Chuck, Burn Notice, Bones, Big Love, 30 Rock, and Better Off Ted.

Repeat Infringer and Unindicted Conspirator "CB"

70. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from September of 2007 through January of 2012, a particular repeat infringer and unindicted conspirator, who was also a resident of the Eastern District of Virginia (herein referred to as "CB"), maintained an account, which at times included premium status, on the Mega Sites. In total, the Mega Conspiracy received at least 361 takedown requests for URL links to infringing materials created by CB through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 3.1 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated CB and never purposefully and completely blocked access to the infringing content. From September of 2007 through January 26, 2008, CB uploaded for distribution infringing copies of copyrighted musical works, including albums and songs from recording artists Buckcherry, Busta Rhymes, Celia Cruz, D12, Destiny's Child, Eminem, Fergie, Gnarls Barkley, Jay-Z, Jill Scott, John Legend, Jordan Sparks, Kelis, Keyshia Cole, Kid Rock, Killer Mike, Leaders of the New School, Lil' Wayne, Limp Bizkit, Linkin Park, Ludacris, Lupe Fiasco, Maxwell, Michael Jackson, Missy Elliot, Murs, Nelly, Norah Jones, the Red Hot Chili Peppers, Ricky Martin, the Roots, and System of a Down. Rather than terminating CB upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that on or about January 27, 2008, the Mega Conspiracy directly rewarded CB's conduct with $100. On January 28, 2008, CB continued his uploading of infringing copyrighted works, and the Mega Conspiracy continued to receive takedown requests regarding CB's uploads. Among recording artists whose works were infringed by CB after January 27, 2008 were Bob Marley, Led Zeppelin, and Michael Jackson. In addition, CB uploaded infringing copies of copyrighted television programs, including Afro Samurai (5 episodes), Air Gear (25 episodes), Baki the Grappler (23 episodes), Boondocks (2 episodes), Dragon Ball Z (74 episodes), Full Metal Alchemist (51 episodes), Full Metal Panic! (22 episodes), Ghost in the Shell: Stand

Alone Complex (34 episodes), Mobile Suit Gundam SEED Destiny (9 episodes), Ronin Warriors (17 episodes), and Samurai Champloo (25 episodes). On October 8, 2009, the Mega Conspiracy made a payment of $300 to CB as part of its Uploader Rewards program. On February 1, 2010, CB received a payment of $100 from the Mega Conspiracy. More than 99% of the total views of content posted on Megavideo.com by CB were generated by copyright-infringing content. Other uploads by CB that were not detected by copyright holders and yet were uploaded to CB's account with the Mega Conspiracy included episodes of Alias (28 episodes), Area 88 (11 episodes), Boogiepop Phantom (12 episodes), Death Note (37 episodes), Get Backers (48 episodes), Ghost Hound (23 episodes), Gun x Sword (26 episodes), Pokémon (10 episodes), Samurai X (89 episodes), Xena (22 episodes), X-Men: The Animated Series (24 episodes), and additional episodes of the copyrighted television programs that were actually detected. This evidence shows that despite receiving more than 350 notices of copyright infringement associated with the conduct of CB, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to reward CB on multiple occasions for his uploading of copyrighted works. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 3.1 million site visits and infringements coming as a result of financial incentives made directly to CB. Repeat infringer CB continued to upload infringing copies of copyrighted motion pictures (which, in fact, had the name of a linking site in the title) until early December of 2011, including The Assault, Battle: Los Angeles, Black Swan, Bridesmaids, Columbiana, The Debt, The Green Lantern, The Hangover Part II, Hanna, The King's Speech, Kung Fu Panda 2, The Lion King, Madea's Big Happy Family, Repo Men, Thor, The Town, Transformers: Dark of the Moon, True Grit, Winnie the Pooh, and X-Men: First Class.

b. Between on or about February 18, 2008, and August 16, 2008, CB created for distribution more than 250 URL links to copyright-infringing works that were subject to copyright-takedown notices, including Full Metal Alchemist, Ronin Warriors, Samurai Champloo, Afro Samurai, Gundam Seed Destiny, Dragon Ball Z, Air Gear, Ghost in the Shell: Stand Alone Complex, Full Metal Panic!, and Baki the Grappleri.

71. The U.S. Attorney's Office for the Eastern District of Virginia expects CB to testify to the following facts:

a. CB discovered the Mega Sites in approximately 2005, while visiting online hip hop music forums. CB learned that he could download songs from the Mega Sites and that he could make money by uploading content. In particular, CB learned that he could get points when others downloaded content or viewed files that he uploaded.

b. CB signed up for a premium membership with the Mega Sites so that he could redeem his points for money, and so that he could overcome storage limitations. CB knowingly uploaded copyright-infringing musical recordings and videos to the Mega Sites. CB posted URL links to the copyright-infringing content that he had uploaded on various forums, including third-party linking sites. CB obtained the majority of these copyright-infringing materials from other Internet sites. CB started uploading anime because he discovered that anime was popular and in high demand for viewing. CB equated an increase in viewings to making more money.

Copyright-Infringing Works Available on the Mega Sites

72. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. As stated in Paragraph 24(c), a preliminary analysis of the databases shows that the Mega Conspiracy and others measured the throughput, or bandwidth, that files on the Mega Sites were consuming. Files that demanded higher throughput, which meant that more users were accessing those files simultaneously, were stored on faster servers located in Washington, D.C. The preliminary analysis of the databases shows that the vast majority of files on these computers are infringing copies of copyrighted works, and the Mega Conspiracy have purposefully made their rapid and repeated distribution a primary focus of their infrastructure. These faster servers thus facilitated the mass distribution of popular copyright-infringing works, which is incompatible with the notion that Megaupload.com was merely a cyberlocker, or that users were primarily interested in sharing personal, non-infringing materials. The establishment of these faster servers demonstrates that the Mega Conspiracy monitored the contents of the Mega Sites, analyzed user demand, and responded so as to maximize their financial profit.

b. DOTCOM personally negotiated the terms of the contractual agreement with Cogent Communications ("Cogent"), the Internet hosting provider that owned the computer servers located in Washington, D.C. Between at least October of 2008 and January of 2012, the Mega Conspiracy leased bandwidth and, beginning in December of 2010, these servers, maintaining exclusive possession and access, except for maintenance and support work performed by Cogent. DOTCOM also personally negotiated the terms of the contractual agreements with Carpathia Hosting, Inc. ("Carpathia"), and Leaseweb. Between at least September of 2005 and January of 2012, the Mega Conspiracy leased servers from Carpathia, maintaining exclusive possession and access, except for maintenance and support work performed by Carpathia. Between at least April of 2007 and January of 2012, the Mega Conspiracy leased and also purchased servers

from Leaseweb, maintaining exclusive possession and access, except for maintenance and support work performed by Leaseweb.

c. Representatives of the FBI have conducted a preliminary analysis of two of the computer servers located in Washington, D.C., which were owned by Cogent and leased exclusively to the Mega Conspiracy. As of January 19, 2012, approximately 2,444 files were stored on these two servers and were available to the public through the Mega Sites. The preliminary analysis demonstrates that of these 2,444 files, more than 2,200 files had multiple URL links pointing to the same file; more than 550 files had over 100 URL links pointing to the same file; more than 100 files had over 500 URL links pointing to the same file; and approximately 30 files had over 1,000 URL links pointing to the same file.

d. The preliminary analysis further demonstrates that of the 2,444 files, more than 1,000 of the files (roughly 43%) already had at least one copyright infringement takedown request submitted to the Mega Conspiracy indicating that the copy of the copyrighted work was infringing. Because the vast majority of files had multiple URL links pointing to the same file, more than 800 files had been the subject of multiple takedown requests, yet remained accessible through additional URL links. In addition, more than 100 files had over 50 takedown requests submitted for each file; and more than 30 files had over 200 takedown requests submitted for each file.

e. In total, the preliminary analysis of the 2,444 files, including content and file name, indicates that at least 90% of the files are infringing copies of non-pornographic copyrighted works; 7% are pornographic videos (many of which are copyrighted); and 3% are unknown due to encryption or because the file has been split into multiple parts.

73. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. The Mega Conspiracy and others created a software program known as "Mega Manager" to facilitate file transfers to the Mega Sites. Mega Manager enabled users, for example, to upload files more quickly, to queue multiple uploads and downloads, to pause and restart uploads and downloads, and to check whether a particular URL link was still active. By providing these features, the Mega Manager facilitated the widespread reproduction and distribution of copyright-infringing materials.

b. The ability to check whether a particular URL link was still active allowed users to distribute copyright-infringing links online, particularly on third-party linking sites, and to quickly recreate and redistribute links that had been disabled due to copyright infringement takedown notices.

Affirmative Reliance on Third-Party "Linking" Sites

74. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. As stated in Paragraph 33(a), Megaupload.com does not provide a search function, and although Megavideo.com does provide a search function, any search for a full-length copyrighted video by the public would not produce any relevant results. Instead, the Mega Conspiracy business model relies on thousands of third-party "linking" sites, which contain user-generated postings of links created by Megaupload.com (as well as URL links created by other Mega Sites, such as Megavideo.com and Megaporn.com). This third-party linking model allowed millions of uploaders and users to advertise, throughout the Internet, URL links to infringing content available on the Mega Sites, hampered the identification and removal of these infringing works, and — by providing the infrastructure that decentralized the linking process — concealed the Mega Conspiracy's role in the unlawful behavior. Such postings on third-party linking sites were financially encouraged by the Uploader Rewards program. URL links posted on these third-party linking sites are publicly available and are inconsistent with the concept of storage of private data. In addition, the purpose of posting URL links on third-party linking sites is to advertise the underlying files to the general public; therefore, such files cannot be legitimate back-up copies of copyrighted works.

b. On or about September 25, 2007, VAN DER KOLK sent an e-mail entitled "RE: Auditing" to an unindicted conspirator and employee of the Mega Sites. Attached to the e-mail was a text file "Auditor Guidelines," which contained the following instructions to employees responsible for auditing files on the Mega Sites:

> Megarotic Video: Videos that have to be set to private:
> - Long length high quality videos that are obvious ---
> - Video with known logos / website URL's in it of copyright holders
>
> Megavideo:
> - Mark sexy / soft erotic (non nude) videos as private
> - Delete soft erotic with nudity
> - Delete pornographic / extreme nudity (visible organs / penetration / etc.) and block the user
> - Delete hateful / violent content (obvious racism / real killing / torture, etc.)
>
> Auditing for Megavideo is rather simple, just make sure that the above described stuff will be deleted and the rest of the videos can be approved.

Videos that were set to "private" were not publicly displayed on the front pages of the Mega Sites, but users still had the ability to distribute these URL links in the same manner as non-private links (for example, on third-party linking sites).

c. On or about March 20, 2011, VAN DER KOLK forwarded an e-mail from an unindicted conspirator to a separate unindicted conspirator, both of whom were then employees of the Mega Sites. In the original e-mail, entitled "Downloading Movies Issue (Megavideo)," the employee stated:

> Please note that we have been receiving inquiries regarding issues in download movies/videos from Megavideo. Premium customers would state that they would be redirected to the Purchase Premium page at Megavideo (http://wwwmegavideo.com/?c=premium) once they click on "Download Original" even if the were already logged in to their premium account. We were able to recreate the problem the other night and here is what we found out. Downloading the movie directly from Megavideo does not redirect the user to the Premium Purchase page. However, if they accessed the movie/video from third-party sites (tested sites: Quicksilverscreen, Watchnewfilms, Surfthechannel) and clicked on "Download Original" they would be redirected to the said page. We propose that we advise the customers to access them through the Megavideo website first before attempting to download a specific movie or video to prevent this from happening.

The websites Quicksilverscreen.com, Watchnewfilms.com, and Surfthechannel.com are third-party linking sites.

d. On or about September 16, 2011, co-defendant NOMM sent an analysis of Megavideo.com to ORTMANN by e-mail. The analysis includes comments from users of the Mega Sites, including the following: "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[.]" The phrase "third party websites" appears to refer to third-party linking sites.

e. According to internal e-mails and documents obtained from Google, members of the Mega Conspiracy, including DOTCOM and VAN DER KOLK, began accessing Google Analytics reports for Megavideo.com, Megaupload.com, and Megaporn.com. The Google Analytics account was opened at least as early as November of 2008 under the name "TIM

VESTOR," which is an alias for DOTCOM. Google Analytics provides website measurement tools, such as the number of visits during a specified time period.

i. A particular Google Analytics report shows that between November 19, 2010, and February 18, 2011, Megavideo.com had roughly 1 billion visits. Less than 13% of these visits were "direct traffic" — meaning visits that were likely generated by the user having directly typed the URL link into the web browser or having bookmarked the URL link. More than 85% of the visits to Megavideo.com were from "referring sites," meaning the user appears to have clicked a URL link on the referring site that directed the user to Megavideo.com. The top referring websites during that time period were third-party linking sites, such as seriesyonkis.com (more than 110 million referrals) and sidereel.com (more than 60 million referrals). The reports from Google Analytics for the following time periods reflect similar data: February 19, 2011 — May 18, 2011; May 19, 2011 — August 18, 2011; August 19, 2011 — October 27, 2011.

ii. A particular Google Analytics report shows that between November 19, 2010, and February 18, 2011, Megaupload.com had roughly 1 billion visits. Less than 20% of these visits were "direct traffic," and roughly 80% were from "referring sites." The top referring websites during that time period were third-party linking sites, such as taringa.net (more than 50 million referrals), seriesyonkis.com (more than 25 million referrals), and multiupload.com (more than 20 million referrals). The reports from Google Analytics for the following time periods reflect similar data: February 19, 2011 — May 18, 2011; May 19, 2011 — August 18, 2011; August 19, 2011 — October 27, 2011.

f. Government-operated web logs have been counting the number of visits to Megaupload.com since January 19, 2012. The logs record whether a user directly typed the Megaupload.com address into the web browser or accessed Megaupload.com through a bookmark or search engine. The logs also record "referral websites," meaning websites that contained a link to Megaupload.com, which a user clicked to access Megaupload.com. The logs contain more than 480 million referral entries spanning 19 non-consecutive days in January, February, and March of 2012. A preliminary analysis of the logs, in particular the referral websites, shows that nine of the top 20 referral websites were known third-party linking sites, which featured copyright-infringing materials. These websites were responsible for approximately 31 million referrals to Megaupload.com. In addition, ten of the top 20 referral websites, which were responsible for approximately 69 million referrals to Megaupload.com, featured pornographic materials (some of which appears to be copyrighted). The

remaining website in the top 20 was Megavideo.com, which was responsible for approximately 20 million referrals to Megaupload.com.

Willful Failure to Remove Copyright-Infringing Files

75. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. As stated in Paragraph 32(g), a preliminary analysis of the databases and associated software code shows that the Mega Sites maintained a "blacklist" of 221 unique files, which were identified by MD5 hash. URL links to files on the blacklist were supposedly automatically disabled by the system.

b. The preliminary analysis indicates that 219 of the 221 MD5 hashes were added to the blacklist between August 14, 2007, and October 10, 2007. In addition, of the known file names in the blacklist, 66 are indicative of explicit pornographic material; 72 are indicative of copyrighted television programs or motion pictures; and 83 had an unknown file title or no title whatsoever.

c. In addition to the blacklist of files, the Mega Sites also maintained a blacklist of key words. All 146 of the key words are indicative of explicit pornographic material.

76. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. With respect to Paragraph 38(j), the representative of various copyright owners is the Asociación Protectora de Cine y Música ("APCM") Mexico. According to publicly available information, APCM is a nonprofit association established in Mexico and Brazil (where it is known as the Associação Antipirataria de Cinema e Música), whose mission is to defend the intellectual property rights of its members. The two e-mails sent by APCM to legal@megaupload.com, dated February 4 and April 23, 2009, identify two different sets of URL links to copyright-infringing materials available on the Mega Sites. These copyrighted materials were at the time owned by members of APCM. The February 4, 2009 e-mail identifies more than 6,000 URL links, and the April 23, 2009 e-mail identifies more than 1,000 URL links, all to copyright-infringing materials available on the Mega Sites. In total, the copyright-infringing files associated with these more than 7,000 URL links were downloaded more than 16.5 million times.

b. With respect to Paragraphs 38(j) and 38(k), the e-mails sent by DOTCOM on April 23 and 24, 2009, relate to the same course of events. Also on April 23, 2009, VAN DER KOLK forwarded to ORTMANN the APCM's

February 4, 2009 e-mail, writing, "another candidate for undeletion." Minutes later, VAN DER KOLK forwarded to ORTMANN the APCM's April 23, 2009 e-mail, writing, "also needs to be undeleted." Based on these e-mails, it appears that access to the URL links identified by APCM had been disabled (although the underlying copyright-infringing materials remained accessible through other URL links pointing to the same materials), and that DOTCOM instructed VAN DER KOLK and ORTMANN to "undelete" the URL links, thus making them available again to the general public. As of January 19, 2012, approximately 4,600 of these 7,000 URL links to copyright-infringing materials were still active and available on the Mega Sites (roughly 2,400 URL links were disabled as a result of later copyright takedown notices; however, the underlying copyright-infringing content remained accessible to members of the public).

c. Despite receiving the February 4 and April 23, 2009 takedown requests, the Mega Conspiracy not only failed to completely block access to the copyright-infringement content but purposefully chose to distribute these files after being told they were infringing because removing the content would have reduced their revenue. After these takedown requests were submitted, new URL links to the same infringing content were created, and the infringing content was downloaded more than 1.7 million times through the new, post-notice URL links.

d. In total, APCM Mexico submitted at least 400 takedown requests, which identified more than 550,000 URL links to copyright-infringing materials available on the Mega Sites. APCM Brazil submitted at least 2,500 takedown requests, which identified more than 1.2 million URL links to copyright-infringing materials available on the Mega Sites.

Additional Evidence of DOTCOM's Knowledge of Copyright Infringement

77. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about April 27, 2009, DOTCOM sent an e-mail to VAN DER KOLK, ORTMANN, and co-defendant BENCKO. In the e-mail, DOTCOM wrote: "I want both of you [VAN DER KOLK and BENCKO] to email me weekly detailed work reports. I want to know what you are currently working on and what tasks have been completed. I expect those emails every Friday."

b. On or about May 25, 2009, NOMM sent an e-mail to DOTCOM entitled "status report." In the e-mail, NOMM wrote, "Time for status report again." NOMM then provided a detailed description of software coding he had recently done for the Mega Sites. NOMM further wrote, "As

always most of my current tasks info also Mathias [ORTMANN] has, we schedule and plan everything with him so he is up to date."

c. DOTCOM maintained a number of active accounts on the Mega Sites. One of his Megaupload.com accounts contained an infringing copy of the copyrighted motion picture Loose Change. The exact file name was "911 – Loose Change 2nd Edition DVDRip (ConCen) XviD.avi." On the Mega Sites there were 97 other URL links pointing to the same infringing copy of Loose Change. In addition, the MD5 hash for the copy of Loose Change stored in DOTCOM's Megaupload.com account matched the file name and unique MD5 hash of infringing copies of Loose Change available on several third-party linking sites, one of which redirected to Megaupload.com.

d. E-mails sent to a number of accounts associated with the Mega Sites were forwarded to DOTCOM. Between at least June of 2007 and February of 2008, DOTCOM received more than 400,000 e-mails addressed to paypal@megaupload.com, which consisted primarily of notifications of payments received by the Mega Sites through PayPal. Between at least June of 2007 and August of 2008, DOTCOM received more than 180,000 e-mails addressed to abusereport@megaupload.com, which consisted primarily of copyright-infringement and other takedown notices. Between at least June of 2007 and December of 2011, DOTCOM received more than 280,000 e-mails addressed to abuse@megaupload.com, which consisted primarily of copyright-infringement and other takedown notices. Between at least June of 2007 and August of 2008, DOTCOM received more than 80,000 e-mails addressed to or sent from support@megaupload.com, which consisted primarily of requests for user support, notifications of account suspensions, and notifications associated with the Uploader Rewards program. Between at least June of 2007 and December of 2011, DOTCOM received more than 80,000 e-mails addressed to legal@megaupload.com, which consisted primarily of copyright-infringement and other takedown notices. Between at least August of 2007 and December of 2011, DOTCOM received more than 79,000 e-mails addressed to abuse@megavideo.com, which consisted primarily of copyright-infringement and other takedown notices. Between at least June of 2007 and December of 2011, DOTCOM received more than 30,000 e-mails addressed to sales@megaupload.com, which consisted primarily of correspondence from third-party businesses. Between at least June of 2007 and December of 2011, DOTCOM received more than 20,000 e-mails addressed to hq@megaupload.com, which consisted primarily of e-mails associated with DOTCOM's role as the Chief Executive Officer of the Mega Sites. Between at least August of 2007 and April of 2009, DOTCOM received more than 20,000 e-mails addressed to dmca@megavideo.com, which consisted primarily of copyright-infringement and other takedown notices. Between at least November of 2008 and December of 2011, DOTCOM received more than

8,000 e-mails addressed to abuse@megaporn.com, which consisted primarily of copyright-infringement and other takedown notices. Between at least February of 2009 and December of 2011, DOTCOM received hundreds of e-mails addressed to legal@megaporn.com, which consisted primarily of copyright-infringement and other takedown notices.

Additional Evidence of ORTMANN's Knowledge of Copyright Infringement

78. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. E-mails sent to a number of accounts associated with the Mega Sites were forwarded to ORTMANN. Between at least December of 2006 and January of 2009, ORTMANN received more than 90,000 e-mails addressed to or sent from support@megaupload.com, and during the same time period, more than 90,000 e-mails addressed to abuse@megaupload.com. Between at least June of 2007 and November of 2010, ORTMANN received more than 700,000 e-mails addressed to webmaster@megaupload.com, which consisted primarily of requests for user support, such as password resets and PayPal payment notifications. Between at least December of 2006 and January of 2009, ORTMANN received more than 45,000 e-mails addressed to account@megaupload.com, which consisted primarily of issues relating to user accounts, such as premier status and payment information. Between at least December of 2006 and January of 2009, ORTMANN received more than 12,000 e-mails addressed to bug@megaupload.com, which consisted of user-reported technical problems. Between at least December of 2006 and January of 2009, ORTMANN received more than 14,000 e-mails addressed to or sent from support@megarotic.com, which consisted primarily of requests for user support. Between at least December of 2006 and January of 2009, ORTMANN received more than 10,000 e-mails addressed to account@megarotic.com, which consisted primarily of issues relating to user accounts, such as premier status and payment information. Between at least August of 2007 and January of 2009, ORTMANN received more than 8,000 e-mails addressed to account@megavideo.com, which consisted primarily of issues relating to user accounts, such as premier status and payment information. Between at least December of 2006 and January of 2009, ORTMANN received more than 5,200 e-mails addressed to legal@megaupload.com.

Additional Evidence of VAN DER KOLK's Knowledge of Copyright Infringement

79. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. VAN DER KOLK maintained a number of active accounts on the Mega Sites. One of his Megaupload.com accounts contained infringing copies

of copyrighted works uploaded by VAN DER KOLK, including a variety of motion pictures and television programs.

b. These copyright-infringing works included books from the graphic novel series Inuyasha and Shigurui; episodes from the television programs Earth: The Power of the Planet, Ugly Betty, Venus Versus Virus, and The Last Days of Lehman Brothers; and the motion pictures Bruno, Taken, Open Season 3, Legion, and L'Italien. On the Mega Sites there were more than 2,400 other URL links pointing to the same infringing copy of L'Italien; more than 800 URL links pointing to the same infringing copy of Bruno; and more than 150 URL links pointing to the same infringing copy of Ugly Betty. The URL links created by VAN DER KOLK for the infringing copy of the motion picture Bruno received approximately 97 downloads or views by users of the Mega Sites.

c. E-mails sent to a number of accounts associated with the Mega Sites were automatically forwarded to VAN DER KOLK. Between at least September of 2009 and September of 2010, VAN DER KOLK received more than 1.7 million e-mails addressed to webmaster@megaupload.com.

Misrepresentations to Copyright Owners

80. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Microsoft Corporation ("Microsoft") to testify to the following facts:

a. With respect to Paragraph 34(b), the May 2, 2006 e-mail was received by a representative of Microsoft Corporation. Based on the plain language of the e-mail, Microsoft reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Microsoft was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. Microsoft relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

81. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. Between December of 2008 and January of 2012, Microsoft submitted more than 200 takedown requests for infringing copies of copyrighted computer software available on the Mega Sites, including takedown

requests for software titles such as Windows Vista, Windows 7, Windows Small Business Server 2011, Office 2010, and Windows Home Server 2011. Some of these copyright-infringing works included software that was capable of generating an unauthorized key to circumvent copyright-protection measures.

b. While some individual URL links to these infringing copies of Microsoft's copyrighted work were disabled, the Mega Conspiracy never purposefully and completely blocked access to the infringing content, and therefore the infringing content remained accessible through additional links. As of January of 2012, approximately 450 of these additional URL links that provided access to the same infringing copy of the file remained active. These URL links allowed users of the Mega Sites to download the same infringing copies of Microsoft's copyrighted works approximately 25,000 times.

c. After Microsoft submitted a number of the takedown requests, copies of the same infringing files were re-uploaded by a number of unindicted conspirators. These reestablished URL links allowed users of the Mega Sites to download the same infringing copies of Microsoft's copyrighted works more than 5,000 times.

82. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Sony Pictures Entertainment Inc. ("Sony") to testify to the following facts:

a. With respect to Paragraph 34(c), the January 25, 2008 e-mail was received by a representative of Sony Pictures Entertainment Inc.[7] Based on the plain language of the e-mail, Sony reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Sony was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. Sony hired the company Aiplex Software Pvt. Ltd. ("Aiplex") to identify infringing copies of Sony's copyrighted works that were publicly available on the Internet, including through the Mega Sites. Aiplex would submit DMCA takedown requests on behalf of Sony.

[7] As explained in Paragraph 96(a), the e-mail was sent by VAN DER KOLK.

c. Sony relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

83. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of NBC Universal to testify to the following facts:

a. With respect to Paragraphs 34(d)-(e), the May 6, 2008 e-mails were received by a representative of NBC Universal.[8] Based on the plain language of the e-mails, NBC Universal reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. NBC Universal was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. NBC Universal relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

84. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. NBC Universal's takedown notification records reflect that for the following copyrighted motion pictures, NBC Universal submitted the listed number of takedown notices to the Mega Sites during 2011 for unique URLs linking to the motion picture: Fast Five, 15,995 URL links; Despicable Me, 7,595 URL links; The Adjustment Bureau, 6,052 URL links; Cowboys & Aliens, 3,500 URL links; and Bridesmaids, 3,485 URL links. Many of these notices were submitted before the motion pictures had been released on DVD. According to a preliminary review of the databases, multiple unique URLs were linked to the same motion picture file (as identified by its unique hash value). The review revealed the following information for just one of the unique hash values for the motion picture Fast Five:

1. NBC Universal submitted its first copyright-infringement takedown request for a URL link associated with an infringing copy of this motion picture on or about April 28, 2011, prior to the motion picture's release in the United States. Access to that particular link was disabled, but access to the infringing content was not disabled.

[8] As explained in Paragraph 96(b), the e-mail was sent by VAN DER KOLK.

2. After NBC submitted the April 28, 2011 takedown notification, the unique motion picture file was viewed 66,732 times on Megavideo.com through other URL links pointing to the same file, and users of the Mega Sites successfully created more than 400 new unique URL links to the same unique motion picture file.

85. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of 20th Century Fox Home Entertainment LLC ("Fox") to testify to the following facts:

a. 20th Century Fox Home Entertainment LLC reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Fox was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. Fox hired the companies DtecNet Software ApS ("DtecNet") and Irdeto Silicon Valley ("Irdeto"), formerly known as BayTSP, to identify infringing copies of Fox's copyrighted works that were publicly available on the Internet, including through the Mega Sites. DtecNet and Irdeto would submit DMCA takedown requests on behalf of Fox.

c. Fox relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

86. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Paramount Pictures Corporation ("Paramount") to testify to the following facts:

a. Paramount Pictures Corporation reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Paramount was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. Paramount hired Irdeto to identify infringing copies of Paramount's copyrighted works that were publicly available on the Internet, including through the Mega Sites. Irdeto would also submit DMCA takedown requests on behalf of Paramount.

c. Paramount relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

87. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of The Walt Disney Company ("Disney") to testify to the following facts:

a. With respect to Paragraph 34(h), the July 10, 2008 e-mail was received by a representative of The Walt Disney Company.[9] Based on the plain language of the e-mail, Disney reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Disney was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. Disney relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

88. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. Disney's takedown notification records reflect that for the following copyrighted motion pictures, Disney submitted takedown notices to the Mega Sites: Tangled, Toy Story 3, Tron: Legacy, Cars 2, and Pirates of the Caribbean: On Stranger Tides. Many of these notices were submitted before the motion pictures had been released on DVD. According to a preliminary review of the databases, multiple unique URLs linked to the same motion picture file (as identified by its unique hash value). The review further revealed the following:

1. After Disney submitted the first takedown notifications for URLs linking to the unique motion picture files associated with Toy Story 3 (as identified by unique hash values), users continued to download the files 57,147 times through other links pointing to the same files. Some of these files included the complete motion picture; others were parts of a motion picture broken up into multiple files.

2. For all five motion pictures listed above, after Disney submitted its first takedown notifications for the URLs linking to those unique

[9] As explained in Paragraph 96(d), the e-mail was sent by ORTMANN.

motion picture files, users successfully created more than 5,000 new unique URL links to the unique motion picture files, and these files were viewed more than 400,000 times on Megavideo.com.

89. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Home Box Office, Inc. ("HBO") to testify to the following facts:

a. Home Box Office, Inc. reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. HBO was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. HBO relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

90. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Zuffa, LLC ("Zuffa"), to testify to the following facts:

a. Zuffa is the parent company of Ultimate Fighting Championship. A number of infringing copies of Zuffa's copyrighted works were reproduced and distributed on the Mega Sites.

b. Zuffa reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Zuffa was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

c. Zuffa relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

91. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Aiplex to testify to the following facts:

a. A number of copyright owners hired Aiplex to identify infringing copies of copyrighted works that were publicly available on the Internet, including through the Mega Sites. The copyright owners included, but

were not limited to, Sony. Aiplex submitted takedown requests to the Mega Sites on behalf of Sony.

b. With respect to Paragraph 34(m), the May 13, 2011 e-mail was received by a representative of Aiplex. Based on the plain language of the e-mail, Aiplex reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Aiplex was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

c. Aiplex relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

92. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Peer Media Technologies, Inc. ("Peer Media') to testify to the following facts:

a. A number of copyright owners hired Peer Media Technologies, Inc. to identify infringing copies of copyrighted works that were publicly available on the Internet, including through the Mega Sites. Peer Media submitted DMCA takedown requests to the Mega Sites on behalf of copyright owners.

b. Peer Media reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Peer Media was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

c. Peer Media relied on misrepresentations made by the Mega Conspiracy and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

93. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of DtecNet to testify to the following facts:

a. A number of copyright owners hired DtecNet, also known as MarkMonitor, to identify infringing copies of copyrighted works that were publicly available on the Internet, including through the Mega Sites. The copyright owners included, but were not limited to, Fox and Warner

Brothers Entertainment. DtecNet submitted DMCA takedown requests to the Mega Sites on behalf of these copyright owners.

b. DtecNet reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. DtecNet was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

c. DtecNet relied on these misrepresentations and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

94. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Irdeto to testify to the following facts:

a. A number of copyright owners hired Irdeto to identify infringing copies of copyrighted works that were publicly available on the Internet, including through the Mega Sites. The copyright owners included, but were not limited to, Paramount, Fox, and NBC Universal. Irdeto submitted DMCA takedown requests to the Mega Sites on behalf of these copyright owners.

b. With respect to Paragraph 34(f), the May 12, 2008 e-mail was received by a representative of Irdeto, known at that time as BayTSP.[10] Based on the plain language of the e-mails, Irdeto reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Irdeto was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

c. Irdeto relied on these misrepresentations and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

[10] As explained in Paragraph 96(c), the e-mail was sent by ORTMANN.

95. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Warner Brothers Entertainment ("Warner") to testify to the following facts:

a. Warner Brothers Entertainment reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Warner was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

b. Warner relied on these misrepresentations and continued to submit takedown notifications rather than pursue additional action against the Mega Sites.

96. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. With respect to Paragraph 34(c), according to internal e-mails obtained through the investigation, the January 25, 2008 e-mail was sent by defendant VAN DER KOLK through the e-mail address megavideo.support@gmail.com. In the e-mail, VAN DER KOLK falsely claimed, "Simply copy and paste one or multiple links into the text area [of the Abuse Tool] and the videos and/or files will be removed from our system immediately."

b. With respect to Paragraphs 34(d)-(e), the May 6, 2008 e-mails were signed on behalf of the "Megavideo Abuse Desk," rather than the "Megaupload Abuse Desk." According to internal e-mails obtained through the investigation, these e-mails were sent by defendant VAN DER KOLK through the e-mail address megavideo.support@gmail.com. In the first e-mail sent on May 6, 2008, VAN DER KOLK falsely claimed that Megavideo.com is "one of the few online video communities that ma[de] it impossible to fraudulently host full-length feature movies due to a human-assisted automatic detection/deletion mechanism." In the second e-mail sent on May 6, 2008, VAN DER KOLK falsely claimed that the Abuse Tool would provide "direct deletion rights, which will completely bypass our abuse team and take files and films offline immediately."

c. With respect to Paragraph 34(f), according to internal e-mails obtained through the investigation, the May 12, 2008 e-mail was sent by defendant ORTMANN through the e-mail address megsupp@googlemail.com. In the e-mail, ORTMANN falsely claimed that the Mega Sites "are taking great care in expeditiously deleting any material reported to us through DMCA takedown notices."

d. With respect to Paragraph 34(h), according to internal e-mails obtained through the investigation, the July 10, 2008 e-mail was sent by defendant ORTMANN through the e-mail address megsupp@googlemail.com. In the e-mail, ORTMANN falsely claimed that "enabling you [Disney] to take down illegal content in real time helps both you and us."

e. With respect to Paragraphs 34(i), the November 23, 2010 communication was an automated online response, generated pursuant to software coding written by a member(s) of the Mega Conspiracy, in response to a takedown request that included a link to the 2010 version of the copyrighted film "A Nightmare on Elm Street." Warner is the copyright owner.

f. With respect to Paragraphs 34(j), the March 9, 2011 communication was an automated online response, generated pursuant to software coding written by a member(s) of the Mega Conspiracy, in response to a takedown request that included links to the 2009 version of the copyrighted film "Friday the 13th" (in two parts). Warner is the copyright owner.

g. With respect to Paragraphs 34(k), the March 11, 2011 communication was an automated online response, generated pursuant to software coding written by a member(s) of the Mega Conspiracy, in response to a takedown request that included links to copies of episodes of the copyrighted television show "Modern Family." Fox is the copyright owner.

h. With respect to Paragraphs 34(l), the April 30, 2011 communication was an automated online response, generated pursuant to software coding written by a member(s) of the Mega Conspiracy, in response to a takedown request that included a link to the copyrighted motion picture "Fast Five." NBC Universal is the copyright owner.

i. With respect to Paragraphs 34(n), the August 10, 2011 communication was an automated online response, generated pursuant to software coding written by a member(s) of the Mega Conspiracy, in response to a takedown request that included links to the 2010 version of the copyrighted motion picture "A Nightmare on Elm Street." Warner is the copyright owner.

Additional Victim Testimony

97. The U.S. Attorney's Office for the Eastern District of Virginia expects a victim referred to here as "JM" to testify to the following facts:

a. JM was the owner and sole employee of a computer software company operated from JM's home in New Zealand. The software allowed customers to create audio effects through a graphical synthesizer program. JM advertized and sold the software for $69 through an Internet website. Customers located in the United States purchased JM's software.

b. JM's software required users to register the product prior to activation, and JM was able to identify infringing copies of the software by comparing registration information with payment records. Sales of JM's software increased until the end of 2009, after which they began to drop. JM believed that the drop was due to copyright infringement. During a 5-day period in September of 2009, JM estimated that more than 65% of the software registrations were unpaid, copyright-infringing activations.

c. In an attempt to combat copyright infringement, JM regularly distributed updates of the software with modified security provisions. Each time JM distributed an updated version of the software, sales would increase slowly and then drop. JM invested significant time into combating copyright infringement, which had a direct impact on his profits.

d. JM identified approximately 10 to 20 URL links to copyright-infringing versions of the software available on Megaupload.com, and JM submitted takedown requests for those links. JM stated that if the underlying files remained active on Megaupload.com, even if the individual URL links were disabled, then the process was hopeless because JM could not afford legal representation to bring a copyright-infringement lawsuit.

98. The U.S. Attorney's Office for the Eastern District of Virginia expects a victim referred to here as "TH-DS" to testify to the following facts:

a. TH-DS was the co-owner, piracy manager, and one of two employees of a digital scrapbook company operated from TH-DS's home in the United States. TH-DS has been in business for approximately three years. The scrapbook kits consisted of artistic designs and backgrounds for organizing digital pictures. TH-DS and company advertized and sold the kits for $16 through an Internet website. Customers located in the United States purchased TH-DS's kits.

b. Each scrapbook kit was sold with a specific Terms of Use document in the contract, which limited further distribution of the kits. TH-DS found stolen scrapbook kits by searching for templates and advertisements through online search engines. TH-DS also received notification of stolen

items from previous customers who found the kits advertised on the Internet. TH-DS sent several e-mail takedown notices to Megaupload.com for TH-DS's designs found on the Mega Sites. Based on TH-DS's interaction with other designers in the digital scrapbook community, most other "webkit" designers did not have the time to search the Internet for their designs or the resources to fight the losses incurred from the stolen sales, and many other digital scrapbook designers have left the industry because of piracy.

99. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of Friend Media Technology Systems Limited ("Friend MTS") to testify to the following facts:

a. A number of copyright owners hired Friend Media Technology Systems Limited to identify infringing copies of copyrighted works that were publicly available on the Internet, including through the Mega Sites. Friend MTS submitted DMCA takedown requests to the Mega Sites on behalf of these copyright owners.

b. Friend MTS reasonably understood that submitting takedown notifications that identified infringing copies of copyrighted works available on the Mega Sites would result in the removal of the file or disabling of all access to the infringing file. Friend MTS was not aware that only the identified URL link(s) would be disabled, and that infringing copies of the copyrighted work would remain on servers controlled by the Mega Conspiracy and accessible to members of the public (as long as at least one link remained), which would also allow new links to the infringing copy to be created.

Pre-Indictment Copyright Litigation Against Members of the Mega Conspiracy

100. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On January 31, 2011, in the United States District Court for the District of Southern California, Perfect 10 Inc., a California corporation, filed a civil lawsuit against MEGAUPLOAD LIMITED and "Kim Schmitz," also known as DOTCOM. The plaintiff's allegations included, among other claims, that MEGAUPLOAD LIMITED and DOTCOM committed copyright infringement through the Mega Sites.

b. On March 28, 2011, MEGAUPLOAD LIMITED filed a motion to dismiss the lawsuit. On July 27, 2011, the district court denied the motion as to the copyright infringement claims. The court concluded that MEGAUPLOAD LIMITED served as more than a mere file storage company, for the following reasons: MEGAUPLOAD LIMITED streamlined users' access to different types of media; MEGAUPLOAD

LIMITED encouraged and paid users to upload large amounts of popular media through its Rewards Programs; MEGAUPLOAD LIMITED disseminated URL links for files throughout the Internet; MEGAUPLOAD LIMITED provided payouts to affiliate websites who maintained a catalogue of all available files; and finally, at a minimum, MEGAUPLOAD LIMITED was plausibly aware of the ongoing rampant infringement taking place on its websites. The court concluded that taken all together, the plaintiff had adequately alleged that MEGAUPLOAD LIMITED had engaged in volitional conduct sufficient to hold it liable for direct infringement. The court also denied MEGAUPLOAD LIMITED's motion to dismiss the plaintiff's claim of contributory copyright infringement. The court began by stating that a claim of contributory infringement must allege that a defendant has knowledge of a third party's infringing activity, and induces, causes, or materially contributes to the infringing conduct. The court found that the plaintiff, by claiming that it had provided MEGAUPLOAD LIMITED with takedown notices pursuant to the DMCA, sufficiently alleged direct infringement by a third party. In discussing the contributory infringement, the court stated:

> Tellingly, in its motion to dismiss, Megaupload does not dispute Perfect 10's allegation that it induces, causes, or materially contributes to infringing conduct. Nor could it, given the allegations that Megaupload encourages, and in some cases pays, its users to upload vast amounts of popular media through its Rewards Programs, disseminates URLs that provide access to such media, and has provided payouts to affiliates who catalogue the URLs for all available media. Under the circumstances of this case, if Megaupload lacks knowledge of infringing activity, Plaintiff's allegations suggest such a lack of knowledge is willful.

c. On October 14, 2011, the parties filed a joint motion requesting a dismissal of the case with prejudice, which stated that the parties had settled the lawsuit pursuant to a confidential settlement agreement. On October 18, 2011, the court entered an order dismissing the lawsuit with prejudice.

Infringement of the Copyrighted Motion Picture "Taken"

101. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. With respect to Paragraphs 35(b) and 40(g)(iii), the infringing copy of the copyrighted motion picture "Taken" viewed and downloaded by Agent Poston on or about November 27, 2011, was the same copy uploaded by VAN DER KOLK and described in Paragraph 35(a).

b. With respect to Paragraph 35(a), on October 25, 2008, VAN DER KOLK sent an e-mail to an unindicted individual containing the URL link to the infringing copy of "Taken" uploaded by VAN DER KOLK. The infringing copy of "Taken" uploaded by VAN DER KOLK was viewed at least 9 times through Megavideo.com.

Life Cycle of a File Uploaded to the Mega Sites

102. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. When a user initially signed up for an account on the Mega Sites, software written by the Mega Conspiracy added an entry to the internal database, which included the following information about the user (not a comprehensive list): identification number, which was assigned by the database and unique to each user; nickname (also called a "user name"), which was selected by the user; contact information (including first and last name, e-mail address, street address, and city); password; Internet Protocol address of the user at sign-up; and premium user status. The "users" table also recorded the last time the user logged on to the Mega Sites.

b. When a user uploaded a file to Megaupload.com, software written by the Mega Conspiracy added an entry to the internal database, which included the following information about the file (not a comprehensive list): unique MD5 hash; file name; file type (with extension, such as AVI); file size; upload date; Internet Protocol address of the user; the number of times the file had been downloaded; the identification number of the user who uploaded the file; the 8-character download identifier for use with the URL link associated with the file; and whether the URL link had been the subject of a copyright-infringement takedown request.

c. When a user uploaded a video file to Megavideo.com, software written by the Mega Conspiracy added an entry to the internal database, which include the following information about the video (not a comprehensive list): unique MD5 hash; video name; video description; upload date; the number of times the video had been viewed; the identification number of the user who uploaded the video; the 8-character download identifier for use with the URL link associated with the video; whether the URL link had been the subject of a copyright-infringement takedown request; and whether the video was "private." Software written by ORTMANN and VAN DER KOLK marked all videos longer than 10 minutes as "private." As discussed in Paragraph 74(b), "private" videos were not publicly displayed on the front pages of the Megavideo website, but users still had the ability to distribute these URL links in the same manner as non-private links (for example, on third-party linking sites).

d. When a user uploaded a video file to Megavideo.com, software written by the Mega Conspiracy converted the video file — including those tagged as "private" — to a particular video format known as Flash Video or "FLV." A flash-version of the video allowed quicker and broader distribution of files by the Mega Conspiracy because Flash videos could be streamed through most Internet browsers with a high level of compression at fast download speeds.

e. When a user uploaded a file to the Mega Sites, software written by the Mega Conspiracy determined where the user was geographically located based on the user's Internet Protocol address. The file would be reproduced onto one or more Mega-controlled servers, which were located in the United States, Canada, France, and the Netherlands.

f. As described in Paragraph 72, software written by the Mega Conspiracy reproduced the most popular files onto faster Mega-controlled servers owned by Cogent Communications. The software executed every 60 seconds on an infinite loop, checking whether the Cogent servers had enough free space to host additional popular files. If there was free space available, the software would download and reproduce the popular file from the Mega-controlled server where it was originally stored onto the faster Cogent server; the file also remained on the original server, resulting in multiple copies. The software measured popularity based on how much throughput, or bandwidth, was consumed by the file at that time. The software also removed files from the Cogent servers when the software determined that those files were not being distributed as frequently.

Knowledge of Copyright-Infringing Works Available on the Mega Sites

103. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about November 14, 2006, via Skype, VAN DER KOLK said to ORTMANN, "I am downloading the latest LOST episodes in HDTV format for Kim :-)". ORTMANN responded, "fantastic :)". "Lost" is a copyrighted television series.

b. On or about February 2, 2007, via Skype, VAN DER KOLK sent ORTMANN a URL link to the copyrighted song "Kiss Me" by Sixpence None the Richer, which had been uploaded to Megaupload.com by an anonymous user. ORTMANN then forwarded the URL link to DOTCOM.

c. On or about February 7, 2007, via Skype, ORTMANN sent DOTCOM a URL link to the copyrighted computer software Microsoft Windows XP, which had been uploaded by a registered Megaupload.com user.

d. On or about March 9, 2007, via Skype, NOMM sent ORTMANN a URL link to the copyrighted motion picture "Dead Lenny," which had been uploaded to Megaupload.com by a registered user.

e. On or about May 21, 2007, via Skype, ORTMANN said to NOMM, "but I have a feeling that Kim [DOTCOM] tolerates a certain amount of copyright violation." NOMM responded, "yep but not too obvious ones." ORTMANN then said, "since it helps initial growth," "but we must not overdo it."

f. On or about June 5, 2007, via Skype, VAN DER KOLK said to ORTMANN, "BTW, scarry story about Kim wiring 50.000 dollars from the Megaupload account to his personal PH account…" The abbreviation "PH" appears to refer to the Philippines. ORTMANN responded, "I am wondering why Kim is taking this so lightly," and "something fishy is going on." ORTMANN commented, "if it was a U.S. authorities problem with Megaupload, we wouldn't be doing business with PayPal any longer, that's for sure." VAN DER KOLK responded, "yeah indeed." ORTMANN then stated, "Kim should refrain from travelling to the U.S., though." And VAN DER KOLK replied, "yeah I wouldnt go to the US either if I were him."

g. The Mega Conspiracy redirected all known URL links pointing to pornographic files from Megaupload.com to Megarotic.com. On or about July 1, 2007, via Skype, ORTMANN said to VAN DER KOLK, "I am thinking about the MU->MR file move… we should definitely put up an informative page when a user clicks on a MR link via the MU domain." The acronym "MU" refers to Megaupload.com, and the acronym "MR" refers to Megarotic.com. ORTMANN then said, "yes… we could, however, also be shooting ourselves in the foot with this, as it proves that we looked at the file," "and therefore are not the dumb pipe we claim to be." ORTMANN also said, "copyright owners may use this against us." VAN DER KOLK responded, "dangerous move indeed."

h. On or about July 2, 2007, via Skype, ORTMANN asked VAN DER KOLK, "maybe we can do a selective payment to keep the people happy?" ORTMANN clarified, "only pay non-copyrighted videos? :)" VAN DER KOLK responded, "that's gonna be a very time consuming thing to manage." VAN DER KOLK also stated, "This time, I'll ban the obvious cases. But we have to think about the rewards and it's future. It's more dangerous on MRV to pay people for uploading copyrighted content." The acronym "MRV" refers to the video streaming portion of Megarotic.com. Despite this conversation, members of the Mega Conspiracy continued to make reward payments to repeat infringers, who uploaded copyright-infringing files, including "obvious cases."

i. On or about August 20, 2007, via Skype, VAN DER KOLK said to ORTMANN, "I mean if Kim was a solid guy with a good financial background and being safe with his money I wouldn't mind, but the current situation is a bit risky in my opinion." ORTMANN responded, "the good thing is, he is operationally dependent on us…he cannot sneak away with the money." VAN DER KOLK then asked, "but what if [EXPLETIVE REDACTED] really hits the fan…would he grab the last little bit of money and take off…he's good at that." And ORTMANN replied, "true…but with his spending nowadays, he will attempt to get the [EXPLETIVE REDACTED] off the fan, and that's what he needs us for." This Skype conversation was contained in an e-mail sent by VAN DER KOLK to a third-party on or about August 21, 2007.

j. On or about August 30, 2007, via Skype, ORTMANN said to VAN DER KOLK, "as we're displaying viewcounts, the copyright industry could be tempted to send us invoices for lost revenue based on that." VAN DER KOLK responded, "that will hurt." And ORTMANN replied, "indeed."

k. On or about August 30, 2007, via Skype, VAN DER KOLK sent ORTMANN a URL link to Megavideo.com's most viewed videos for that day. VAN DER KOLK stated, "most viewed videos are all > 1 hour." ORTMANN responded, "that's a bad direction we're going in." And VAN DER KOLK replied, "yes.."

l. On or about September 1, 2007, via Skype, ORTMANN told an unindicted conspirator, "my favourite of recent times is 'The life of others' (that German film that won the Oscar)." The conspirator asked, "is that in mega upload?" ORTMANN responded, "checking…" Less than five minutes later, ORTMANN said, "I have to find The life of others in original version with English subtitles, then – still searching." Less than eight minutes later, ORTMANN said, "I only found the German version, w/o subtitles." "The Lives of Others" is a copyrighted motion picture.

m. On or about September 2, 2007, via Skype, VAN DER KOLK said to ORTMANN, "we're modern pirates :-)". ORTMANN responded, "we're pretty evil, unfortunately", "but Google is also evil, and their claim is 'don't be evil.'" VAN DER KOLK replied, "yes!" Then VAN DER KOLK stated, "and the world is changing, this is the internet, people will always share files and download their stuff for free," "with or without Megaupload." ORTMANN responded, "yes… the content providers should just get a producer account and sign up for rewards."

n. On or about September 3, 2007, via Skype, VAN DER KOLK and ORTMANN discussed the Uploader Rewards program. VAN DER KOLK said, "on Megaupload we're much more dependent on traffic from other sites, there it's more important that we pay." ORTMANN replied, "right." Because Megaupload.com itself was not publicly searchable, the site was

dependent on Internet traffic from third-party linking sites, where repeat infringers advertised links to copyright-infringing materials that were hosted on Megaupload.com, so members of the Mega Conspiracy felt it was important to pay rewards to those repeat infringers.

o. On or about September 30, 2007, via Skype, ECHTERNACH asked ORTMANN, in German, "send me a mega link to an xp installation cd ;)" ORTMANN responded, "need to screen through it, just a second." Approximately 1 day later, via Skype, ORTMANN sent ECHTERNACH a URL link, which had been uploaded by a Mega user, to the copyright-protected computer operating system "Windows XP USB Edition" on Megaupload.com. Approximately three hours later, ECHTERNACH responded, "USB Edition?!" ORTMANN then sent ECHTERNACH another URL link uploaded by a separate mega user to the non-USB edition of "Windows XP" on Megaupload.com. Windows XP is a copyrighted software program owned by Microsoft Corporation. The "USB Edition" refers to a version of Windows XP available on a USB drive.

p. On or about October 7, 2007, via Skype, ORTMANN told VAN DER KOLK, "back in the early days, I hoped that we would stay online for 2, 3 more months," "before law enforcement would take our servers down…" VAN DER KOLK asked, "seriously? you were that sceptical?" And ORTMANN answered, "every day that passed without something serious happening on that side made me feel happy." VAN DER KOLK responded, "Amongst our sites Megaupload is definitely the safest legally I think." ORTMANN replied, "there is really no easy way to distinguish between an ISP and us." A few minutes later, VAN DER KOLK told ORTMANN that they should have a "backup payment provider," "but we're not super attrective to potential buyers or investors, and that's unfortunate." ORTMANN responded, "yes, although the new VC still seems to be interested." VAN DER KOLK asked, "that's good, but do you think it will really get to an investment?" ORTMANN responded, "if we were a 100% clean site with that growth and profit, we would have sold for a nine-figure sum already." VAN DER KOLK replied, "yes, unfortunately :-(" and then: "But what would make us attractive to VC's is if they could put in a bit of money so that we can grow and be sold to a big player in the future for much more money. We don't need money to grow (at least not with the current business model), and it will be hard to get sold to a big player because we're not 100% legit.." ORTMANN responded, "This is exactly the point where the higher-level suits always cancel the investment" "and they've got a point there…" VAN DER KOLK replied, "yeah that's very unfortunate, we have to think of a work around for that otherwise we'll never cash in and we'll just end up with legal problems in a few years or other problems." He also stated, "this can not last forever I think." ORTMANN responded, "we have to create

spinoffs, legit ones, and fuel those." The acronym "VC" refers to a venture capitalist.

q. On or about November 14, 2007, via Skype, DOTCOM said to ORTMANN, in German, "will you eventually solve the conversion problem? the complaints don't stop. what do you think you can do?" ORTMANN responded, "we have a long queue of dvd-rips" "and some DRM protected, that cannot be converted." DOTCOM replied, "then we need more conversion servers", "please order." The acronym "DRM" refers to "Digital Rights Management" and is commonly understood to mean copyright-protection based in either software, such as encryption, or somewhat less commonly, hardware. During that time period, the Mega Conspiracy was converting user-uploaded videos, including copyrighted videos, into a particular video format known as Flash Video or "FLV," which facilitated the video's distribution.

r. On or about November 18, 2007, via Skype, VAN DER KOLK said to ORTMANN, "I am doing the rewards now, and those split files are really costly. I often see Vietnamese file portfolio's with DVD iso's split into 100+ pieces." An "iso" is a type of file containing all the data from a disc. VAN DER KOLK then said, "But for now we'll pay those Vietnamese file portfolio's right?" And, "this will be expensive again :(" ORTMANN responded, "it will not be cheap, but we need to fill 20 more gigs in two weeks." VAN DER KOLK replied, "Yeah that's true, but making some changes so that they make a little less money wouldn't hurt." And, "they will not stop uploading if they get paid less I think." The term "gigs" refers to Gigabytes, a unit of measuring data-storage and file-size capacity.

s. On or about November 22, 2007, via Skype, VAN DER KOLK said to ORTMANN, "damn the top favorites on MV really need some cleaning indeed" and ORTMANN responded, "we seem to have two main types of content on MV: softcore nudity and simpsons :)" ORTMANN also said, "if Fox TV sends us a takedown request, our Gmail accounts will overflow," and "if someone starts exploring our sites and experimenting a bit, we'll be down in no time." The Simpsons is a copyrighted television program.

t. On or about November 26, 2007, via Skype, ORTMANN told an unindicted conspirator, "people dig anime, though – look at the amount of anime on megavideo :)" The term "anime" refers to Japanese animated materials, both copyrighted television series and motion pictures.

u. On or about December 3, 2007, via Skype, VAN DER KOLK told ORTMANN, "BTW, I downloaded some TV series for [NAME REDACTED] a few days ago and got some problems with the Mega Manager again, I had to pause, stop, and restart/resume the downloa while the download was already completed in order to get the multiparts together as a

completed file." As discussed in Paragraph 73, members of the Mega Conspiracy created Mega Manager to facilitate file transfers to the Mega Sites. The Mega Manager enabled users, for example, to upload files more quickly, to queue multiple uploads and downloads, to pause and restart uploads and downloads, and to check whether a particular URL link was still active. By providing these features, the Mega Manager facilitated the widespread reproduction and distribution of copyright-infringing materials.

v. On or about January 4, 2008, via Skype, VAN DER KOLK and ORTMANN discussed an e-mail alerting the Mega Conspiracy to a potentially fraudulent website with a name similar to Megarotic.com. VAN DER KOLK commented, "haha people worieing about our name being pirated :)" ORTMANN responded, "we have a ton of parasitic domains." VAN DER KOLK replied, "yeah I know, but the term piracy is funny in this context :)" because "we are the pirates here." ORTMANN responded, "you can see it this way :)" but "no, we're just a service provider." VAN DER KOLK replied, "yeah legally, but we know better :)"

w. On or about March 14, 2008, via Skype, ORTMANN told VAN DER KOLK, "we are in a strange business." VAN DER KOLK responded, "yes indeed," "modern day pirates :)"

x. On or about March 24, 2008, via Skype, VAN DER KOLK and ORTMANN discussed an e-mail asking for the name and contact information of the designated agent for receiving notices of infringement for Megarotic.com and that failure to do so was a violation of the safe harbor provisions of the DMCA ORTMANN asked, "who is writing this?" VAN DER KOLK answered with the sender's name and the phrase, "a gay porn website." ORTMANN responded, "ah, okay," "as long as it's not PayPal…" ORTMANN also said, "we should definitely have such an agent registered, [NAME REDACTED] was also suggesting it." VAN DER KOLK replied, "yes if that is really sa requirement for the DMCA law we better do it indeed :)" because "our entire business is based on that."

y. On or about June 15, 2008, via Skype, DOTCOM told ORTMANN, in German, "we should really focus massively stronger on anime there" because "they really rip everything." He added, "we have a real chance here to build a super advertisement machine." In this context, the term "rip" meant to reproduce the material in a manner that infringed copyright.

z. On or about August 18, 2008, via Skype, ORTMANN and VAN DER KOLK discussed the embedded player feature. ORTMANN said, "okay! basically, we'll abort the video datastream when the playtime limit is exceeded, the player recontacts the server and receives a special message that triggers the message to the user with the link to the MV premium page." VAN DER KOLK responded, "Aha that's a new concept,

but sounds like a good plan to me, that way users will really be forced to buy," "they will want to see the end of the movie :)" ORTMANN added, "we also want to force third-party download tools (which still work) to buy premium :)" By making it more difficult for non-premium users to view lengthy files, such as full-length copyrighted motion pictures, the Mega Conspiracy encouraged its users to pay significant fees to become "premium" members.

aa. On or about September 5, 2008, via Skype, ORTMANN told a third-party individual at an Internet hosting provider, "Switzerland features some interesting locations for server hosting" because "deep inside some mountain, the data will survive nearly all natural and man-made disasters." The third-party individual responded, "yea - i dont think megaupload needs to be up after a world ending nuclear war." And ORTMANN replied, "it [Megaupload.com] could serve as a pretty complete archive of the world's intellectual property for a coming generation."

bb. On or about December 23, 2008, via Skype, ORTMANN said to VAN DER KOLK, "I think there is a good chance that the top100 will bring in significant additional revenue mid-term." And VAN DER KOLK responded, "yeah, and it makes our whole site look much more legit & attrective as well," to which ORTMANN replied, "exactly." As discussed in Paragraph 30, the Top 100 was a list displayed on the Mega Sites, purportedly of the most downloaded files, but was, in fact, carefully curated by members of the Mega Conspiracy to exclude popular copyright-infringing materials.

cc. On or about January 16, 2009, via Skype, VAN DER KOLK said to ORTMANN, "good thing I have implemented the name 'Megavideo' to be displayed for watching video files from a MU user on MV :)" followed by, "I was thinking there, we should not disclose MU usernames anywhere." ORTMANN responded, "very good! :)" and VAN DER KOLK replied, "also for copyright issues etc."

dd. On or about March 2, 2009, via Skype, NOMM told ORTMANN, "seems there are certain conditions to have ot HD encoded," and ORTMANN responded, "BD rips :)" The term "HD" refers to high definition, and the term "BD rips" refers to infringing copies of Blu-ray Discs. NOMM then said, "I doubt youtube has any open rips hehe," "we have ONLY movies/etc, they have very less such things ;)"

ee. On or about March 3, 2009, via Skype, VAN DER KOLK sent ORTMANN the results of a search for the term "1080p" in the Mega database. The term "1080p" refers to high-definition video, which typically contains 1080 lines of progressively vertical resolution. The search showed that the term appeared in more than 41,000 separate files. VAN DER KOLK sent ORTMANN some of the results, which included

the copyrighted motion pictures "Transporter 2," "The Forbidden Kingdom," and "Ghost in the Shell: Stand Alone Complex — The Laughing Man." ORTMANN commented, "yes :) but with HD video, we'll easily need 50 gigs more already," "but we'll also be MUCH more popular/valuable." VAN DER KOLK asked, "Kim likes the idea as well I suppose?" and ORTMANN responded, "he loves it." Then ORTMANN asked, "I just wonder what warner bros. will say when they see crystal clear BD rips instead of the usual blurry video :)" and VAN DER KOLK responded, "yeah will be even more pissed off :)"

ff. On or about March 4, 2009, via Skype, VAN DER KOLK told ORTMANN, "I downloaded some bluray rips with Mega Manager over night, downloaded a whopping 50GB+ in about 14 hours :)" and ORTMANN responded, "damn :)" In this context, the phrase "bluray rips" appears to refer to infringing copies of copyrighted blu-ray discs.

gg. On or about March 5, 2009, via Skype, ORTMANN told VAN DER KOLK, "MV has the potential to rock 2009 (and 2010)." VAN DER KOLK responded, "yes," "what started as a youtube clone…" ORTMANN then said, "yep :) the MU business model works very well for online video (private links)" "now we're doing exactly what I foresaw in the beginning – innocent front end, private back end :)"

hh. On or about March 7, 2009, via Skype, VAN DER KOLK said to ORTMANN, "If copyright holders would really know how big our business is they would surely try to do something against it," "they have no idea that we're making millions in profit every month." ORTMANN responded, "indeed."

ii. On or about March 7, 2009, via Skype, VAN DER KOLK sent ORTMANN an e-mail from the Dutch organization BREIN (Bescherming Rechten Entertainment Industrie Nederland), "the Dutch anti-piracy program," notifying Mega of a particular copyright-infringing file on Megaupload.com. The e-mail was sent by a particular BREIN representative (hereinafter "PH"). VAN DER KOLK then said, "I had a lot of trouble with this [PH] guy :)" "with this mp3 site I had." He continued, "They wanted to sue me, and only if I would sign a contract they would not," but "then I left to Manila :)" and "never heard anything from them." ORTMANN commented, "until now!" VAN DER KOLK added, "I had the top40 with direct downloads," and ORTMANN responded, "that's not so legal, of course :)" VAN DER KOLK then said, "always lived from piracy :)"

jj. On or about March 8, 2009, via Skype, DOTCOM asked ORTMANN, in German, "Have you got a minute? Let's talk about how we should prepare for lawsuits, should they ever happen." ORTMANN responded, "We need to take a look at how YouTube has dealt with that so far.

Promise some kind of technical filtering crap and then never implement it." DOTCOM added, "We should already be hiring an attorney now, perhaps an in-house one, to get us prepared for anything."

kk. On or about March 8, 2009, via Skype, ORTMANN and VAN DER KOLK discussed an e-mail from a user seeking technical support about the Mega sites. ORTMANN said, "uhm, the guy does have an IMDB entry :)" and then, "haven't seen any of his works, but yes, he seems to be very active," "we do have legit users." VAN DER KOLK responded, "yes, but that's not what we make $ with :)" The acronym "IMDB" refers to the Internet Movie Database, available at IMDB.com, an online database of information relating to motion pictures, television programs, and video games.

ll. On or about March 9, 2009, via Skype, NOMM told ORTMANN, "one my friend said me:" "megavideo is major serials/etc supplier…but why dont they supply subtitles to download?" NOMM added, "seems people think we are some movies download center lol." The acronym "lol" generally means "laugh out loud."

mm. On or about March 16, 2009, via Skype, ORTMANN and VAN DER KOLK discussed the possibility of establishing a new Mega website for music without any copyright-infringing materials. ORTMANN said, "can't wait to approach the music industry with requests to sell their products legally… 'what?! yooooou???'" VAN DER KOLK responded, "haha" "If they at all want to do business with us." He added, "If I were in that industry I would ban any Mega* company :)" ORTMANN commented, "yep :)"

nn. On or about March 16, 2009, via Skype, NOMM sent ORTMANN a Mega URL link to a copyrighted episode of the animated television program "Mobile Suit Gundam 00," commenting, "cartoons look better too." ORTMANN responded, "beautiful :)" and added, "look for 5+ GB .mkv files," "BD rips of current animated movies." The term "mkv" refers to a particular video format. In this context, the phrase "BD rips" appears to refer to infringing copies of copyrighted blu-ray discs.

oo. On or about March 20, 2009, via Skype, DOTCOM and ORTMANN discussed providing high definition content on Megavideo.com. DOTCOM said, in German, "I'm looking forward to MV [HD,]" "it will be cool." ORTMANN responded, "The quality is going to be amazing…the Warner Brothers opening credits for Terminator 3 on Andrus' [NOMM] unoptimized demo video is already a feast for the eyes." "Terminator 3: Rise of the Machines" is a copyrighted motion picture.

pp. On or about May 6, 2009, via Skype, ORTMANN asked VAN DER KOLK, “has anyone ever tested the file size limit of Flash uploading? 2 GB?” and VAN DER KOLK answered, “never tried this,” “but I think it’s 2 GB indeed.” VAN DER KOLK continued, “I can try to upload a bluray rip before I go to bed :)” and ORTMANN responded, “yes, please try :)” The “file size limit of Flash uploading” appears to refer to file-size limitations imposed on videos uploaded to be streamed as Flash videos with the FLV file type.

qq. On or about May 25, 2009, via Skype, ORTMANN told NOMM, “H.264 will kill the movie industry the way that MP3 has killed the music industry,” “pure eye candy.” A few minutes later, VAN DER KOLK asked ORTMANN, “What will be the HD launch page?” and ORTMANN replied, “a landing page advertising ‘Megavideo goes High Definition,’” VAN DER KOLK responded, “Hollywood will curse us :)” and ORTMANN replied, “this is indeed the point where streaming web video is starting to rival theatre quality.” The term “H.264” refers to a particular standard for video compression that is commonly used in the compression and distribution of high definition videos.

rr. On or about October 10, 2009, via Skype, VAN DER KOLK told ORTMANN, “Theoratically we could make MV just like MU,” “remove all the video listing stuff.” ORTMANN responded, “yep, but even better than that, we list only really harmless stuff,” and VAN DER KOLK replied, “yes, but problem is almost no harmless stuff is being uploaded to MV :)” Then VAN DER KOLK suggested, “We should actively add youtube videos again perhaps,” and ORTMANN responded, “yes, we could do that indeed.” ORTMANN suggested, “Kim’s idea of leaving the semi-harmful stuff online for 23 hours is also pretty good,” and VAN DER KOLK responded, “yes also not bad,” “but then there will always still be harmful content on the site always,” and “I would say we should not even make it public at all,” because “we make money from direct links & embedded, no need to risk anything.” ORTMANN responded, “harmful content isn’t bad per se as long as we process takedowns and don’t upload it ourselves.” VAN DER KOLK replied, “that we already do now even :)” and ORTMANN responded, “it has a positive effect in that it allows content owners to search our site and send takedown requests.” Then VAN DER KOLK said, “but it’s good to stay off the radar by making the front end look like crap while all the piracy is going through direct links & embedded.” And ORTMANN added, “the important thing is that nobody must know that we have auditors letting this stuff through.” VAN DER KOLK responded, “yes that’s very true also.” ORTMANN replied, “if we had no auditors – full DMCA protection, but with tolerant auditors, that would go away.” And VAN DER KOLK replied, “yes true.”

ss. On or about November 19, 2009, via Skype, DOTCOM sent ORTMANN a Skype conversation between DOTCOM and VAN DER KOLK, during which DOTCOM said:

> MV is full of problematic content on the [publicly viewable] video pages. I told you how important this is. Every day counts, especially since we have articles out there comparing us with napster and putting us in a bad light. WHY THE [EXPLETIVE REDACTED] did you not take care of this? You told me you will do this WHILE you are in HK. I just spoke with mathias [ORTMANN] and he told me he informed you long time ago about fixing this. WHY do you risk our good running business with not following up on important matters like this. If you look at the latest video pages now it is FULL with the latest commercial stuff. [EXPLETIVE REDACTED] THIS BRAM!

VAN DER KOLK responded, "I already spoke to Mathias, and will implement some new measures now. I also have a meeting with the auditors tomorrow evening, I always pointed out to them how important it was that all big hollywood stuff needs to go, but apperantly they're not doing a good job." DOTCOM replied:

> ITS your job, when a task like this is given to you, that you make sure it is properly done. This is YOUR fault and not the auditors. And Mathias brought this to your attention months ago when I told Mathias about it and asked this to be fixed with filters, etc. You are responsible Bram if this backfires because it hasnt been done. Better make sure that by Monday I will never see [EXPLETIVE REDACTED] like this again on the public video pages or else we will have a major problem again, understood?

Later that day, VAN DER KOLK told ORTMANN, "We also often get DMCA notices for the manga," "funimation, a US company is often sending us huge batches." ORTMANN responded, "I told Kim [DOTCOM] that Manga is commercial stuff, too, and he said that the Manga companies are tiny and will never sue (?!)." VAN DER KOLK replied, "I don't think so, that's quite a big business also," and ORTMANN said, "I think so as well." Napster was a file-sharing service that facilitated widespread copyright infringement until it was shut down in July 2001 to comply with a court-ordered injunction.

tt. On or about November 21, 2009, via Skype, ORTMANN told VAN DER KOLK, "MV's public videos could not possibly have generated significant payments."

uu. On or about November 30, 2009, via Skype, ORTMANN sent VAN DER KOLK the following e-mail submitted by a Mega user:

> I visit the website http://www.watch-movies-online.tv to watch some movies. The movies i can watch through so many mediums made available. However from my assessment, Megavideo gives better picture quality with minimal bufferings.

VAN DER KOLK responded, “nice :)” “not many competitors with such massive bandwidth and such a conversion infrastructure.” ORTMANN replied, “yes, and such a persistent group of nerdy Turks perfectionizing the conversion process :)” VAN DER KOLK also said, “okay, so we should definitely not piss off our uploaders now :)” and ORTMANN responded, “let’s pay them to keep them happy.” VAN DER KOLK replied, “yes indeed.”

vv. As described in Paragraph 38(n), on or about July 8, 2010, DOTCOM sent an e-mail to ORTMANN and ECHTERNACH entitled “attention.” In the e-mail, DOTCOM copied a link to a news article entitled “Pirate Bay and Megaupload Escape Domain Seizure by US,” which 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.” DOTCOM wrote, “this is a serious threat to our business. Please look into this and see how we can protect ourselfs.” He also asked, “Should we move our domain to another country (canada or even HK?).” ORTMANN responded, “We just have to continue to comply with the law, then nothing can happen – proper takedown processing is our lifeblood – doing country-specific takedowns would have jeopardized that.” ECHTERNACH then responded, “In case domains are being seized from the registrar, it would be safer to choose a non-US registrar[.]” And ORTMANN replied, “They were apparently seized at the ICANN level, which wouldn’t even protect foreign domains. But there is a good reason why the did NOT actually seize thepiratebay.com and megaupload.com: We have proper registration credentials. Sven [ECHTERNACH], can you compile a list of pre-seizure registration details of all the domains that were taken over? Let’s find out if all of them were misregistered or anonymized (remember that megaporn.com is currently anonymized).”

Forcing Premium Membership and Private
Financial Gain by Limiting Viewing Duration

104. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. In September of 2008, the Mega conspirators began limiting how long users could watch videos on Megavideo.com. The time limitation was changed from between 60 to 90 minutes, sometimes on a daily basis. If users wanted to continue watching videos, they were required to pay for premium membership. These limitations were imposed in part through a new video player.

b. On or about September 7, 2008, via Skype, ORTMANN told VAN DER KOLK, regarding the new Megavideo player, "all it has to do is limiting the bandwidth used by MV." He added, "we can limit it hard if needed." A few minutes later, VAN DER KOLK said, "I am looking forward to the first 1M$ profit/month :)" and ORTMANN responded, "you are looking at December or January, provided that the new player performs well :)" VAN DER KOLK added, "But especially the fact that the video will stop after XX minutes and then show a message will trigger sales I think" because "the users want to see the rest." ORTMANN replied, "yes, the concept is absolutely ingenious," "much more incentive to pay than MU."

c. On or about September 11, 2008, via Skype, ORTMANN told VAN DER KOLK, "many people just watch one 2-hour movie," and then he asked, "how many movies can you watch in a row without getting bored? :)" VAN DER KOLK replied, "that's true indeed, okay lets see what the new or current player with video view limitations will do then."

d. On or about September 14, 2008, via Skype, ORTMANN told VAN DER KOLK, "imagine people being interrupted shortly before a movie ends," and "the inclination to pay will be higher than on MU." VAN DER KOLK responded, "pretty good point," and "this can be the new way of making revenue for Hollywood one day again :)"

e. On or about September 26, 2008, via Skype, ORTMANN told VAN DER KOLK, "if you want to some testing, [particular Megavideo.com URL] is a longer movie. parameters: 3 minutes quota, then 10 minutes waiting time." VAN DER KOLK asked, "when will the movie stop?" because "It's already playing more than 3 minutes." ORTMANN said, "now :)" and VAN DER KOLK responded, "ah yes," "wow," "Very NICE :)" ORTMANN then said, "yep, and we can also start offering higher-quality encoding as an option and really become the Rapidshare of the movie scene." In March 2012, a German appellate court upheld decisions finding that Rapidshare.com, a Swiss file-hosting website, could be held liable for publication of copyright-protected material by third-party users.

f. On or about September 27, 2008, via Skype, ORTMANN told VAN DER KOLK, “we have about 120,000 IPs that watched more than 120 minutes in the past 12 hours,” “that’s our base squeezing potential,” “if 1% pays…” “every day…” VAN DER KOLK responded, “that’s a lot of money indeed.” ORTMANN also commented, “I think 120 minutes is way too generous…” The acronym “IP” refers to Internet Protocol address.

g. On or about September 27, 2008, via Skype, ORTMANN said to VAN DER KOLK, “although the site design is NEVER a decisive factor here – content is king,” and VAN DER KOLK responded, “yes.” The “content” available on the Mega Sites was overwhelmingly copyright-infringing material.

h. On or about September 27, 2008, via Skype, ORTMANN told VAN DER KOLK, “we did some things right,” “we allowed fraud for a long time, fueling our growth,” “then we forced our own player, making us explode,” “and now we can capitalize on it.” VAN DER KOLK responded, “yes.” ORTMANN then said, “and again, it’s nicely non-searchable… really nice,” and he also said, “let’s become the Rapidshare of video :)” In addition, ORTMANN said, “our strongest country (USA) isn’t even fully awake yet :)” and VAN DER KOLK responded, “indeed.”

i. On or about September 27, 2008, via Skype, ORTMANN sent VAN DER KOLK the following e-mail, which was submitted by a Mega user:

> “I love Megavideo, but I received a strange message and was not allowed to finish watching a movie. The message I received said “You have watched 77 minutes of video today. Please wait 120 minutes, or click here to enjoy unlimited use of Megavideo.” And I did, cause of course I wanted to finish the movie I’d started. Let’s see it was routed through www.watch-movies.net, maybe that’s got something to do with it? Anyway, when I clicked on the that nothing happened.”

j. On or about September 28, 2008, via Skype, VAN DER KOLK asked ORTMANN, “Don’t you think copyright holders will now get extra pissed?” ORTMANN responded, “they wouldn’t know,” because “they probably don’t watch their own stuff for 60+ minutes :)”

k. On or about October 28, 2008, via Skype, ORTMANN told VAN DER KOLK, “limiting MV to less than 90 minutes really triggers the flow,” “movie length.” VAN DER KOLK responded, “yes indeed,” “but the more we limit the more we hurt our growth.”

l. On or about November 20, 2008, via Skype, VAN DER KOLK told ORTMANN, “Also recent MV payments on PayPal look good now,” and

then he asked, “limitation was unchanged?” ORTMANN responded, “limitation is now at 70 minutes.”

m. On or about November 21, 2008, via Skype, VAN DER KOLK and ORTMANN discussed how many users decided to pay for premium membership due to the time limitations on watching videos. VAN DER KOLK said, “interesting: MV had 389,350 uniques redirected to “/?c=premium&l=1” “vs 29,933 for MP.” The acronym “MV” refers to Megavideo.com, and the acronym “MP” refers to Megaporn.com. ORTMANN responded, “that reflects the ratio between redirects sent quite accurately,” “roughly 1:10.” ORTMANN then commented, “now if MP also generated the same amount of sales…” “we would have 300 new subscriptions a day.” VAN DER KOLK said, “I don’t get it,” and ORTMANN responded, “perhaps people just go elsewhere,” because “porn is generic,” “movies are not.” VAN DER KOLK added, “yeah thats true.”

n. On or about November 21, 2008, via Skype, VAN DER KOLK and ORTMANN discussed the ideal time limitations to maximize the number of users who decide to pay for premium membership. VAN DER KOLK said, “we have to reach that critical point to cash in,” and “yes, but with MV people watch 90-120 minutes.” ORTMANN responded, “limtis beyond 3 hours – no conversion, 2 hours – some conversion, 90 minutes – more conversion, 70 minutes - major conversion,” and “there is a huge difference between 90 and 70 minutes there.” VAN DER KOLK then said, “lets see how many % clicks on the buy now button from the MV premium limitation message,” and “(this is very good btw, google analytics).” ORTMANN added, “yes, seems so :)”

o. On or about November 23, 2008, via Skype, ORTMANN and DOTCOM discussed whether the time limitation should be 60 or 72 minutes to maximize the number of users who decide to pay for premium membership. The conversation was originally in German. DOTCOM said, “MV is continuing to grow,” “even with limits,” and ORTMANN responded, “right.” Later, DOTCOM said, “What I don’t understand is why we don’t do what we agreed on. 60 minutes playtime / 60 [minutes] waiting. I don’t understand that. Isn’t that what we agreed on?” ORTMANN responded, “Psychologically, I think it’s better if people have to wait a little less than they are allowed to see in one go. We’ve more than reached the target-payment level. We’ve continue to grow with real 72 Minutes. With real 60 Minutes, we are headed into new territory.” ORTMANN also said, “Movies last 90 minutes. They’re interesting in the last 20 minutes.” Later, DOTCOM said, “Okay. It would just be nice if something like that got explained to me once in awhile. Just don’t leave me in the dark. I had assumed 60 [minutes] here. Yesterday we said we would try it out for four days now WITHOUT screwing around. Instead, it’s 72 [minutes] now. And yesterday, you had raised the limits for an hour

again. That isn't what was agreed on. But it's no big deal. It would just be fair and proper if you would keep to agreements or at least clarify in advance any changes to agreements. I really wanted to see where the journey would lead with 60/60. And four days won't hurt anybody. MV will keep growing." ORMANN responded, "No problem. We had identified 60 inexact Minutes as a sweet-spot. That it's 72 Minutes in reality - so much the better for the user. The sweet-spot attribute might completely have to do with the fact that movies heighten the suspense toward the end." DOTCOM asked, "But you yourself said that most of the movies with us are being uploaded in high bitrate?" and ORTMANN responded, "Low bitrate movies were really twice as long sometimes before the user got the message," "but long, low bit-rate movies are rare (DVD rips are high quality)." In this context, the phrase "DVD rips" appears to refer to infringing copies of copyrighted DVDs.

p. On or about December 30, 2008, via Skype, ORTMANN told DOTCOM, in German, "What led to the miraculous MU turnaround at the end of July, we don't know. But the introduction of MV limitations was our most important, deterministic change in 2008."

Copying Videos from YouTube.com

105. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. As discussed in Paragraphs 26 through 29, the Mega Conspiracy reproduced videos directly from Youtube.com to distribute them through the Mega Sites.

b. On or about May 17, 2007, via Skype, VAN DER KOLK said to ORTMANN, "he [DOTCOM] was telling again yesterday how important 'all youtube files' are and that I need to ask you for more disk space so we can leech." VAN DER KOLK also said, "I'll just stick to our strategy and leech most popular files only." ORTMANN responded, "right, very good."

c. On or about June 4, 2007, via Skype, VAN DER KOLK asked ORTMANN, "Andrus [NOMM] told me everything is done to import the Youtube video's?" ORTMANN responded, "Andrus [NOMM] has finished the flv indexer… his approach is pretty ingenious, we'll be able to import everything within a few days." VAN DER KOLK responded, "Cool! :-)". The acronym "flv" refers to the Flash Video file type.

d. On or about June 14, 2007, via Skype, VAN DER KOLK said to ORTMANN, "Youtube will be pissed :-)". ORTMANN responded, "heh :) indeed… I think we'll just do the importing by direct fetching from one of our servers initially until they block us."

e. On or about June 19, 2007, via Skype, VAN DER KOLK said to ORTMANN, “to have the top XXX thousand videos for the launch of MV is nice”, “but having ALL youtube files is over the edge.” VAN DER KOLK then said, “but it was always very hard to say anything about it.” The acronym “MV” refers to Megavideo.com. ORTMANN responded, “yeah, it’s Kim’s pet project :)” And VAN DER KOLK replied, “kim was extremely persistant”.

f. On or about June 27, 2007, via Skype, VAN DER KOLK asked ORTMANN, “Do you think it will be possible to start importing the youtube video to Megavideo today or tomorrow?” ORTMANN responded, “today, definitely. no more delays.” VAN DER KOLK replied, “okay that sounds good :-)” and, “If there’s anything I can help you with, please let me know!”

g. On or about August 5, 2007, via Skype, VAN DER KOLK said to ORTMANN, “Hopefully youtube will not block us and will not do anything evil,” “but if we get letters from their lawyers and we let [unindicted conspirator] read then we’ll definitely get big instantly haha.” ORTMANN responded, “I am sure we’ll get a letter from their lawyers sooner or later and that our leech IP will be blocked.”

h. On or about September 3, 2007, via Skype, VAN DER KOLK and ORTMANN discussed copying, without authorization, videos from websites such as YouTube.com, Break.com, and Google Videos. ORTMANN stated, “I have 152589 successful imports in the db, this seems quite a lot.” The acronym “db” refers to database.

i. On or about October 4, 2007, via Skype, VAN DER KOLK sent to ORTMANN a conversation between VAN DER KOLK and DOTCOM, where DOTCOM stated, “the day has 1440 minutes and I want to see one Video upload on megavideo every minute. If necessary use the youtube videos we still have unpublished and publish one by one from dirrent accounts every minute,” and “otherwise we look like small fish [EXPLETIVE REDACTED].” VAN DER KOLK commented to ORTMANN, “I was thinking to automatically import 1000 youtube videos every day to fulfill Kim’s wish (and it would make MV look better).” ORTMANN responded, “good idea indeed!”

j. On or about October 8, 2007, via Skype, ORTMANN asked VAN DER KOLK, “so, how can we have a new youtube import online every minute without 24h auditor surveillance?” VAN DER KOLK responded, “youtube videos are already audited, some videos that were imported by users were ‘sexy’ but there’s never real nudity on youtube.” ORTMANN replied, “okay, so we trust them…” VAN DER KOLK then said, “so far youtube imports didn’t require approval as well” “and, I only import popular videos from youtube every minute.” ORTMANN responded, “but there

should be a youtube import completing every minute anyway… the importer is working heavily all the time."

k. On or about October 9, 2007, via Skype, ORTMANN asked VAN DER KOLK, "is youtube importing still working, btw?" VAN DER KOLK responded, "yes it's working perfect now!" and "the recent videos on Megavideo look so much better." He also said, "and I'm automatically leeching the featured break videos to feature on Megavideo, so Megavideo looks much more alive now." ORMANN responded, "perfect," "(and nasty :))." The phrase "break videos" appears to refer to videos copied from the website Break.com. VAN DER KOLK then said, "Now Kim can try to get some advertisers or investors or buyers for it :-)" "and semi scam then :-)" ORTMANN responded, "yeah :)"

l. On or about April 14, 2008, via Skype, VAN DER KOLK asked ORTMANN, "What was the proxy server again that was setup for youtube importing about two months ago?" ORTMANN responded with the server's Internet Protocol address, and roughly thirty minutes later VAN DER KOLK said, "now let's activate the one video per minute script again so that MV looks nice again." ORTMANN commented, "yeah, that would be cool."

m. On or about April 18, 2008, via Skype, ORTMANN told DOTCOM, in German, "let's see, if TF1 will sue us for 10s of millions aside from Dailymotion and Youtube :)" TF1 is a private national French television channel. The website Dailymotion.com is a French video-sharing website, similar to YouTube, on which users can upload, share, and view videos. In addition to YouTube, the Mega Conspiracy copied without authorization videos from Dailymotion.com.

n. On or about April 18, 2009, via Skype, ORTMANN and VAN DER KOLK discussed videos appearing in Google searches. VAN DER KOLK said, "maybe we should slowly do that again, it really makes the site look more legit," and ORTMANN responded, "yes." VAN DER KOLK asked, "How did we do it last time, I downloaded the files directly to a fileserver right?" and ORTMANN answered, "yes." VAN DER KOLK then said, "I'll try to quickly implement something with the Youtube API so that we can upload new legit videos to MV continuesly to make the site look more legit." VAN DER KOLK commented, "Megavideo has quite a piracy image already," and ORTMANN added, "yes."

Reliance on — and Failure to Terminate — Repeat Infringers

106. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about November 4, 2006, the Mega Conspiracy distributed a description of the Uploader Rewards program. Although the description cautioned users to "respect copyrights," members of the Mega Conspiracy routinely paid users despite flagrant copyright violations, as described in the paragraphs, below. The description read as follows:

> For every download of your files, you earn 1 reward point.*
> You can redeem your reward points for premium services and cash:
>
> 5000 reward points: One day premium
> 50000 reward points: One month premium
> 100000 reward points: One year premium
> 500000 reward points: Lifetime premium + $300 USD
> 1000000 reward points: $1000 USD
> 5000000 reward points: $10000 USD
>
> You need a premium membership to qualify for a payment.
> You must be logged in while uploading.
> Your uploads must honor our terms of service & respect copyrights.
> You are disqualified & banned if you try to manipulate your results.
> Files larger than 100 MB do not qualify for our Rewards Program
> Only downloads from these countries are being counted.

b. Members of the Mega Conspiracy regularly discussed and paid repeat infringers and unindicted conspirators who were registered users of the Mega Sites.

c. As stated in Paragraph 25(f), on or about February 22, 2007, VAN DER KOLK sent an e-mail to ORTMANN entitled "2 reward payment files." Attached to the e-mail was a text file listing proposed reward amounts, which ranged from USD $100 to USD $500, the Megaupload.com username, and a description of the uploaded content. For a particular repeat infringer and unindicted conspirator (herein referred to as "AR"), VAN DER KOLK wrote the following: "Our old famous number one on MU, still some illegal files but I think he deserves a payment." On or about April 6, 2007, via Skype, VAN DER KOLK said to ORTMANN, "[AR] uploaded a video! :-)". ORTMANN responded, "YEAH :)" and then stated, "that is the breakthrough." VAN DER KOLK replied, "our [old] famous reward participant." ORTMANN commented, "he will upload tons from now on."

d. On or about April 10, 2007, via Skype, VAN DER KOLK said to ORTMANN, “we should definitely pay all of the uploaders in the beginning,” and, “they will make us big.” ORTMANN then asked, “are new uploads currently audited for copyright violation?” VAN DER KOLK responded, “not yet, I am sending specs to Andrus [NOMM] shortly.”

e. The Mega Conspiracy’s Uploader Rewards program paid users for every download of their files. Many repeat infringers responded by splitting copyright-infringing videos into multiple parts and forcing users who wanted to watch the entire video to download each part. This increased their reward points.

f. On or about November 18, 2007, via Skype, VAN DER KOLK said to ORTMANN that a particular repeat infringer and unindicted conspirator (herein referred to as “VF”), “created a second account [NAME REDACTED] and within 19 days a 1500 USD redemption.” ORTMANN responded, “amazing” “we are very, very lucky to have him as an uploader.” ORTMANN then said, “those 1500 USD are multiplied by a factor of 10 at least” “and no DMCA notices yet from Vietnam.” VAN DER KOLK responded, “those are well worth it, however major split files in the portfolio.” VAN DER KOLK then searched VF’s account based on file size and ORTMANN commented, “damn!!” “10000 46 MB files!” VAN DER KOLK responded, “yeah totally amazing.” And ORTMANN replied, “this guy is amazingly valuable.” VAN DER KOLK suggested, “It would be interesting if we can create statistics how many unique premium users downloaded a user’s files or how many ‘premium reward points’ a user has for the decission if a user should get paid or not…” He then said, “but yeah that would be too much work for now :)” ORTMANN responded, “I did make such statistics a year ago for some of our top uploaders” and “it turned out that one of the vietnamese guys generated several 10k of premium revenue per month.” VAN DER KOLK commented, “that’s extremely valuable information to decide wether a rewards participant should get paid or not.” ORTMANN replied, “basically, all the Vietnamese guys are gems” and “if [VF] knew how much money he brings us, he would probably not be content with a few $1500 redemptions per month :)” ORTMANN also said, “as long as the total amount we pay out to him is reasonable, it’s fine” and “we must keep him motivated.” In addition, ORTMANN said, “well, I can only say – the Vietnamese guys deserve it, and shortly before xmas, it’s a great motivation boost.”

g. On or about December 2, 2007, via Skype, VAN DER KOLK told ORTMANN, “the idea behind the rewards should be that we attract new users / traffic to our sites, not pay for existing traffic / users IMHO.” The acronym “IMHO” generally means “in my humble opinion.” ORTMANN responded, “huge uploaders should profit, even if they have been with us for a long time.”

h. On or about December 17, 2007, via Skype, VAN DER KOLK asked ORTMANN, “What would you expect as an acceptable amount for payout this time? ORTMANN responded, “15K,” and VAN DER KOLK replied, “okay I’ll adjust strictness accordingly :)” ORTMANN commented, “good.”

i. On or about January 18, 2008, via Skype, DOTCOM asked ORTMANN, in German, “and I need to know exactly how much we pay monthly to uploader rewards.” ORTMANN responded, “the first rewards payment after Christmas was 76K.” DOTCOM replied, “maaadddnnneeess!” and then he said, “no wonder we’re growing like that now.” In addition, DOTCOM said, “have growth” “not because of gigs” but “because of PAYMENT!” ORTMANN commented, “the payment came after the growth :)” and DOTCOM responded, “since the special people uploaded and promoted more.” ORTMANN agreed, “yes, that is surely relevant.” DOTCOM then said, “growth has less to do with the many gigs than with the rewards. in my opinion.” The term “gigs” refers to Gigabytes, a unit of measuring data-storage and file-size capacity.

j. On or about January 25, 2008, via Skype, VAN DER KOLK and ORTMANN discussed a particular repeat infringer and unindicted conspirator (herein referred to as “JH”). VAN DER KOLK said, “his 500 and 1500 USD redemptions were disqualified” and “he has 6 $100 redemptions pending.” ORTMANN said, “he probably has 100% fraudulent files in his account.” VAN DER KOLK responded, “most likely,” “that’s the big flaw in the rewards program” — “we are making profit of more than 90% infringing files,” “so either we should just lower the points a bit and pay everybody, or stop paying rewards.” VAN DER KOLK then said, “I asume with this rewards payment Kim wants to be very generous?” ORTMANN responded, “yes, but only for those users that brought premium sales :)”

k. On or about January 26, 2008, via Skype, VAN DER KOLK sent ORTMANN a conversation between VAN DER KOLK and DOTCOM. During that conversation, VAN DER KOLK sent DOTCOM the rewards payments for a 2.5-week period. DOTCOM responded, “cool! “let’s [EXPLETIVE REDACTED] pay.” VAN DER KOLK replied, “okay I be less restrictive, fine with me :)” and DOTCOM responded, “good.” DOTCOM also said, “this is our growth motor,” “you will see.”

l. On or about February 17, 2008, via Skype, DOTCOM asked ORTMANN, in German, “do we know from the reward stats now who really brings us the sales?” ORTMANN responded, “bram is supposed to build a stats tool for that… then we will have a slider too.”

m. According to e-mails and Skype conversations, in or about February of 2008, the Mega Conspiracy altered the Uploader Rewards program by

limiting reward points to a single point per download or view, for a single Internet Protocol address, per day. They also implemented "sliders," which allowed the Mega Conspiracy to change the number of downloads or views credited to users toward reward points — in other words, 10 downloads or views might result in a single reward point. These changes reduced reward points and eliminated the objectiveness of the rewards system, that is, it involved members of the Mega Conspiracy subjectively valuing the contributions (which were often illegal) of individual users.

1. On or about March 14, 2008, via Skype, ORTMANN asked VAN DER KOLK, "I trust you set the sliders predominantly on people who upload lame content." VAN DER KOLK responded, "yeah or users that just upload to MRV and don't have a website driving traffic to us." The acronym "MRV" refers to Megarotic Video. ORTMANN then asked, "and you wouldn't mind losing some of the slidered uploaders altogether?" VAN DER KOLK responded, "rewarding MU users is much more important." The acronym "MU" refers to Megaupload. ORTMANN replied, "yep." VAN DER KOLK then said, "it will not be that harmful, but I think they will continue to upload anyway" because "we're still the only adult tube site that pays." He also said, "since we have the sliders and the new counting logic our growth has been unchanged." ORTMANN commented, "I am glad to hear that." Then VAN DER KOLK said, "and now we can be a bit more relaxed with the payments, we don't always have to find a reason to disqualify in order to reduce the total amount we're paying."

2. On or about April 16, 2008, via Skype, VAN DER KOLK sent ORTMANN an e-mail from a registered user thanking them for an Uploader Reward payment. VAN DER KOLK commented, "What he doesn't know is that he has a slider and that his points go 5 times slower from now on, it's really good this way now." He added, "no need to disqualify anyone anymore." ORTMANN agreed, "perfect."

n. On or about April 15, 2008, via Skype, VAN DER KOLK sent ORTMANN a portion of an e-mail sent by a representative of Warner Brothers Entertainment Inc. to the Mega Conspiracy at dmca@megavideo.com. The portion of the e-mail stated:

> The following user [USERNAME REDACTED] appears to have circumvented Megavideo. When you look at his profile he shows that he has uploaded only 7 videos to Megavideo. However, this is not accurate. This user is circumventing Megavideo by linking to infringing videos directly and not searchable via Megavideo.

> Since these television episodes below prove that user [USERNAME REDACTED] has hidden and marked his videos has private, content owners such as Warner Bros. are unable to search and find all infringing content. I would like to request that his account be suspended. Below is an example of infringing content found from the linking site for user [USERNAME REDACTED].

The full e-mail also included multiple URL links to copyright-infringing materials, including the copyrighted television programs Smallville and Terminator: Sarah Connor Chronicles. Attached to the e-mail were two photographs, the first depicting the user's profile on Megavideo.com, and the second depicting a copyright-infringing video of Smallville uploaded by the user. VAN DER KOLK commented via Skype to ORTMANN, "the copyright holders are also getting smarter, with screenshots and everything :)" ORTMANN responded, "wow :)" As of January 20, 2012, [USERNAME REDACTED]'s account was active.

o. On or about July 15, 2008, via Skype, ORTMANN and VAN DER KOLK discussed a recent reward payment of "41.1K." VAN DER KOLK commented that the amount was, "a lot of money, thats for sure," but ORTMANN responded, "yeah, but we need the growth now." VAN DER KOLK added, "next one will be less, new video reward participants will slowly get slidered more & more."

p. On or about August 29, 2008, via Skype, VAN DER KOLK sent ORTMANN an e-mail from a particular repeat infringer and unindicted conspirator. The e-mail read:

> Today I monitor both view and reward points and I notice I was averaging 20,000 views an hour but only receiving 900 reward points and hour. Am I really surpose to get 9,000 reward points an hout and you guys shorting me a digit, like the last zero changing 9000 to 900? I working very hard and I know when I started, my reward points were incrediblely better and I was uploading alot less vids. Please give me a better ratio, at 1800-2000 reward points an hour would be greatly apprecited and I guarantee you I will stop asking questions and sending email. Come on we are all professional!

VAN DER KOLK commented to ORTMANN, "haha this guy is exactly right, he has a 0.1 factor in the slider table :)" He then said, "Yeah but its alright, most users are uploading like crazy in order to get more points now :)"

q. On or about November 22, 2008, via Skype, ORTMANN and VAN DER KOLK discussed a technical issue that required playing a video. ORTMANN said, “I had to try three videos.downloadid of that file, only the third one wasn’t removed yet :)” and VAN DER KOLK responded, “haha.” ORTMANN then said, “the good thing is that reuploaded videos convert instantly,” “nice for repeat infringers.” VAN DER KOLK replied, “yes,” “especially nice with the Mega Manager,” and ORTMANN responded, “yes! :)” During this time period, the Mega Conspiracy was converting user-uploaded videos into the Flash video format and reproducing them to facilitate distribution.

r. On or about March 13, 2009, via Skype, ORTMANN sent VAN DER KOLK a message submitted by a Mega user, which read: “hi. ummm… seems like when I upload videos in MU and use them on megavideo, the videos go to the user named ‘Anonymous’ not mine.. please help me.” VAN DER KOLK responded, “yes I did that on purpose” “Because otherwise we disclose MU usernames.” ORTMANN replied, “TRUE.” And VAN DER KOLK added, “Also not good for repeat infringement offenders.”

s. On or about April 1, 2009, via Skype, an unindicted conspirator asked ORTMANN, “The reward payout- is it the bonus the members got from others download from their upload?” ORTMANN answered, “correct.” The unindicted conspirator then asked, “how can they get US$10000!? what did they upload?” and ORTMANN responded, “we had some crazy uploaders that uploaded thousands of popular files.”

t. On or about May 25, 2009, via Skype, VAN DER KOLK told ORTMANN, “Rewards payment file & Translator payment file sent!” Then VAN DER KOLK said, “317 different paypal addresses being paid,” “nicely spread.” ORTMANN responded, “good, looks like most are $100 :)” and VAN DER KOLK replied, “yes, the sliders do their job very well” Then VAN DER KOLK said, “This should really boost our popularity,” “unlike paying just a few users tens of thousands.” Then ORTMANN said, “good, paying now…” “86.3k.” A few minutes later, VAN DER KOLK said, “it’s fine I’d say with our profit,” “giving away less than 10% is very acceptable.” ORTANN responded, “yes,” “especially in a growth phase,” and VAN DER KOLK replied, “And we really hardly disqualify anyone, we just block fraud that’s it.” The term “fraud” appears to refer to the users’ attempts to defraud the Mega Sites.

u. On or about July 31, 2009, via Skype, VAN DER KOLK and ORTMANN discussed a rewards payment. VAN DER KOLK asked, “How much was it in total btw?” and ORTMANN answered, “179300.” VAN DER KOLK commented, “oh not even _that_ bad” “for two months” “with our amount of uploads / revenue.” ORTMANN responded, “yep, it’s really cheap overall,” and VAN DER KOLK replied, “and this is not with any

disqualifications of bad portfolio's." ORTMANN responded, "yep!" and VAN DER KOLK replied, "should really boost growth, let's see."

v. On or about November 8, 2009, via Skype, VAN DER KOLK and ORTMANN discussed a rewards payment of $175,600. VAN DER KOLK said, "it's still very fine in relation to our costs / income / profit if you think about it," because "these users are making it happen." ORTMANN asked VAN DER KOLK about a particular repeat infringer and unindicted conspirator, referred to as LR in Paragraph 53, "is that a big contributor," and VAN DER KOLK responded, "more than 70M video views." ORTMANN replied, "not bad :)" VAN DER KOLK offered, "but we can skip him if you want :)" and ORTMANN replied, "nono :)" "70M video views are worth up to 150K."

Copyright-Infringement Through Embedded Players

107. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to e-mail and Skype conversations, members of the Mega Conspiracy permitted users of the Mega Sites to "embed" videos on third-party websites. Embedded videos were hosted on, that is, reproduced and distributed by, the Mega Sites but could be viewed and accessed from third-party linking sites. In other words, users could view Mega-hosted videos on third-party linking sites, but the Mega Conspiracy maintained direct control over the distribution of the underlying video file.

b. On or about May 20, 2007, via Skype, VAN DER KOLK told ORTMANN, "We have already over a million views on embeded players now everyday." The Mega Conspiracy therefore had the ability to measure Internet traffic generated through the embedded players.

c. On or about May 23, 2007, via Skype, VAN DER KOLK asked ORTMANN, "If we identify a video as copyright, should we remove it only from the site or also make it unavailable in the embeded player?" ORTMANN responded, "that's a very good question." VAN DER KOLK replied, "I think it make sense to keep it available in the embeded players (at least for now)." ORTMANN responded, "I guess so, too," and VAN DER KOLK replied, "okay." Although VAN DER KOLK referred to "remov[ing]" copyright-infringing videos from the Mega Sites, these videos were not actually removed. Instead, these videos were simply marked "private."

d. On or about August 30, 2007, via Skype, ORTMANN asked VAN DER KOLK, "how clean are the existing videos on MRV now, what do you think?" The acronym "MRV" appears to refer to the streaming section of Megarotic.com. VAN DER KOLK responded, "it's pretty clean from the

perspective of child porn / disgusting stuff," "but still lot's of copyright infringements." He added, "if we want to clean things up we have to agree on what has to go and what not," "otherwise I can delete 90% of the content :-)" Then VAN DER KOLK said, "right okay," "so videos longer than 10 minutes on MRV should be set to private or something…" and ORTMANN responded, "yes," but "direct linking / embedding is fine." VAN DER KOLK added, "embedded players are not so harmful." ORTMANN commented, "searchability is dangerous and will kill us," and VAN DER KOLK replied, "yeah."

e. On or about October 4, 2007, via Skype, VAN DER KOLK suggested to ORTMANN, "We should be a bit more careful with deleting popular videos from MRV in my opinion," "since that is profitable." ORTMANN responded, "so far, all case I have seen were MV," "but you're right, a popular MRV video should be mirrored to other servers rather than deleted :)" VAN DER KOLK replied, "yeah those are the long full dvd rips in embeded players, we really needed this feature," and ORTMANN agreed, "yes, it was overdue."

f. On or about October 7, 2007, via Skype, VAN DER KOLK said to ORTMANN, "Maybe we should automatically delete videos on Megavideo that are longer than 30 minutes and have more than XXX views or something because I still see so much piracy that is being embedded." VAN DER KOLK then asked, "What kind of videos are legit and longer than 30 minutes and views more than XXX times…" ORTMANN responded, "what we can indeed do is put them into 'temporarily not available' state and priority-audit them" and "anything that's legit will then be unblocked permanently, the rest will go to deleted." VAN DER KOLK responded, "yeah, but 99.999% will be deleted then." Based on a preliminary review of the Mega databases and source code, as of January 19, 2012, it does not appear that the Mega Conspiracy implemented a copyright screening feature for videos longer than 30 minutes based on the number of views.

g. On or about April 15, 2008, via Skype, VAN DER KOLK told ORTMANN, "almost 18.000.000 video views on MRV per day," "and also a wopping 6.000.000 on MV now." ORTMANN responded, "amazing" and "wow." VAN DER KOLK added, "MV had nice growth during the past 2 months," "probably piracy in embedded players" — "50.000 daily clicks to partypoker from the ads in the embedded players of MV." ORTMANN responded, "that's a massive asset," and VAN DER KOLK replied, "yes," "piracy or not :)" The website PartyPoker.com provided online gambling services.

h. On or about May 27, 2008, via Skype, VAN DER KOLK told ORTMANN, "those embedded players are responsable for almost 10.000.000 video views per day so they must be loaded many many

times…" ORTMANN added, "and they are loaded by tons of different users."

i. On or about July 12, 2008, via Skype, ORTMANN told VAN DER KOLK, "I am playing 'Sex and the City' on kino.to in our regular player and have to admit – mencoder is a good tool :)" VAN DER KOLK responded, "okay very good :)" "Sex and the City" is a copyrighted television series that aired on the premium channel Home Box Office. The website kino.to was a third-party linking site. And MEncoder is a third-party video encoding and decoding software.

j. On or about October 29, 2008, via Skype, VAN DER KOLK told ORTMANN, "the users that are valuable to MRV are the ones that drive traffic to us," "the ones that have big sites and use our embedded players." ORTMANN responded, "right." The acronym "MRV" refers to the video streaming portion of Megarotic.com.

k. By November of 2008, premium members had the ability to download — not just view — copyright-infringing videos through embedded players. On or about November 9, 2008, via Skype, VAN DER KOLK told ORTMANN, "so premium users can also download from embedded players," which is an "important feature to become the RS of online video I'd say :)" In this context, the acronym "RS" appears to refer to Rapidshare.com.

l. On or about November 15, 2008, via Skype, ORTMANN asked VAN DER KOLK, "do you have a public link with MRV embedded videos?" VAN DER KOLK responded by sending a link to the third-party linking site http://megaroticvideo.blogspot.com, which included embedded videos that were hosted on the Mega Sites but were available for users to watch on the third-party linking site.

m. On or about July 17, 2009, via Skype, ORTMANN sent VAN DER KOLK the following e-mail from a Mega user:

> we still have this once in a while (but very rarely):
>
> From Buyer: [NAME REDACTED] on 16/07/2009 07:18 PDT
>
> Yes, however, I was watching an episode of an old tv show, when a message popped up saying i had watched 74 minutes and had to wait 54 minutes before watching more of the episode. The message said I could buy a membership to watch unlimited video without a time limit; however, buying the membership did not allow me to watch the video without a time limit.

VAN DER KOLK responded to ORTMANN with the following:

I have this template reply for these cases:

Dear user,

Were you watching in the embedded player through a third party website? Your premium membership should also work on third party sites, however shared objects in flash is a requirement. Please use the following site to verify if you have shared objects enabled: [URL LINK REDACTED].

Thank you for using Megavideo!

Sincerely,
Megavideo Support

Repeat Infringer and Unindicted Conspirator "TH"

108. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. Members of the Mega Conspiracy discussed, via Skype, repeat infringer and unindicted conspirator TH, who is identified in Paragraphs 62 and 63.

b. On or about March 10, 2007, via Skype, VAN DER KOLK told ORTMANN, "All redemptions are 100 dollar, except for our famous [TH] which has another 1500 dollar redemption." ORTMANN responded, "okay, that's what I expected… how about their portfolios?" VAN DER KOLK then said, "I'll go through their portfolio's now." And ORTMANN replied, "okay!" Less than five minute later, VAN DER KOLK said, "so far not really any harmful stuff, and lots of old accounts redeemed, like [USERNAME REDACTED], [USERNAME REDACTED], [USERNAME REDACTED]." One of these users was a repeat infringer who uploaded numerous copyright-infringing materials, including copyrighted television programs such as Lost and Prison Break, over 500 of which were subject to copyright infringement takedown notices, and who was still active on January 19, 2012.

c. On or about March 11, 2007, via Skype, DOTCOM asked ORTMANN, in German, "dude, can you give me the stats in connection of which user accounts have the most premium sales?" DOTCOM clarified, "I mean rewards users." DOTCOM then said, "which uploaders have caused the most premium sales with their files." Then DOTCOM stated, "I would like to know how much premium our [TH] has brought!"

d. On or about March 15, 2007, via Skype, DOTCOM asked ORTMANN, in German, "can you tell me how many premium accounts dear [TH] brought us? ORTMANN responded, "the analysis will take approximately 2 hours, I'll work on that right away." The following day, via Skype,

ORTMANN said to DOTCOM, “morning…so far [TH] has provided us: -18 Million Download-Pageviews -112257 USD Premium-Sales to users who have downloaded at least 15 of his files.” DOTCOM responded, “112257????” ORTMANN then said, “yep, those are the global nguyens.” “Nguyen” is a common Vietnamese surname.

e. On about June 17, 2007, via Skype, ORTMANN said to VAN DER KOLK, “[TH] is currently occupying 2.5 terabytes of disk space, btw – 10 times his allowance :)”. VAN DER KOLK responded, “amazing,” “and he’s making good money with that :-)”. ORTMANN then commented, “he is one of our most important uploaders... I don’t regret any of the dollars we send him every month.” VAN DER KOLK replied, “yeah.”

f. On or about June 18, 2007, via Skype, ORTMANN said to VAN DER KOLK, “…the 3000 dollars for [TH] and [VF] are really money well spent.” VAN DER KOLK replied, “yeah that I do believe.”

g. On or about August 31, 2007, via Skype, ORTMANN said to VAN DER KOLK, “we could make 50K/month with [TH’s] uploads alone :)”. ORTMANN then said, “good that I convinced Kim [DOTCOM] not to delete him back when he complained about not having been paid :)”. VAN DER KOLK responded, “yeah I bet,” and “yes definitely.”

h. On or about January 25, 2008, via Skype, VAN DER KOLK told ORTMANN, “the rewards system will only really contribute to our growth if we stop pissing off users” and “so as long as we disqualify users for infringing files it is only counter productive and very costy in my opinion” “because growth is mainly based on infringement anyway :)” Then ORTMANN asked, “what if we modulate our tolerance according to sales triggered? :)” followed by, “(not a very honest thing to do, but economically viable).” VAN DER KOLK replied, “yes, that way we at leats don’t disqualify any valuable users.” Then VAN DER KOLK asked, “but isn’t the amount of sales & amount of reward points per account per month pretty liniar?” and ORTMANN answered, “no,” “some people generate sales, some don’t.” Then ORTMANN said, “[TH] is e.g. just ranked 12 by sales.”

i. On or about March 20, 2008, via Skype, VAN DER KOLK sent ORTMANN a Skype conversation between VAN DER KOLK and DOTCOM, in which DOTCOM said, “i just sent a mail to [TH]. Check if he will make any major changes to his accounts or if his stats are dropping significantly in the next few days.” VAN DER KOLK responded, “alright clear.” Later on March 20, 2008, via Skype, VAN DER KOLK asked ORTMANN, “Do you know what happened with [TH]?” because “He didn’t seem to have uploaded any files in the past three weeks anyway.” VAN DER KOLK then suggested, “He didn’t get that 10.000 USD payment perhaps?” ORTMANN responded, “he got at least one that he

acknowledged." And VAN DER KOLK replied, "damn what waste of money then :)" Then ORTMANN said, "well, he did bring us good sales in the past, but we don't say 'thank you,' we motivate for the future :)" VAN DER KOLK agreed, "exactly."

j. On or about March 28, 2008, via Skype, VAN DER KOLK asked ORTMANN, "so [TH] stopped uploading because of the change of reward points?" ORTMANN responded, "yep," "that's the only real casualty." VAN DER KOLK replied, "oh well, he will soon create another account under a different name and continue to use Megaupload" because "we're still the only one that really pays I think" — "I have seen that often." ORTMANN then commented, "at least he didn't delete all of his files yet."

k. On or about November 21, 2008, via Skype, ORTMANN sent VAN DER KOLK an e-mail written by TH, in which he wrote, "I have not been receiving money for 9 months while I still work hard for Megaupload. I really need money now. Please reply this email as soon as possible to make me comfortable. So that, I continue working for Megaupload at this time." ORTMANN asked VAN DER KOLK, "is he really still uploading/redeeming?!" because "I thought he was gone." VAN DER KOLK responded, "let me check," and ORTMANN replied, "okay, will send him a reply."

Repeat Infringer and Unindicted Conspirator "VK"

109. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the Mega databases, from December of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "VK") maintained a registered account, which at times included premium status, on the Mega Sites.

b. On or about September 13, 2007, via Skype, VAN DER KOLK sent the URL link www.ftp2share.com to ORTMANN and asked, "ever heard of that? You can upload or fetch a file there and then it gets uploaded to 5 big oneclick hosters at the same time (including us)." VAN DER KOLK also said, "tested it and the upload got attached to a premium account." VAN DER KOLK then sent ORTMANN the premium account number for repeat infringer VK, together with the number of uploads associated with that account. Based on VAN DER KOLK's statements, repeat infringer VK created an online service that enabled users to upload a file to the website ftp2share.com, which would then upload the file to multiple "hosters," including the Mega Sites. This type of service would have facilitated the widespread distribution of copyright-infringing works.

c. A preliminary review of files uploaded by VK indicates that, prior to September 13, 2007, VK uploaded for distribution copyright-protected television programs (such as Scrubs and How I Met Your Mother), copyright-protected motion pictures (such as Ratatouille, Alpha Dog, and Ghost Rider), and copyright-protected computer software (such as the operating system Microsoft Windows Vista Ultimate and the game Final Fantasy 9).

d. On or about September 13, 2007, via Skype, ORTMANN asked VAN DER KOLK, "does [VK] ever redeem his points? :)" VAN DER KOLK responded, "yes he does." ORTMANN asked, "how much total so far?" VAN DER KOLK responded, "600 USD" "during the past 2 months." ORTMANN then commented, "there must be a ton of illegal stuff in that account." VAN DER KOLK responded, "with 97.000 files for sure indeed, but I am not that strict with single 100 USD redemptions, especially not from such huge accounts."

e. In total, the Mega Conspiracy received at least 1,100 takedown requests for URL links to infringing materials created by VK through uploads of copyright-infringing content to the Mega Sites.

f. Despite having received hundreds of takedown requests, the Mega Conspiracy never purposefully and completely blocked access to the infringing content uploaded by VK. Rather than permanently terminating VK's access to the Mega Sites upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to VK. As of January 19, 2012, VK's account was still active on the Mega Sites.

Repeat Infringer and Unindicted Conspirator "TE"

110. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from August of 2006 through December 2010, a particular repeat infringer and unindicted conspirator (herein referred to as "TE") maintained several registered accounts, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 275 takedown requests for URL links to infringing materials created by TE through uploads of copyright-infringing content to the Mega Sites. These links generated more than 8 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received the more than 275 takedown requests, the Mega Conspiracy never purposefully and completely blocked access to the infringing content

uploaded by TE. A preliminary review of files uploaded by TE indicates that this user uploaded for distribution copyright-protected written works with titles such as Beginning Programming for Dummies, 3rd Edition, and Wireless Home Networking for Dummies; and copyright-protected titles such as Sports Illustrated Swimsuit 2007: Ana Beatriz Barro, Sports Illustrated Swimsuit 2008: Bar Rafaeli, Hot Danica Patrick SI Swimsuit Photoshoot, and Hooters International Swimsuit Pageant. Rather than permanently terminating TE's access to the Mega Sites upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to TE. For example, on or about July 30, 2008, the Mega Conspiracy paid $1,500 to TE as part of the Uploader Rewards program. Then between July 30, 2008, and September 9, 2008, TE uploaded more than 222 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 156 takedown requests for URL links to infringing content created using these accounts. Even after receiving these takedown requests, the Mega Conspiracy paid TE an additional $1,700 on September 9, 2008, and continued to pay TE another $1,600 through October of 2008. In total, between August of 2007 and October of 2008, the Mega Conspiracy made 28 separate payments to TE totaling over $49,900. This evidence shows that despite receiving more than 275 notices of copyright infringement associated with the conduct of TE, the Mega Conspiracy chose to pay TE on at least 28 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 8 million site visits and infringements coming as a result of financial incentives made directly to TE.

c. Prior to TE's first rewards payment ($100 on or about August 8, 2007), he created for distribution at least 36 URL links to copyright-infringing materials that were subject to copyright takedown notices.

d. Between TE's first and second reward payments ($100 on or about August 8, 2007 and $500 on or about September 3, 2007), he created at least 6 URL links to copyright-infringing materials that were subject to copyright takedown notices.

e. Between TE's second and third reward payments ($500 on or about September 3, 2007 and $100 on or about September 18, 2007), he created at least 12 URL links to copyright-infringing materials that were subject to copyright takedown notices.

f. Between TE's third and fourth reward payments ($100 on or about September 18, 2007 and $100 on or about October 10, 2007), he created at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

g. Accounts belonging to TE were repeatedly suspended for violating Megaupload's Terms of Service regarding copyright infringement. Despite these suspensions, TE's accounts were reactivated by members of the Mega Conspiracy. For example, on or about September 9, 2007, VAN DER KOLK e-mailed TE and stated, "we're not paying out any rewards to users that upload copyright infringing material." On or about September 18, 2007, VAN DER KOLK informed TE by e-mail that his account was suspended again on September 17, 2007, because Megarotic's rewards desk "identified a number of uploads that may infringe on the intellectual property rights of third parties." On or about October 6, 2007, however, DOTCOM forwarded ORTMANN an e-mail from TE indicating that TE's account had been reinstated. The following day, October 7, 2007, ORTMANN e-mailed TE, "We just got off the phone with Megarotic Support, and they advised us of your longstanding history of violating their terms of service. They advised us to keep your account closed. Please confirm that you are willing to respect Megarotic's rules from now on, and we'll talk to them again and try to convince them." That same day, TE responded that he was "more than willing to respect the rules and TOS of everyone involved!" ORTMANN responded the following day, "We just convinced Megarotic Support to actually unblock your account. However, they'll be having an eye on you from now on, and any further violation will result in permanent suspension of your account." Despite that warning, after October 7, 2007, TE uploaded more than 200 URL links to files that were the subject of copyright-infringement takedown requests.

h. On or about October 7, 2007, via Skype, ORTMANN asked VAN DER KOLK, regarding TE, "has he uploaded very, very bad stuff, or should I write him a merciful e-mail and unblock him?" VAN DER KOLK responded, "yeah that's a known infringer, he was just uploading adult stuff on MV and lots of copyrighted stuff to MRV and also inappropriate stuff.. But yeah he can be reactivated again." The acronym "MV" refers to Megavideo.com and "MRV" refers to Megarotic.com. ORTMANN then said, "he has been begging for a few weeks already," and, "let's give him one more chance and then kill him off for good."

i. Between TE's fourth and fifth reward payments ($100 on or about October 10, 2007 and $700 on or about October 24, 2007), he created at least 4 URL links to copyright-infringing materials that were subject to copyright takedown notices.

j. Between TE's fifth and sixth reward payments ($700 on or about October 24, 2007 and $1,500 on or about November 1, 2007), he created at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

k. Between TE's sixth and seventh reward payments ($1,500 on or about November 1, 2007 and $1,500 on or about November 8, 2007), he created

at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

l. On or about November 16, 2007, via Skype, VAN DER KOLK said to ORTMANN, “ten 1500 redemptions,” to which ORTMANN responded, “damn.” VAN DER KOLK then said, “two from the disabled [TE] guy,” and ORTMANN commented, “time for some restrictions.” VAN DER KOLK responded, “yes,” “we can not afford this,” “wasting nice profit,” and ORTMANN replied, “yep.”

m. On or about November 16, 2007, via Skype, VAN DER KOLK asked ORTMANN, “Are we really going to pay this [TE] guy for example?” ORTMANN asked, “he had illegal stuff in the past, right?” VAN DER KOLK replied, “yes he did.” ORTMANN stated, “I would say that we pay him $1500 … his content _is_ valuable contribution… tell him that the other redemption was still voided by his shady past or something.” ORTMANN then commented, “he will be happy with $1500.” VAN DER KOLK replied, “alright fine with me!”

n. Between TE’s seventh and eighth reward payments ($1,500 on or about November 8, 2007 and $1,500 on or about November 18, 2007), he created at least 3 URL links to copyright-infringing materials that were subject to copyright takedown notices.

o. On or about November 28, 2007, via Skype, VAN DER KOLK asked ORTMANN, “Did you see all those e-mails from [TE] btw?” ORTMANN responded, “yes… send him a nice reply that the auditing team determined that of the first $1500 redemption, $178 were legitimate.” VAN DER KOLK responded, “it’s gonna be a nightmare for support if we’re really gonna be very strict…”

p. On or about December 1, 2007, via Skype, VAN DER KOLK told ORTMANN, “damn [TE] already has new big redemptions outstanding, this is gonna be headache :(“ He also said, “2000$, plus the 178$ we promised him.” ORTMANN responded, “okay…”

q. On or about December 2, 2007, TE received his ninth reward payment of $2,178.

r. Between TE’s ninth and tenth reward payments ($2,178 on or about December 2, 2007 and $3,000 on or about December 19, 2007), he created at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

s. Between TE’s tenth and eleventh reward payments ($3,000 on or about December 19, 2007 and $4,500 on or about January 8, 2008), he created at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

t. Between TE's eleventh and twelfth reward payments ($4,500 on or about January 8, 2008 and $3,000 on or about January 27, 2008), he created at least 2 URL links to copyright-infringing materials that were subject to copyright takedown notices.

u. On or about January 27, 2008, VAN DER KOLK sent an e-mail to ORTMANN entitled "Sales stats." In the attached reward payment file, repeat infringer TE was among those listed as being entitled to a payment of $1,500.

v. Between TE's twelfth and thirteenth reward payments ($3,000 on or about January 27, 2008 and $3,000 on or about February 11, 2008), he created at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

w. On or about February 22, 2008, via Skype, VAN DER KOLK said to ORTMANN, "Damn we just had a 10.000 dollar redemption from our friend [TE]…" ORTMANN responded, "damn…." And VAN DER KOLK replied, "We should just come up with some story and pay him half or something, it's not that he has a big site and is sending us huge traffic." ORTMANN then commented, "hmm – not that easy, since he was basically under supervision all the time," and VAN DER KOLK responded, "Yep that's true."

x. On or about March 3, 2008, TE received his fourteenth reward payment of $10,000.

y. On or about March 15, 2008, TE received his fifteenth reward payment of $1,500.

z. Between TE's fifteenth and sixteenth reward payments ($1,500 on or about March 15, 2008 and $1,500 on or about March 31, 2008), he created at least 4 URL links to copyright-infringing materials that were subject to copyright takedown notices.

aa. Between TE's sixteenth and seventeenth reward payments ($1,500 on or about March 31, 2008 and $1,500 on or about April 15, 2008), he created at least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

bb. Between TE's seventeenth and eighteenth reward payments ($1,500 on or about April 15, 2008 and $1,500 on or about April 27, 2008), he created at least 2 URL links to copyright-infringing materials that were subject to copyright takedown notices.

cc. Between TE's eighteenth and nineteenth reward payments ($1,500 on or about April 27, 2008 and $1,500 on or about May 20, 2008), he created at

least 1 URL link to copyright-infringing material that was subject to a copyright takedown notice.

dd. For roughly two years, between May of 2008 and May of 2010, the Mega Conspiracy maintained a "white list" of users. The Mega Conspiracy permitted users on the white list to upload files without subjecting those files to size limitations or review by the auditing team. On or about May 21, 2008, via Skype, VAN DER KOLK said to ORTMANN, "tomorrow I will also implement a white-list for trusted users so that their uploads become available instantly." TE was added to the "white list."

ee. Between TE's nineteenth and twentieth reward payments ($1,500 on or about May 20, 2008 and $3,000 on or about June 9, 2008), he created at least 5 URL links to copyright-infringing materials that were subject to copyright takedown notices.

ff. On or about June 9, 2008, via Skype, ORTMANN and VAN DER KOLK discussed Uploader Rewards payments, and ORTMANN said, "but [TE] still got 3ik :)" VAN DER KOLK commented, "yeah I know, but he's also uploading full time," and ORTMANN said, "yeah, that's fine." VAN DER KOLK added, "he has 5489 videos now," and ORTMANN commented, "wow."

gg. On or about June 12, 2008, VAN DER KOLK e-mailed TE and asked, "Why are you still cutting your videos in parts while we have finally implemented a white list for you so that you can post full videos? You have to stop this immediately or we will remove you from the white list." Users were "cutting" videos into parts to gain additional points through the Uploader Rewards program. Also on or about June 12, 2008, TE sent an e-mail entitled "white list" to account@megarotic.com. In the e-mail, TE wrote:

> I know you don't want me to split up video's, but what about video's that are 110mb. I know, just upload them, you don't mind, do you! Well I do, because I'm doing this for the income and you know it. Porn doesn't do a damn thing for me at my age.
>
> I'm trying to co-operate, but I didn't appreciate with being threatened with being removed from the white list if I split up video's anymore. If you want to take me off the white list, so be it.
>
> We both know that I am the largest uploader you have, and have produced the highest view count for you. If you want me to quit, just say so! My wife would wants me to

also. It might take me forever to delete all “my” video’s, but I would.

hh. Between TE’s twentieth and twenty-first reward payments ($3,000 on or about June 9, 2008 and $1,500 on or about June 26, 2008), he created at least 10 URL links to copyright-infringing materials that were subject to copyright takedown notices.

ii. On or about June 24, 2008, via Skype, VAN DER KOLK sent ORTMANN an e-mail from TE, in which TE alerted the Mega Conspiracy that he had more than 100 million video views. VAN DER KOLK commented, “what a guy :)” and ORTMANN, “wow :)”

jj. On or about June 25, 2008, via Skype, ORTMANN asked VAN DER KOLK, “is [TE] using Mega Manager to upload?” VAN DER KOLK responded, “checking,” then “[TE] is indeed using Mega Manager to upload and has the auditor bypass.”

kk. Between TE’s twenty-first and twenty-second reward payments ($1,500 on or about June 26, 2008 and $1,500 on or about July 14, 2008), he created at least 11 URL links to copyright-infringing materials that were subject to copyright takedown notices.

ll. Between TE’s twenty-second and twenty-third reward payments ($1,500 on or about July 14, 2008 and $1,500 on or about July 30, 2008), he created at least 4 URL links to copyright-infringing materials that were subject to copyright takedown notices.

mm. On or about July 30, 2008, via Skype, ORTMANN told VAN DER KOLK, “damn, [TE] is going crazy with his uploads :)” He added, “good :) I hope to be able to send the rewards batch tomorrow morning.” VAN DER KOLK added, “All video reward points are now always being slidered, just some old MRV participants have factors 0.3 / 0.2 configured by default, other users eventually get factor 0.1.” ORTMANN commented, “good concept!” and VAN DER KOLK added, “money saver :)” “and almost no complaints.” Then ORTMANN said, “excellent indeed.”

nn. Between TE’s twenty-third and twenty-fourth reward payments ($1,500 on or about July 14, 2008 and $100 on or about September 9, 2008), he created at least 156 URL links to copyright-infringing materials that were subject to copyright takedown notices.

oo. It appears that TE continued to upload copyright-infringing content while on the “white list.” On or about August 28, 2008, for example, another user of the Mega Sites e-mailed support@megavideo.com and stated, “I have seen a white list member on your site posting copy-right materials.” This user stated that an account name belonging to TE had posted a video that appeared to be copyright infringing. The Mega databases indicate that

as of January 19, 2012, the video mentioned by the user as copyright-infringing was never flagged for deletion by any of the members of the Mega Conspiracy, and that the video remained accessible on the Mega Sites.

pp. On or about August 23, 2008, via Skype, ORTMANN sent VAN DER KOLK an e-mail sent from TE's wife. In the e-mail, TE's wife said, "I signed up so that I could help my husband, and try to relieve some of the stress that has been on him since his heart surgery 2 weeks ago. ORTMANN asked VAN DER KOLK, "can you slider her and give her whitelist status? :)" VAN DER KOLK responded, "yes, she will be slidered automatically the more points she makes, yes will give her the whitelist status." He added, "amazing family."

qq. Between TE's twenty-sixth and twenty-seventh reward payments ($100 on or about September 9, 2008 and $1,500 on or about October 14, 2008), he created at least 15 URL links to copyright-infringing materials that were subject to copyright takedown notices.

rr. On or about September 16, 2008, via Skype, ORTMANN commented to VAN DER KOLK, "eek, [TE] is now putting a logo into his vids, and a pretty big black bar." VAN DER KOLK responded, "ah thats lame."

ss. On or about September 22, 2008, TE sent an e-mail entitled "Delete Buttons" to support@megarotic.com. In the e-mail, TE stated:

> I would like to know why on my video pages the buttons under each video is labeled undefined? I would like to go thru my video's and delete the older video's that are not producing reward points. As stated in the TOS I can delete anything I uploaded.
>
> Due to the extremely poor return on video views (last 7 days 1 RP for 15 views) when I have over 9000 video's uploaded, I am seriously considering quiting. I'am putting in on average 8 to 10 solid hours a day downloading, editing and preparing video's for uploading. With the current and non reliable points system, its not viable now for a steady income. And yes I did make a good bit of money, but I earned it under the program you set up.

The acronym "RP" refers to "Reward Point." On or about the following day, VAN DER KOLK wrote the following response: "That's a strange phenomenon, and we'll investigate that. It certainly has nothing to do with restricting you from deleting your videos."

tt. On or about October 14, 2008, via Skype, VAN DER KOLK sent ORTMANN an e-mail sent by TE, which stated, in part: "Wife and I need

to go up to West Virginia immediately, but with the cost of the trip I need to know if I am getting paid today." He also wrote in the e-mail, "If I know that it will be in paypal I can access it with my paypal debit card." VAN DER KOLK asked ORTMANN, "Did we already pay the rewards?" and ORTMANN responded, "will pay right now (sorry for the delay)." Less than thirty minutes later, VAN DER KOLK sent ORTMANN a follow-up e-mail from TE, which stated: "Thank you!!!!!!!!!! I appreciate this and hopefully will be back home and uploading fri or sat."

uu. The Mega databases indicate that TE's account was deactivated in 2008 for non-copyrighted-related reasons. On or about October 28, 2008, via Skype, VAN DER KOLK said to ORTMANN that TE "has declared the war on MRV already :)" because TE had "opened his own tube site, and started deleting his videos." It appears that TE was deleting his videos that had been uploaded to the Mega Sites. VAN DER KOLK then said, "so I banned him." Despite the deactivation, files that had been uploaded by TE continued to be distributed by members of the Mega Conspiracy for profit, without TE's consent. On or about August 14, 2008, DOTCOM forwarded an e-mail to VAN DER KOLK that had originally been sent by TE. In TE's original e-mail, TE stated that he planned to discontinue uploading to the Mega Sites, and that he wanted to have the right to delete all of the videos that he had stored on Mega's servers. In another e-mail sent on or about August 14, 2008, entitled "I want access to my videos!", TE stated that according to Megaupload's Terms of Service, uploaded videos belong to whoever uploaded them, not to Megaupload. DOTCOM forwarded the e-mail to VAN DER KOLK and stated, "Do not turn this idiots account back on. And don't give him access to his videos." On or about December 13, 2008, TE e-mailed account@megaporn.com, stating that a video he had uploaded to the Mega Sites on November 7, 2007, was still available to the public, despite the fact that TE's account was deactivated.

vv. On or about October 29, 2008, via Skype, ORTMANN asked VAN DER KOLK, "what is a gallery dump? :)" VAN DER KOLK responded, "gallery dump is a forum where a lot of MRV users are posting," "[TE] is making war on MRV there for example." ORTMANN replied, "ah, I see," and asked, "is the reduced number of new MRV subscriptions related to [TE]'s war?" to which VAN DER KOLK answered, "I have no idea, I doubt it."

Repeat Infringer and Unindicted Conspirator "AJ"

111. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from December of 2007 through January of 2012, a particular repeat infringer and unindicted

conspirator (herein referred to as “AJ”) maintained a registered account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 890 takedown requests for URL links to infringing materials created by AJ through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 6 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these hundreds of takedown requests, the Mega Conspiracy never terminated AJ and never purposefully and completely blocked access to the infringing content. From January of 2009 through August of 2011, a preliminary review indicates that AJ uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted motion pictures, such as Avatar, Iron Man 2, Clash of the Titans, 2 Fast 2 Furious, and 3 Idiots. Rather than terminating AJ upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to AJ. For example, on or about October 8, 2009, the Mega Conspiracy paid $500 to AJ as part of the Uploader Rewards program. Between October 8, 2009, and April 26, 2010, AJ uploaded more than 940 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 340 takedown requests for URL links to infringing content created by AJ. Even after receiving these hundreds of additional takedown requests, the Mega Conspiracy paid AJ an additional $1,500 on April 26, 2010. Between September of 2009 and April of 2011, the Mega Conspiracy made at least 9 reward payments to AJ for a total of $2,700. This evidence shows that despite receiving more than 890 notices of copyright infringement associated with the conduct of AJ, including requests that were received and processed manually by VAN DER KOLK, the Mega Conspiracy chose to pay AJ on at least 9 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 6 million site visits and infringements coming as a result of financial incentives made directly to AJ.

c. On or about September 17, 2009, VAN DER KOLK sent an e-mail entitled “rewards payment” to ORTMANN. In the e-mail, VAN DER KOLK wrote, “Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]” In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

d. On or about October 7, 2009, VAN DER KOLK sent an e-mail entitled “rewards payment” to ORTMANN. In the e-mail, VAN DER KOLK wrote, “Hello Mathias, Hereby another rewards payment :) Best regards, Bram van der Kolk[.]” In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $500 payment.

e. Between approximately March 4, 2010, and August 31, 2010, AJ created for distribution at least 30 URL links to copyright-infringing works that were subject to copyright takedown notices, including the copyrighted motion pictures Avatar, Clash of the Titans, The Train, and Tere Bin Laden.

f. On or about April 25, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $1,500 payment.

g. On or about August 8, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

h. On or about August 30, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby another rewards payment file. Should be around 50–60k. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

i. On or about October 5, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment + translators payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, Find attached the reward batch file + translator batch files. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

j. On or about November 5, 2010, VAN DER KOLK sent an e-mail entitled "Rewards + Translators" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, Please see files attached. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

k. On or about December 7, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

l. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer AJ was among those listed as being entitled to a $100 payment.

Repeat Infringer and Unindicted Conspirator "JC"

112. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from November of 2007 through January of 2012, a particular infringer and unindicted conspirator (herein referred to as "JC") maintained an account, which at times included premium status, on the Mega Sites.

b. A preliminary review of the files uploaded by JC indicates that he uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted animated television programs such as Full Metal Alchemist and Dragon Ball Z, and copyrighted motion pictures, such as The Fast And The Furious Tokyo Drift and Lord of War. In total, the Mega Conspiracy received takedown requests for over 5,000 URL links to infringing materials created by JC through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 8.2 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated JC and never purposefully and completely blocked access to the infringing content. Instead, financial records show that between July of 2009 and April of 2011, the Mega Conspiracy made 15 separate payments totaling over $4,700 to JC. For example, on or about September 2, 2009 the Mega Conspiracy made a $1,500 payment to JC as part of the Uploader Rewards program. Between September 2, 2009 and September 18, 2009, JC uploaded for distribution more than 18 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 19 takedown requests for URL links to infringing content created by JC. Even after processing these takedown requests, the Mega Conspiracy paid JC an additional $100 on September 18, 2009, and continued to pay JC through April of 2011. This evidence shows that despite receiving more than 5,000 notices of copyright infringement associated with the conduct of JC, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay JC on at least 15 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 8.2 million site visits and infringements coming as a result of financial incentives made directly to JC.

c. Between approximately February 18, 2008, and August 16, 2008, JC created for distribution at least 690 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the

animated television programs Dragon Ball Z, One Piece, and Samurai Champloo.

d. On or about July 31, 2009, VAN DER KOLK sent an e-mail entitled "FW: rewards payment file" to ORTMANN. In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

e. On or about September 2, 2009, VAN DER KOLK sent an e-mail entitled "FW: Paypal account" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the updated rewards batch payment file. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $1,500.

f. On or about September 18, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

g. On or about October 8, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby another rewards payment :) Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to two separate payments of $100 each.

h. On or about November 9, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hereby the rewards payment file for at least the last 30 days. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $500 and a payment of $100.

i. On or about November 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment for the last 2 weeks+. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

j. On or about December 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hereby the rewards payment. Best regards, Bram van der Kolk[.]"

In the attached reward payment file, repeat infringer JC was among those listed as being entitled to three separate payments of $100 each.

k. On or about March 10, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "This includes 3 translator payments (slightly rounded them up for inconvenience because of the delay), and those 1400 USD for that crazy Indian guy that was loudly complaining (the ones that Kim forwarded). Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

l. Between approximately March 4, 2010, and August 31, 2010, JC created for distribution at least 17 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the animated television programs Case Closed and Black Cat.

m. On or about August 30, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hereby another rewards payment file. Should be around 50-60K. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

n. On or about November 5, 2010, VAN DER KOLK sent an e-mail entitled "Rewards + Translators" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, Please see files attached. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

o. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer JC was among those listed as being entitled to a payment of $100.

Repeat Infringer and Unindicted Conspirator "BD"

113. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from August of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "BD"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 380 takedown requests for URL links to infringing materials created by BD through his uploads of copyright-infringing content to the Mega Sites. Despite having received

these takedown requests, the Mega Conspiracy never terminated BD and never purposefully and completely blocked access to the infringing content. From November of 2007 through January of 2010, a preliminary review indicates that BD uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted motion pictures, such as Lake Placid 2, Balls of Fury, Ocean's Thirteen, and The Warlords. Rather than terminating BD upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy made 3 reward payments to BD for a total of $5,000. This evidence shows that despite receiving more than 388 notices of copyright infringement associated with the conduct of BD, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay BD on at least 3 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 7 million site visits and infringements coming as a result of financial incentives made directly to BD.

c. On or about January 8, 2008, VAN DER KOLK sent an e-mail entitled "Batch payment file" to ORTMANN. In the attached reward payment file, repeat infringer BD was among those listed as being entitled to a payment of $1,500.

d. On or about January 27, 2008, VAN DER KOLK sent an e-mail entitled "RE: Sales stats" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Good morning, Hereby the batch payment file. I really think we should focus on the sales reward points in the new rewards scheme, and introduce the one download per IP per day together with that if we really want to make the rewards program work. Bram[.]"" In the attached reward payment file, repeat infringer BD was among those listed as being entitled to two separate payments of $1,500 each.

e. On or about March 15, 2008, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the attached reward payment file, repeat infringer BD was among those listed as being entitled to a payment of $500.

Repeat Infringer and Unindicted Conspirator "MW"

114. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from July of 2009 through January of 2012, a particular infringer and unindicted conspirator (herein referred to as "MW") maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received takedown requests for at least 1,000 URL links to infringing materials created by MW through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 4 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated MW and never purposefully and completely blocked access to the infringing content. From August 7, 2009 to July 14, 2011, a preliminary review of the files uploaded by MW indicates that he uploaded for distribution a number of copyright-infringing works that were subject to copyright-takedown notices, including infringing copies of copyrighted television series Futurama, My Name is Earl, and Band of Brothers, and copyrighted motion pictures The Good Shepherd, Tropic Thunder, Gamer, and Event Horizon. Rather than terminating MW upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to MW. For example, on or about November 24, 2009, the Mega Conspiracy made a $500 payment to MW as part of the Uploader Rewards program. Between November 24, 2009 and April 8, 2011, MW uploaded for distribution more than 240 URL links to copyright-infringing materials to the Mega Sites, and during that same time period, the Mega Conspiracy processed more than 400 takedown requests for URL links to infringing content created by MW. Even after processing these takedown requests, the Mega Conspiracy paid him an additional $1,500 on April 8, 2011. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 4 million site visits and infringements coming as a result of financial incentives made directly to MW.

c. Between approximately March 4, 2010, and August 31, 2010, user accounts linked to MW created for distribution at least 240 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs It's Always Sunny in Philadelphia, Modern Family, and Arrested Development; and the motion pictures Michael Clayton and Slumdog Millionaire.

d. An account controlled by MW was temporarily suspended only after MW's account was found to be accessing too many links to files on servers controlled by the Mega conspiracy at one time. On or about April 19, 2010, VAN DER KOLK sent an e-mail to MW. In this e-mail, VAN DER KOLK wrote:

> Dear [NAME REDACTED], Your personal Megaupload/Megavideo account was found to be accessing 7 files/videos from 5 different IP addresses at the same time. This indicates that:

- you are using IP anonymizing or "hiding" tools
- your ISP is redirecting you through multiple proxies,
- you are performing concurrent remote file fetching to several hosts,
- you used a link-sharing download tool such as "XunLei" or "QQ Xuanfeng", or
- your account leaked, e.g. through phishing, sniffing or password guessing attacks.

Despite having processed over 700 takedown requests by April 19, 2010, for URL links to infringing content created by MW, on or about April 20, 2010, members of the Mega Conspiracy reactivated MW's account from its suspended status.

Repeat Infringer and Unindicted Conspirator "JI"

115. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from March of 2007 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "JI"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 1,300 takedown requests for URL links to infringing materials created by JI through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 9 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated JI and never purposefully and completely blocked access to the infringing content. From December of 2008 through December of 2011, a preliminary review indicates that JI uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted motion pictures, such as The Smurfs, Transformers 3, Captain America, and The Change-Up. Rather than terminating JI upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to JI. For example, on or about April 29, 2009, the Mega Conspiracy paid $100 to JI as part of the Uploader Rewards program. Between April 29, 2009 and July 31, 2009, JI uploaded more than 590 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 158 takedown requests for URL links to infringing content created by JI. Even after receiving these takedown requests, the Mega Conspiracy paid JI an additional $600 on July 31, 2009. Between April of 2009 and July of 2009, the Mega Conspiracy made 3 reward payments to JI for a total of

$700. This evidence shows that despite receiving more than 1,300 notices of copyright infringement associated with the conduct of JI, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay JI on at least 3 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 9 million site visits and infringements coming as a result of financial incentives made directly to JI.

c. Between approximately March 4, 2010, and August 31, 2010, JI created for distribution at least 6 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the motion pictures Iron Man 2, Alice in Wonderland, and Salt.

d. Between approximately July 23, 2011, and January 19, 2012, JI created for distribution at least 40 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the motion pictures Twilight: Breaking Dawn, Final Destination 5, Bridesmaids, and Killer Elite.

Repeat Infringer and Unindicted Conspirator "MK"

116. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from May of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "MK"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 630 takedown requests for URL links to infringing materials created by MK through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 1.7 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated MK and never purposefully and completely blocked access to the infringing content. From September of 2009 through August of 2011, a preliminary review indicates that MK uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as the Lie to Me, True Blood, and Boardwalk Empire, and copyrighted motion pictures such as Friends with Benefits and Toy Story 3. Rather than terminating MK upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to MK. For example, on or about February 1, 2010, the Mega Conspiracy paid $100 to MK as part of the Uploader Rewards

program. Between February 1, 2010 and May 8, 2010, MK uploaded more than 200 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 70 takedown requests for URL links to infringing content created by MK. Even after receiving these takedown requests, the Mega Conspiracy paid MK an additional $100 on May 8, 2010. Between December of 2009 and December of 2010, the Mega Conspiracy made 4 reward payments to MK for a total of $400. This evidence shows that despite receiving more than 630 notices of copyright infringement associated with the conduct of MK, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay MK on at least 4 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 1.7 million site visits and infringements coming as a result of financial incentives made directly to MK.

c. On or about December 23, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer MK was among those listed as being entitled to a payment of $100.

d. On or about February 1, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer MK was among those listed as being entitled to a payment of $100.

e. On or about May 8, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Find attached a rewards payment for the last +/- 10 days. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer MK was among those listed as being entitled to a payment of $100.

f. Between approximately March 4, 2010, and August 31, 2010, MK created for distribution at least 250 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Covert Affairs, True Blood, Justified, and Cold Case.

g. On or about December 7, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer MK was among those listed as being entitled to a payment of $100.

h. Between on or about July 23, 2011, and January 19, 2012, MK created for distribution at least 3 URL links to copyright-infringing works that were

subject to copyright-takedown notices, including the television program Rizzoli and Isles and the motion picture Friends with Benefits.

Repeat Infringer and Unindicted Conspirator "KR"

117. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from July of 2008 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "KR"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 1,030 takedown requests for URL links to infringing materials created by KR through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 5 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated KR and never purposefully and completely blocked access to the infringing content. From August of 2008 through July of 2011, a preliminary review indicates that KR uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as South Park, The Big Bang Theory, The Ricky Gervais Show, and Bored to Death. Rather than terminating KR upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to KR. For example, on or about October 8, 2009, the Mega Conspiracy paid $100 to KR as part of the Uploader Rewards program. Between October 8, 2009 and November 8, 2009, KR uploaded more than 70 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 50 takedown requests for URL links to infringing content created by KR. Even after receiving these takedown requests, the Mega Conspiracy paid KR an additional $200 on November 8, 2009. Between September of 2008 and April of 2011, the Mega Conspiracy made 17 reward payments to KR for a total of $2,400. This evidence shows that despite receiving more than 1,030 notices of copyright infringement associated with the conduct of KR, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay KR on at least 17 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 5 million site visits and infringements coming as a result of financial incentives made directly to KR.

c. On or about September 26, 2008, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

d. On or about October 14, 2008, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file for the past 19 days. Please let me know the total amount as I'm also curious :) Thank you! Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

e. On or about December 15, 2008, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $500.

f. On or about January 3, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment for the past 17-18 days. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

g. On or about February 4, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, Hereby the rewards payment file. Please let me know the total amount once you've made the payment :) Thanks! Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

h. On or about March 9, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file for the last ~ 40 days. Please let me know the total :) Thanks! Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

i. On or about April 29, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file. It will be quite a substantial amount, but still under 100K I think. Please let me know the

total :) Thanks! Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

j. On or about July 31, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $300.

k. On or about September 18, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

l. On or about October 8, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby another rewards payment :) Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

m. On or about November 9, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file for at least the last 30 days. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $200.

n. On or about December 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

o. On or about February 1, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

p. On or about March 10, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "This includes 3 translator payments (slightly rounded them up for inconvenience because of the delay), and those 1400 USD for that crazy Indian guy that was loudly complaining (the ones that Kim forwarded). Best regards, Bram van der Kolk[.]" In the attached reward payment file,

repeat infringer KR was among those listed as being entitled to a payment of $100.

q. On or about June 21, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment + translation payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached two batchfiles. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

r. Between approximately March 4, 2010, and August 31, 2010, KR created for distribution at least 270 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Burn Notice, True Blood, Breaking Bad, and Nurse Jackie.

s. On or about October 5, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment + translators payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the reward batch file + translator batch files. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

t. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer KR was among those listed as being entitled to a payment of $100.

u. Between approximately July 23, 2011, and January 19, 2012, KR created for distribution at least 7 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Burn Notice, True Blood, Torchwood, and Entourage.

Repeat Infringer and Unindicted Conspirator "RM"

118. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from November of 2007 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "RM"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 1,700 takedown requests for URL links to infringing materials created by RM through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 11.4 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated

RM and never purposefully and completely blocked access to the infringing content. From October of 2008 through September of 2011, a preliminary review indicates that RM uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted animated television programs, such as Fairy Tail, and Mnemosyne and copyrighted television programs, such as The Big Bang Theory, One Tree Hill, and How I Met Your Mother. Rather than terminating RM upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to RM. For example, on or about February 1, 2010, the Mega Conspiracy paid $900 to RM as part of the Uploader Rewards program. Between February 1, 2010 and March 9, 2010, RM uploaded more than 80 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 70 takedown requests for URL links to infringing content created by RM. Even after receiving these takedown requests, the Mega Conspiracy paid RM an additional $1,900 on March 9, 2010. Between October of 2009 and May of 2010, the Mega Conspiracy made 5 reward payments to RM for a total of $3,600. This evidence shows that despite receiving more than 1,700 notices of copyright infringement associated with the conduct of RM, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay RM on at least 5 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 11.4 million site visits and infringements coming as a result of financial incentives made directly to RM.

c. On or about May 27, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby another rewards payment :) Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer RM was among those listed as being entitled to a payment of $100.

d. Between approximately March 4, 2010, and August 31, 2010, RM created for distribution at least 60 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs The New Adventures Of Old Christine, 30 Rock, and Two and a Half Men.

Repeat Infringer and Unindicted Conspirator "KP"

119. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from September of 2009 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "KP"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 6,300 takedown requests for URL links to infringing materials created by KP through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 14.3 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated KP and never purposefully and completely blocked access to the infringing content. From September of 2009 through February of 2010, a preliminary review indicates that KP uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted motion pictures, such as Max Payne, Meet the Fockers, Edge of Darkness, and Ratatouille. Rather than terminating KP upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to KP. For example, on or about December 23, 2009, the Mega Conspiracy paid $1,500 to KP as part of the Uploader Rewards program. Between December 23, 2009 and February 1, 2010, KP uploaded more than 1,570 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 1,020 takedown requests for URL links to infringing content created by KP. Even after receiving these takedown requests, the Mega Conspiracy paid KP an additional $1,500 on February 1, 2010. Between December of 2009 and April of 2011, the Mega Conspiracy made 6 reward payments to KP for a total of $5,000. This evidence shows that despite receiving more than 6,300 notices of copyright infringement associated with the conduct of KP, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay KP on at least 6 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 14.3 million site visits and infringements coming as a result of financial incentives made directly to KP.

c. On or about December 23, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment. Best regards, Bram

van der Kolk[.]" In the attached reward payment file, repeat infringer KP was among those listed as being entitled to a payment of $1,500.

d. On or about February 1, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer KP was among those listed as being entitled to a payment of $1,500.

e. On or about March 9, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "This includes 3 translator payments (slightly rounded them up for inconvenience because of the delay), and those 1400 USD for that crazy Indian guy that was loudly complaining (the ones that Kim forwarded). Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KP was among those listed as being entitled to a payment of $1,500.

f. On or about April 25, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer KP was among those listed as being entitled to a payment of $100.

g. On or about August 30, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby another rewards payment file. Should be around 50-60K. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer KP was among those listed as being entitled to a payment of $300.

h. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer KP was among those listed as being entitled to a payment of $100.

Repeat Infringer and Unindicted Conspirator "TP"

120. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from December of 2007 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "TP"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 3,400 takedown requests for URL links to infringing materials created by TP through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 15.2 million views of copyright-infringing video files on

servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated TP and never purposefully and completely blocked access to the infringing content. From February of 2008 through April of 2011, a preliminary review indicates that TP uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as NCIS: Los Angeles, Nurse Jackie, True Blood, Gossip Girl, and Southland and copyrighted motion pictures, such as Harry Potter The Half Blood Prince and Transformers 2. Rather than terminating TP upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to TP. For example, on or about May 25, 2009, the Mega Conspiracy paid $500 to TP as part of the Uploader Rewards program. Between May 25, 2009 and July 31, 2009, TP uploaded more than 700 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 200 takedown requests for URL links to infringing content created by TP. Even after receiving these takedown requests, the Mega Conspiracy paid TP an additional $500 on July 31, 2009 and continued to pay him through April of 2011. Between April of 2009 and April of 2011, the Mega Conspiracy made 10 reward payments to TP for a total of $5,000. This evidence shows that despite receiving more than 3,400 notices of copyright infringement associated with the conduct of TP, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay TP on at least 10 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 15.2 million site visits and infringements coming as a result of financial incentives made directly to TP.

c. Between approximately February 18, 2008, and August 16, 2008, TP created for distribution at least 570 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs One Tree Hill, Ghost Whisperer, Gossip Girl, and 30 Rock.

d. Between approximately March 4, 2010, and August 31, 2010, TP created for distribution at least 40 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Lost and Psych.

Repeat Infringer and Unindicted Conspirator "DR"

121. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from February of 2007 through January of 2012, a particular repeat infringer and unindicted conspirator, (herein referred to as "DR"), maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 2,500 takedown requests for URL links to infringing materials created by DR through his uploads of copyright-infringing content to the Mega Sites, and these links generated more than 13.7 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated DR and never purposefully and completely blocked access to the infringing content. From June of 2007 through April of 2010, a preliminary review indicates that DR uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted motion pictures, such as The Chronicles of Narnia: Prince Caspian, The Incredible Hulk, The Reader, and Star Trek; infringing copies of the animated television series Bleach, Full Metal Alchemist, and One Piece; and the video game Call of Duty: World at War. Rather than terminating DR upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to DR. For example, on or about May 25, 2009, the Mega Conspiracy paid $300 to DR as part of the Uploader Rewards program. Between May 25, 2009 and July 31, 2009, DR uploaded more than 70 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 110 takedown requests for URL links to infringing content created by DR. Even after receiving these takedown requests, the Mega Conspiracy paid DR an additional $700 on July 31, 2009, and continued to pay him an additional $1,400 through November 5, 2010. Between August of 2008 and November of 2010, the Mega Conspiracy made 29 reward payments to DR for a total of $4,100. This evidence shows that despite receiving more than 2,500 notices of copyright infringement associated with the conduct of DR, including requests that were received and processed manually by defendant VAN DER KOLK, the Mega Conspiracy chose to pay DR on at least 29 separate occasions for his infringement of copyrighted works using the Mega Sites. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 13.7 million site visits and infringements coming as a result of financial incentives made directly to DR.

c. On or about September 11, 2008, DR sent an e-mail entitled "My Suspended Account" to VAN DER KOLK. In the e-mail, DR wrote "I recently saw that my account was suspened for uploading inappropriate files on there.I would like to know if theres any way that I can get back my account and I will see to it that I dont upload any other inappropriate files…. Also I recently collected another 100,000 points and was wondering if I cant get my account back if its possible that you guys convert the points that I do have and send me the money." Later, on or about September 11, 2008, DR sent another e-mail to VAN DER KOLK, titled "RE: My Account got Suspended" stating "I just forgot to sa[y] that on my last email that I also help to generate alot of views on the site and Im know by alot of people and I know this may not mean anything you guys but Just wanted to say that and thanks again." On or about September 16, 2008, VAN DER KOLK replied to DR via e-mail, stating "We decided to give you another chance. Use it!" In response, user DR wrote back to VAN DER KOLK. Asking for clarification about why his account was suspended: "Thank you so much, so what can't I upload. Anime or just certain anime because most people like me because of the anime. And I get the most attention from that." VAN DER KOLK replied by stating "[You can't upload] Anything violating Megavideo's rules, very specifically adult material - that goes to Megarotic instead." Despite processing over 1,800 takedown requests after September 18, 2008 for material uploaded by DR, DR's account remained active through January 2012.

d. On or about November 5, 2008, FINN BATATO sent an e-mail entitled "AW: New registration – [USERNAME REDACTED]" to repeat infringer DR. In the e-mail, BATATO observed that DR had created a new account with Megaclick.com. Later, on or about November 6, 2008, BATATO wrote another e-mail to DR, stating: "Dear customer, Thank you for creating your campaign on Megaclick.com. As soon as we received the payment your campaign on Megaupload.com will go live! Best regards Finn." In this reply, repeat infringer DR appears to have created an advertising campaign on the Mega sites. The title of repeat infringer DR's advertising campaign was listed in BATATO's reply as "2008-11-05 WatchMyAnime."

e. On or about April 29, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file. It will be quite a substantial amount, but still under 100K I think. Please let me know the total :) Thanks! Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer DR was among those listed as being entitled to a payment of $200.

f. On or about July 31, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the attached reward payment

file, repeat infringer DR was among those listed as being entitled to a payment of $700.

g. On or about August 10, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment file. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer DR was among those listed as being entitled to a payment of $100.

h. On or about September 5, 2009, BATATO sent an e-mail entitled "AW: New campaign has been created" to repeat infringer DR, stating: "Dear customer, Thank you for creating your campaign on Megaclick.com. As soon as we received the payment your campaign will go live! Do you prefer Paypal or wire transfer? If you've got any further questions please let me know. Best regards Finn." In this reply, repeat infringer DR appears to have created an advertising campaign on the Mega sites. The title of repeat infringer DR's advertising campaign was listed as "2009-09-04 Animebayocom."

i. On or about September 18, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer DR was among those listed as being entitled to a payment of $100.

j. On or about October 8, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby another rewards payment :) Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer DR was among those listed as being entitled to a payment of $200.

k. On or about November 9, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment file for at least the last 30 days. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer DR was among those listed as being entitled to a payment of $300.

l. On or about December 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Hereby the rewards payment. Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer DR was among those listed as being entitled to a payment of $200.

Repeat Infringer and Unindicted Conspirator "JR"

122. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from September of 2006 through January of 2012, a particular infringer and unindicted conspirator (herein referred to as "JR") maintained an account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received takedown requests for over 390 URL links to infringing materials created by JR through his uploads of copyright-infringing content to the Mega Sites, and these links to infringing content generated more than 3.8 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated JR and never purposefully and completely blocked access to the infringing content. From October 26, 2007 to January 19, 2010, a preliminary review of the files uploaded by JR indicates that he uploaded for distribution a number of copyright-infringing works that were subject to copyright-takedown notices, including infringing copies of copyrighted television series The Simpsons, The Office, and Heroes. Rather than terminating JR upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to JR. For example, on or about April 29, 2009 the Mega Conspiracy made a $2,000 payment to JR as part of the Uploader Rewards program, although even prior to this Rewards payment, the Mega Conspiracy had already processed more than 50 takedown requests for URL links to infringing content created by JR. Even after processing these takedown requests, the Mega Conspiracy continued to pay JR an additional $1,500 on May 25, 2009. The Mega Conspiracy did this to generate advertising and subscriber interest with more than 3.8 million site visits and infringements coming as a result of financial incentives made directly to JR.

c. On or about April 29, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, Hereby the rewards payment file. It will be quite substantial amount, but still under 100K I think. Please let me know the total :) Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JR was among those listed as being entitled to a $2,000 payment.

d. On or about May 25, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hi Mathias, Hereby the rewards payment file from the last month.

Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer JR was among those listed as being entitled to a $1,500 payment.

Repeat Infringer and Unindicted Conspirator "AT"

123. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about January 25, 2008, via Skype, ORTMANN told VAN DER KOLK, "user [AT] has sold 782 premium accounts since Dec 09," commenting "not even a Vietnamese." VAN DER KOLK responded, "wow!" ORTMANN then said, "he has 2 million reward points, used 1.3million." ORTMANN then listed the top four registered users who caused other users to purchase premium accounts. A few minutes later, ORTMANN told DOTCOM, in German, "[AT] in 1st place with 782 Sales." During the same conversation, DOTCOM pointed out that the 3rd place user "has 2.3 million reward points and 4,000 files" and then asked, "did we not pay him?" ORTMANN responded, "he is #3 in top sales." DOTCOM stated that "he wants his money" and directed ORTMANN, "by all means pay [him]."

Repeat Infringer and Unindicted Conspirator "CU"

124. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the databases, from December of 2008 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "CU") maintained at least eight separate accounts, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 60,285 takedown requests for URL links to infringing materials created by these eight accounts through uploads of copyright-infringing content to the Mega Sites. These links generated more than 15.4 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these takedown requests, the Mega Conspiracy never terminated CU or the eight accounts associated with CU, and never purposefully and completely blocked access to the infringing content. A preliminary review of files uploaded by these accounts indicates that these conspirators uploaded for distribution the copyright-protected television series Family Guy, CSI: Miami, Naruto Shippuuden, Law and Order, 24, Nurse Jackie, Bones; the copyright-protected video game Crysis, Tiger Woods PGA Tour 11, Tom Clancy's Rainbow Six Vegas 2: Reloaded, and copyright-protected motion pictures Toy Story 3, State of Play, and Twilight: New Moon. Rather than terminating CU or accounts associated

with CU upon receiving notice of these repeated infringements from representatives of the copyright owners, financial records show that the Mega Conspiracy continued to make reward payments to CU. For example, on or about February 1, 2010, the Mega Conspiracy paid $3,800 to CU as part of the Uploader Rewards program. Between February 1 2010 and March 9, 2010, a user or multiple users with accounts linked to CU uploaded more than 1,920 URL links to copyright-infringing materials to the Mega Sites, and during that same period, the Mega Conspiracy processed more than 1,736 takedown requests for URL links to infringing content created using these accounts. Even after receiving these takedown requests, the Mega Conspiracy paid CU an additional $1,700 on March 9, 2010, and continued to pay CU another $1,100 through 2011. In total, between July of 2009 and May of 2011, the Mega Conspiracy made 73 separate payments totaling over $17,800 to CU.

c. On or about July 31, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled to a payment of $1,000.

d. On or about September 2, 2009, VAN DER KOLK sent two separate e-mail messages to ORTMANN. In the documents attached to these e-mails, repeat infringer CU was among those listed as being entitled to payments totaling $1,000.

e. On or about October 7, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled to payments totaling $2,700.

f. On or about November 8, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment file" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled to payments totaling $3,000.

g. On or about November 24, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled to payments totaling $800.

h. On or about December 23, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment file" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled to payments totaling $900.

i. On or about February 1, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file,

repeat infringer CU was among those listed as being entitled to payments totaling $3,800.

j. Between on or about March 4, 2010, and August 31, 2010, user accounts linked to CU created for distribution at least 11,353 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the television programs Bones, Californication, NCIS: Los Angeles, and the video game Sniper: Ghost Warrior.

k. On or about April 6, 2010, VAN DER KOLK sent an e-mail entitled "rewards & translator payments" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled to a payment of $200.

l. On or about April 25, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled a payment of $400.

m. On or about May 27, 2010, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled a payment of $100.

n. On or about December 7, 2010, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled a payment of $100.

o. On or about January 3, 2011, VAN DER KOLK sent an e-mail entitled "6 payment files" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Please find attached six payment files. Thanks for paying asap! Best regards, Bram van der Kolk[.]" In the attached reward payment file, repeat infringer CU was among those listed as being entitled to a payment of $100.

p. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file, repeat infringer CU was among those listed as being entitled a payment of $200.

q. On or about May 10, 2011, VAN DER KOLK sent an e-mail entitled "rewards payment + blog translator payments" to ORTMANN. In the e-mail, VAN DER KOLK wrote, "Hello Mathias, Find attached two payment files. Thanks! Best regards, Bram van der Kolk[.]" In the attached reward payment files, repeat infringer CU was among those listed as being entitled a payment of $100.

r. Between approximately July 23, 2011, and January 19, 2012, user accounts linked to CU created for distribution at least 440 URL links to copyright-infringing works that were subject to copyright-takedown notices, including the animated television programs Criminal Minds, Royal Pains, Game of Thrones, Nikita, True Blood, and the video game Call of Duty: Modern Warfare 3.

Repeat Infringer and Unindicted Conspirator "KX"

125. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the Mega databases, from December of 2007 through January of 2011, a particular repeat infringer and unindicted conspirator (herein referred to as "KX") maintained a registered account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 65 takedown requests for URL links to infringing materials created by KX through uploads of copyright-infringing content to the Mega Sites. These links generated more than 480,000 views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these dozens of takedown requests, the Mega Conspiracy never terminated KX and never purposefully and completely blocked access to the infringing content. A preliminary review of files uploaded by KX shows that from March of 2008 through January of 2010, KX uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as Smallville, 90210, Terminator: The Sarah Connor Chronicles, and The Big Bang Theory.

c. On or about April 15, 2008, a representative of Warner Brothers Entertainment ("Warner Brothers") sent an e-mail to dmca@megavideo.com and identified KX as having repeatedly uploaded to the Mega Sites copyright-infringing materials owned by Warner Brothers. Despite being notified by the copyright owner that KX was a repeat infringer, the Mega Conspiracy never terminated KX's account. And a preliminary review of the Mega databases shows that KX continued to upload copyright-infringing materials, and that the Mega Conspiracy received at least 60 takedown requests for URL links to infringing materials uploaded by KX after April 15, 2008.

d. Between approximately February 18, 2008, and August 16, 2008, KX created for distribution at least 14 URL links to copyright-infringing works that were subject to copyright takedown notices.

Repeat Infringer and Unindicted Conspirator "ZS"

126. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the Mega databases, from September of 2007 through December of 2011, a particular repeat infringer and unindicted conspirator (herein referred to as "ZS") maintained a registered account, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 190 takedown requests for URL links to infringing materials created by ZS through uploads of copyright-infringing content to the Mega Sites. These links generated more than 950,000 views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these dozens of takedown requests, the Mega Conspiracy never terminated ZS and never purposefully and completely blocked access to the infringing content. A preliminary review of files uploaded by ZS shows that from March of 2008 through February of 2009, ZS uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as Smallville, Lost, The Simpsons, Prison Break, and House. More than 99% of user views of files uploaded by ZS to Megavideo.com were views of copyright-infringing works.

c. On or about April 28, 2008, a representative of Warner Brothers sent an e-mail to dmca@megavideo.com and identified ZS as having repeatedly uploaded to the Mega Sites copyright-infringing materials owned by Warner Brothers. Despite being notified by the copyright owner that ZS was a repeat infringer, the Mega Conspiracy never terminated ZS's account. And a preliminary review of the Mega databases shows that ZS continued to upload copyright-infringing materials, and that the Mega Conspiracy received at least 190 takedown requests for URL links to infringing materials uploaded by ZS after April 28, 2008.

d. Between approximately February 18, 2008, and August 16, 2008, ZS created for distribution at least 16 URL links to copyright-infringing works that were subject to copyright takedown notices.

Repeat Infringer and Unindicted Conspirator "HO"

127. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the Mega databases, from September of 2006 through January of 2012, a particular repeat infringer and unindicted conspirator (herein referred to as "HO") maintained several

registered accounts, which at times included premium status, on the Mega Sites.

b. In total, the Mega Conspiracy received at least 3,000 takedown requests for URL links to infringing materials created by HO through uploads of copyright-infringing content to the Mega Sites. These links generated more than 11.5 million views of copyright-infringing video files on servers directly controlled by the Mega Conspiracy. Despite having received these dozens of takedown requests, the Mega Conspiracy never terminated HO and never purposefully and completely blocked access to the infringing content. A preliminary review of files uploaded by HO shows that from May of 2007 through September of 2011, HO uploaded for distribution a number of copyright-infringing works, including infringing copies of copyrighted television programs, such as Dexter, Prison Break, V, Ghost Whisperer, Heroes, and The Office.

c. On or about April 28, 2008, a representative of Warner Brothers sent an e-mail to dmca@megavideo.com and identified HO as having repeatedly uploaded to the Mega Sites copyright-infringing materials owned by Warner Brothers. Despite being notified by the copyright owner that HO was a repeat infringer, the Mega Conspiracy never terminated HO's account. And a preliminary review of the Mega databases shows that HO continued to upload copyright-infringing materials, and that the Mega Conspiracy received at least 2,500 takedown requests for URL links to infringing materials uploaded by HO after April 28, 2008.

d. Financial records show that the Mega Conspiracy continued to make reward payments to HO even after receiving Warner Brothers' April 28, 2008 notification that HO was a repeat infringer. For example, on or about July 31, 2009, the Mega Conspiracy paid HO $1,600 as part of the Uploader Rewards program. Between approximately August 1, 2009, and October 8, 2009, HO uploaded more than 350 URL links to copyright-infringing materials to the Mega Sites. Even after receiving these hundreds of takedown requests, the Mega Conspiracy paid HO an additional $100 on October 8, 2009, and continued to pay HO another $1,400 through April of 2011. In total, between January of 2009 and April of 2011, the Mega Conspiracy made 17 separate payments to HO totaling over $3,600.

1. On or about January 3, 2009, VAN DER KOLK sent an e-mail entitled "Rewards payment" to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

2. On or about March 9, 2009, VAN DER KOLK sent an e-mail entitled "rewards payment" to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

3. On or about April 28, 2009, VAN DER KOLK sent an e-mail entitled “Rewards payment file” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to two payments totaling $200.

4. On or about May 25, 2009, VAN DER KOLK sent an e-mail entitled “Rewards payment file” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

5. On or about July 31, 2009, VAN DER KOLK sent an e-mail entitled “rewards payment file” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to payments totaling $1,600.

6. On or about October 8, 2009, VAN DER KOLK sent an e-mail entitled “Rewards payment” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

7. On or about November 8, 2009, VAN DER KOLK sent an e-mail entitled “Rewards payment file” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to two payments totaling $200.

8. On or about December 23, 2009, VAN DER KOLK sent an e-mail entitled “rewards payment file” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to payments totaling $200.

9. On or about February 1, 2010, VAN DER KOLK sent an e-mail entitled “Rewards payment” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

10. On or about March 10, 2010, VAN DER KOLK sent an e-mail entitled “Rewards payment” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $200.

11. On or about May 27, 2010, VAN DER KOLK sent an e-mail entitled “Rewards payment” to ORTMANN. In the attached reward payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

12. On or about April 8, 2011, VAN DER KOLK sent an e-mail entitled “rewards payment” to ORTMANN. In the attached reward

payment file repeat infringer HO was among those listed as being entitled to a payment of $100.

e. E-mail records show that the Mega Conspiracy allowed repeat infringer HO to create an advertising campaign on the Mega Sites, even after receiving the April 28, 2008 e-mail from Warner Brothers identifying HO as a repeat infringer. On or about November 23, 2008, BATATO sent an e-mail to HO, thanking HO for registering a new advertisement campaign through Megaclick.com.

f. Between approximately February 18, 2008, and August 16, 2008, HO created for distribution at least 700 URL links to copyright-infringing works that were subject to copyright takedown notices, including the motion pictures Brothers Grimm and The Patriot and the television programs The Closer, Eureka, and Numb3rs.

g. Between approximately March 4, 2010, and August 31, 2010, HO created for distribution at least 50 URL links to copyright-infringing works that were subject to copyright takedown notices.

h. Between approximately July 23, 2011, and January 19, 2012, HO created for distribution at least 2 URL links to copyright-infringing works that were subject to copyright takedown notices, including the television series Glee.

Additional Evidence of ORTMANN's Knowledge of Copyright Infringement

128. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of two e-mail accounts used by ORTMANN, abuse@megaupload.com and mo@megaupload.com, between October of 2008 and October of 2011 ORTMANN and PayPal exchanged e-mails regarding copyright-infringing materials found on the Mega Sites.

b. During the 2010 calendar year, PayPal representatives sent ORTMANN over 115 notices referencing more than 2,000 URL links to copyright-infringing materials on the Mega Sites. More than 94% of these URL links were uploaded by only 193 users with registered accounts on the Mega Sites (the remainder was uploaded by anonymous accounts). And the copyright-infringing materials associated with these URL links were downloaded more than 700,000 times. During the 2011 calendar year, PayPal representatives sent ORTMANN over 30 notices referencing more than 1,400 URL links to copyright-infringing materials on the Mega Sites. More than 92% of these URL links were uploaded by only 140 registered users (the remainder was uploaded by anonymous accounts). And the

copyright-infringing materials associated with these URL links were downloaded more than 99,000 times.

c. ORTMANN responded to these copyright-infringement notices by assuring PayPal that the infringing file had been removed or deleted, and — for approximately 220 of the approximately 330 registered users — that the user had been blocked from using the Mega Sites (for the remaining users, ORTMANN either failed to mention the user entirely, or he indicated that the user had been warned). For example, on or about September 17, 2011, ORTMANN wrote the following two-sentence response: "All infringing uploads have been deleted and their uploader blocked. Thank you for forwarding this DMCA notice!"

d. A preliminary review of the databases shows that despite ORTMANN's claims that the uploaded files had been deleted, the Mega Conspiracy merely disabled the specific URL links identified in the notices. And despite ORTMANN's claims that approximately 220 registered users had been blocked, as of January 19, 2012, only approximately 18 of those users were blocked from using the Mega Sites on that date.

Additional Evidence of VAN DER KOLK's Knowledge of Copyright Infringement

129. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about February 17, 2007, VAN DER KOLK sent an e-mail to an unindicted conspirator, entitled "links for my little megaupload addict! :-)" The e-mail listed links that had been uploaded to Megaupload, including the Megaupload URL link, corresponding file name, and file size. VAN DER KOLK organized the links according to various categories.

1. The "Justin timberlake movies" category listed 33 links, 1 of which was marked "Deleted=5." According to a preliminary review of the Mega databases, "Deleted=5" indicated that the link had not been accessed within a specified period of time and had expired. Justin Timberlake is an American actor, performer, and singer-songwriter.

2. The "Porn" category listed 100 links, 4 of which were marked "Deleted=5," and 1 of which was marked "Deleted=1." According to a preliminary review of the Mega databases, "Deleted=1" indicated that the link had been deleted due to an abuse report.

3. The "weight loss" category listed 12 links, 1 of which was marked "Deleted=5," and 1 of which was marked "Deleted=99." According to a preliminary review of the Mega databases, "Deleted=99" indicated that the link had been deleted by the user.

4. The “yoga” category listed 100 links, 12 of which were marked “Deleted=5.”

5. The “oprah” category listed 100 links, 3 of which were marked “Deleted=5.” Oprah Winfrey is an American talk show host, actress, producer, and philanthropist.

6. The “mad tv” category listed 100 links, 5 of which were marked “Deleted=5.” Mad TV is a copyrighted television series.

7. The “harvey birdman” category listed 3 links, 1 of which was marked “Deleted=5.” Harvey Birdman, Attorney at Law, is a copyrighted television series.

8. The “arrested development” category listed 100 links, 11 of which were marked “Deleted=5.” Arrested Development is a copyrighted television series.

9. VAN DER KOLK’s e-mail listed a total of 508 non-deleted URL links. According to a preliminary review of the Mega databases, as of January 19, 2012, 439 of the 508 links were still active. The active files had been downloaded more than 119,000 times.

b. On or about February 7, 2009, via Skype, VAN DER KOLK told ORTMANN, “I have many old videos in my portfolio.” VAN DER KOLK then said, “I uploaded full dvd rips” and then sent ORTMANN a Mega URL to the copyrighted motion picture Taken and commented, “that was a 1013.05 MB upload :)” ORTMANN responded, “looks good :)” and VAN DER KOLK replied, “yeah.”

Affirmative Reliance on Third-Party “Linking” Sites

130. The U.S. Attorney’s Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about September 17, 2008, via Skype, BATATO asked ORTMANN, in German, “Mats, will you please take a look at this site [http://www.animea.net] If it’s okay, I’ll make it live.” ORTMANN responded, “This is a pirate download-link site for animes. It’s not legal, but it’s not forbidden for them to advertise with us,” then asked, “This will then raise your attained sales number in the first five weeks to $500?” BATATO responded, “More like 6,000 plus 7,000 plus 5,000, which will be coming in the next few days,” and “6k worth of payments are already in the account.” ORTMANN replied, “I feel better then.”

b. On or about September 27, 2008, via Skype, ORTMANN said to VAN DER KOLK, “truveo is finding a whopping 40,000 Anime videos hosted by us and loading them in a nicely upsized embedded player.” VAN DER

KOLK responded, “wow :)” and ORTMANN then commented, “in total, they have indexed 1084273 Megavideo videos.” At that time, Truveo.com was a video search engine.

c. On or about September 28, 2008, via Skype, VAN DER KOLK sent ORTMANN a link to the third-party linking site www.surfthechannel.com, commenting, “they have an alexa rank 669 and are full with MV links.” VAN DER KOLK then said, “ah yeah there are plenty of sites like that, and there will be 10 new ones.”

d. In early February of 2009, members of the Mega Conspiracy discussed the third-party linking site watch-movies.net:

1. On or about February 1, 2009, via Skype, ORTMANN told VAN DER KOLK, “watch-movies.net seems to be offline,” then later, “it seems that their DNS provider is down.” VAN DER KOLK responded, “okay, probably not being taken down then,” and ORTMANN replied, “no,” and VAN DER KOLK replied “good :)” The next day, ORTMANN told VAN DER KOLK, “watch-movies.net’s problems are causing quite a few support requests: ‘Please cancel and credit back to the same card. The site is not respondding anymone.’” VAN DER KOLK responded, “that’s not so cool…”

2. On or about February 2, 2009, via Skype, VAN DER KOLK told ORTMANN, “so the copyright holders target the spreaders as well now, not us which is good :)” ORTMANN responded, “they always do,” “it’s the sites providing search results that are targeted.” VAN DER KOLK replied, “we’ll be fine,” “where one site closes, 100 new ones will come up,” “as long as they don’t file a lawsuit against us everything will be just fine.”

3. On or about February 3, 2009, via Skype, DOTCOM told ORTMANN, in German, “MV has 1 million less users on Extreme Tracking since the removal of watch-movies[.net]. But strangely, this has no effect on payments. Really funny.”

4. On or about February 8, 2009, via Skype, ORTMANN told VAN DER KOLK, “yeah, warner bros. seems to be emailing many hosters these days, but at least watch-movies.net is back as watch-movies-links.net :)” VAN DER KOLK responded, “ah really, amazing :)” “let the cat&mouse game continue!” He then said, “as long as there is Internet there will be piracy.”

5. On or about February 9, 2009, via Skype, VAN DER KOLK told ORTMANN, “MV is growing again :)” and ORTMANN responded, “ah, thanks to watch-movies[.net] :)”

e. On or about May 7, 2009, via Skype, ORTMANN told VAN DER KOLK, "interesting analysis results… out of our 15 top referrers, 10 are in Spanish…and combined, they generate roughly 15% of our gross revenue." VAN DER KOLK responded, "Quite significant," "And in line with what I saw in the Google Analytics referers." Then VAN DER KOLK asked, "Are we going to create some stats page or something with this?" and ORTMANN responded, "What I will automate is revenue per downloadid stats so that you can check the monetary value of a takedown request." A few minutes later, ORTMANN sent VAN DER KOLK the following list of the 15 top third-party linking sites that had generated premium accounts on the Mega sites:

> seriesyonkis.com 13697 (spanish)
> surfthechannel.com 12574 (english)
> vagos.wamba.com 10117 (spanish)
> taringa.net 8493 (spanish)
> peliculasyonkis.com 6468 (spanish)
> mcanime.net 4335 (spanish)
> wawa-mania.eu 4126 (spanish)
> alloshowtv.com 3890 (french)
> cinetube.es 2795 (spanish)
> monblog.ch 2791 (french)
> sdd-fanatico.blogspot.com 2733 (spanish)
> sharebee.com 2705 (generic)
> pordescargadirecta.com 2561 (spanish)
> dospuntocerovision.com 2487 (spanish)
> seriesgringas.us 2451 (spanish)

ORTMANN explained, "the number is the number of active premium accounts in the past 5 days…lots will visit multiple sites, but still major revenue ($7 per month per account on average)." VAN DER KOLK responded, "yes, these sites are quite significant value to us then indeed."

f. On or about May 25, 2009, via Skype, ORMANN sent to VAN DER KOLK the following e-mail exchange between ORTMANN and a Mega user:

> mostly women open this kind of disputes on PayPal:
>
> From Buyer: [NAME REDACTED] on 24/05/2009 18:25 PDT
>
> "I was watching a download of Dexter, the TV Show, which I thought was on Megavideo, and it stopped playing, and said to join to see the entire show. I joined and paid $9.99 for a month thru PayPal, but I cannot find that episode (or any others) on Megavideo."

(I responded: “Your premium membership is valid not only for Megavideo.com itself, but also for our streaming service on third party sites. Go back to the original site and continue watching.”)

“Thank you, I finally figured that out when I received the confirmation email...sorry for the trouble! THANKS!”

VAN DER KOLK responded, “Haha damn :)” “but good.” And ORTMANN replied, “yeah, it’s not easy to figure out :)” The “streaming service on third party sites” refers to the embedded video players operated by the Mega Conspiracy available on third-party linking sites.

g. On or about July 19, 2009, via Skype, ORTMANN told VAN DER KOLK, “I just fear the day when those ten Spanish sites that make up for 20% of our payments get busted :(“ VAN DER KOLK responded, “nah sites will come and go all the time,” and ORTMANN replied, “true :)”

131. The U.S. Attorney’s Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. According to a preliminary review of the Mega Sites’ source code, the Mega Conspiracy searched third-party linking sites for URLs linking to the Mega Sites. For example, source code in the file “cuevana.php” was designed to search for URL links referring to “Megaupload” and “serie” (the Spanish word for “series”) on the third-party linking site cuevana.tv. The search results were stored in log files, which were created on or about December 14 and 15, 2011.

b. As of January 19, 2012, the Mega Conspiracy had created at least 36 log files for various third-party linking sites, including cuevana.tv and icefilms.info. These log files listed more than 5 million Megaupload.com URL links, roughly 85,000 of which were unique URL links — in other words, many of the URL links appeared in more than one log and appeared more than once on the third-party linking sites. According to a preliminary review of the Mega databases, the most popular URL links were to copyright-infringing materials, such as the copyrighted television programs The Simpsons, Dexter, Family Guy, The New Girl, and 2 Broke Girls, and copyrighted motion pictures such as The Change-Up and Contagion. More than 95% of these URL links were uploaded by users with registered accounts on the Mega Sites, and many of these registered users uploaded multiple URL links found in the logs. Of the 10 registered users who uploaded the most URL links found in the logs, all 10 also had at least 500 copyright takedown notices associated with their account. And as of January 19, 2012, each of these 10 registered users were still active on the Mega Sites.

132. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. eXTReMe digital V.O.F. ("Extreme Tracking"), a Dutch company, provides website measurement tools, such as the number of visits during a specified time period. These tools are available at the website ExtremeTracking.com. According to records provided by Extreme Tracking, as early as May of 2005, the Mega Conspiracy opened 4 separate analytics accounts under the name "KIMBLE," which is an alias for DOTCOM. These analytics accounts tracked the websites Megavideo.com, Megaupload.com, Megaporn.com, and Sexuploader.com.

b. Records obtained from Extreme Tracking show that visitors searching for terms specific to copyrighted works were referred to the Mega Sites on a daily basis. For example:

1. Between approximately December 1, 2010, and January 31, 2012:

i. Over 43,000 unique visitors searching for the term "pokemon" were redirected to the site Megaupload.com. Pokémon is a media franchise owned by Nintendo featuring copyrighted videogames, cartoons, trading cards, toys, and books.

ii. Over 32,000 unique visitors searching for the term "psp" were redirected to Megaupload.com. The acronym "psp" refers to PlayStation Portable, a handheld videogame console sold by Sony.

iii. Over 74,000 unique visitors searching for the term "keygen" were referred to Megaupload.com. A key generator refers to a software program that bypasses the digital rights management of copyrighted software.

iv. Over 12,000 unique visitors searching for the term "twilight" were referred to Megavideo.com. The Twilight Saga is a series of copyrighted motions pictures based on copyrighted novels written by American author Stephenie Meyer.

2. On or about December 13, 2010, over 650 unique visitors searching for the term "dexter" were referred to Megaupload.com. Dexter is a copyrighted television series on the premium cable channel Showtime. A new episode of Dexter, entitled "The Big One," aired on or about December 12, 2010.

3. On or about December 25, 2010, over 1,300 unique visitors searching for the term "Gorillaz" were redirected to

Megaupload.com. The Gorillaz are a British musical band. Their copyrighted album "The Fall" was released on December 20, 2010, as a digital download exclusive to members of the band's fan club, and then in April of 2011 as a physical release. A 12-month subscription to the band's fan club currently costs $45.00.

4. On or about January 2, 2011, over 700 unique visitors searching for the terms "harry" and "potter" were referred to Megaupload.com. The copyrighted motion picture "Harry Potter and the Deathly Hallows: Part 1" was released in U.S. theaters on or about November 19, 2010.

5. On or about January 11, 2011, over 200 unique visitors searching for the term "photoshop" were referred to Megaupload.com. Photoshop is a copyrighted graphics editing program developed and sold by Adobe Systems.

6. On or about May 8, 2011, over 350 unique visitors searching for the term "thor" were referred to Megavideo.com. The copyrighted motion picture "Thor" was released in U.S. theaters only two days earlier, on or about May 6, 2011.

c. Records obtained from Extreme Tracking show that a handful of third-party linking sites provided a substantial portion of Internet traffic to the Mega Sites. For example:

1. Between approximately December 1, 2010, and January 19, 2012, 10 third-party linking sites referred over 700 million unique visitors to Megavideo.com, accounting for over 78% of the total referred visitors. Referred visitors are in contrast to those who visit directly by typing in the website address. The 10 third-party linking sites are: seriesyonkis.com, allourl.com, surfthechannel.com, taringa.net, watch-movies.net, peliculasyonkis.com, tv-links.eu, italia-film.com, streamiz.com, and serialeonline.pl.

2. Between approximately December 1, 2010, and January 19, 2012, over 1 billion unique visitors were referred to Megaupload.com by third-party linking sites. Of those, 56% were referred by 7 third-party linking sites: cuevana.tv, allourl.com, taringa.net, watchmovies.net, icefilms.info, forum.downparadise.ws, and streamiz.com.

3. On or about March 13, 2011, over 3.3 million unique visitors were directed to Megavideo.com by all referring sites. Of these visitors, over 1.3 million were directed from seriesyonkis.com, over

600,000 were referred by allourl.com, and over 350,000 from peliculasyonkis.com.

4. On or about September 25, 2011, over 1.4 million unique visitors were referred to Megavideo.com from third-party linking sites such as seriesyonkis.com and tv-links.eu, and over 3.8 million unique visitors were referred to Megaupload.com from third-party linking sites such as cuevana.tv or icefilms.info.

5. On or about November 6, 2011, over 4.4 million unique visitors were referred to Megaupload.com by third-party inking sites. Of these visitors, 54% were referred by just 2 sites, cuevana.tv and icefilms.info.

d. Records obtained from Extreme Tracking show that copyright infringement was evident in the names of the URL links found on third-party linking sites. For example:

1. On or about February 16, 2011, over 23,000 unique visitors were referred to Megavideo.com from the following URL link: italia-film.com/telefilm/5292-the-vampire-diaries-il-diario-del-vampiro.html, and another 26,000 unique visitors were referred to Megavideo.com from the following URL link: stream.myblog.it/archive/2010/05/20/the-vampire-diaries-streaming.html. The Vampire Diaries is a copyrighted television series on The CW channel. New episodes of The Vampire Diaries aired on February 10, 2011, and on February 17, 2011.

2. On or about April 2, 2011, over 45,000 unique visitors were referred to Megavideo.com from the following URL link: italia-film.com/telefilm/2451-greys-anatomy.html, and another 11,000 unique visitors were referred to Megavideo.com from the following URL link: megastreaming.biz/2009/09/28.streaming-serie-tv-greys-anatomy-stagione-6. Grey's Anatomy is a copyrighted television series on ABC. A new episode of Grey's Anatomy, entitled "Song Beneath the Song," originally aired on or about March 31, 2011, only two days prior to the Extreme Tracking data.

Willful Failure to Remove Copyright-Infringing Files

133. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about December 26, 2008, via Skype, ORTMANN said to VAN DER KOLK, "wow, an Indian subpoena requesting MV uploader credentials…" VAN DER KOLK responded, "wow," "ah that one from the

police," "I think I saw that one." Later, VAN DER KOLK said, "it's just Indian police," and ORTMANN responded," yes, we can probably ignore this one." VAN DER KOLK suggested, "we can always say that we never received their e-mail," and ORTMANN responded, "yep," "but they probably also sent a postal letter (scanned attachments)." VAN DER KOLK replied, "ah yes then it's a different story," and then he asked, "do we get many physical mail these days for copyright issues?" ORTMANN responded, "very few," and VAN DER KOLK commented, "good."

b. On or about February 15, 2009, via Skype, VAN DER KOLK and ORTMANN discussed multiple Mega URLs point to the same file. VAN DER KOLK told ORTMANN, "Kim [DOTCOM] was suggesting to maybe limit it up to 10 of the same files per user, he just thought that it could be useful for some users to upload the same file several times if they want to have easy backups against deletions, or spread different links on different forums." ORTMANN responded, "yeah, could be useful then." And VAN DER KOLK replied, "We would provide a feature that would make it harder to control for copyright holders :)"

c. As discussed in Paragraphs 38(j) and 76, in February and April of 2009, the Asociación Protectora de Cine y Música ("APCM") Mexico, which represents various copyright owners, submitted multiple takedown requests for copyright-infringing materials available on the Mega Sites. DOTCOM blamed a subsequent drop in revenue on VAN DER KOLK's decision to disable the links (but not the underlying files) pursuant to the takedowns. The Mega conspirators discussed the situation via Skype:

1. On or about April 23, 2009, ORTMANN told VAN DER KOLK, "maybe try undeleting them :)" and VAN DER KOLK asked, "you want to risk that?" Then VAN DER KOLK said, "I mean MX is just MX, we could ignore them," and ORTMANN added, "it's not like Mexico is going to sue us in Hong Kong." ORTMANN continued, "just for testing, we should undelete those files," "for one day," "we can excuse it as a tech glitch." VAN DER KOLK added, "I often ignore reports from certain countries, such as VN." In this context, the abbreviations "MX" and "VN" appear to refer to Mexico and Vietnam, respectively.

2. Later that day, DOTCOM instructed ORTMANN, in German, "and please do what I wrote bram. undelete everything that was in the last 4 weeks reported from non first world countries. SIMPLY everything. And you will see we have daily record again."

3. Later that day, ORTMANN sent DOTCOM a portion of the APCM e-mail, which stated that APCM Mexico is the authorized representative of, amongst others, Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, and

Warner Bros. Entertainment Inc. ORTMANN told DOTCOM, in German, “if true, Bram has not done anything wrong.” A few minutes later, DOTCOM blamed the takedowns for causing “50k revenue gone.”

4. Later that day, ORTMANN told BENCKO, “the takedown notices were legitimate for sure,” “however, calculated risk could work here.”

5. Later that day, DOTCOM told VAN DER KOLK and ORTMANN:

> make a list of all links that were reported from mexico, brazil, and other non first world countries in the last 4 weeks. and undelete all of them. They have not sent us legitimate takedown notices with sufficient proof that they represent the right holders for every single link. and from now on you will only delete links from the USA, France, Germany, UK and SPAIN instatntly.

6. The following day, April 24, VAN DER KOLK told ORTMANN, “me deleting them is normal procedure, especially since we’re soon being sued. This was not sent from a Gmail or Yahoo address, this is the Mexican MPAA.”

7. On or about April 27, 2009, VAN DER KOLK asked ORTMANN, “People are already re-sending their DMCA notices now, can I resume processing them again?” ORTMANN answered, “yes, first-world only.”

d. On or about May 20, 2009, via Skype, ORTMANN told VAN DER KOLK, “DtecNet is getting more annoying. Kim [DOTCOM] requests to ignore their notices until Sunday evening.” VAN DER KOLK replied, ”okay.” As discussed in Paragraph 93, a number of copyright owners hired DtecNet, also known as MarkMonitor, to identify infringing copies of copyrighted works that were publicly available on the Internet, including through the Mega Sites.

e. On or about June 2, 2009, via Skype, ORTMANN told VAN DER KOLK, “I will give you the HD showcase videos shortly, and we don’t want DtecNet or anybody else to interfere with that.” VAN DER KOLK responded, “ah right, we can introduce a white-list table easily.”

General Operation of the Mega Sites

134. The U.S. Attorney's Office for the Eastern District of Virginia expects a representative of the FBI to testify to the following facts:

a. On or about February 25, 2009, via Skype, an unindicted conspirator asked ORTMANN, "Another issue: do you have any end-user report, ie. how many people sign up each day, login name, country of origin, what plan they buy, etc." ORTMANN responded, "We have all of that information and can extract reports from it, and some of the aspects are already covered by reporting tools that we use to assess our growth." The conspirator asked, "can you create a simple client report each month from your data based for me for the accounting purpose?" and ORTMANN replied, "I can extract that information together with the upcoming monthly PayPal etc. reporting." The conspirator then asked, "Can we do it automatically, so I don't need to ask you every month?" and ORTMANN responded, "No problem. That would be 150,000 purchases per month, can you handle that?" "probably 200,000 soon…"

b. On or about March 6, 2009, via Skype, VAN DER KOLK asked ORTMANN, "How much profit are we making per month now approximately?" ORTMANN responded, "our cost base is 1.7m (will go up to 1.8 million in April for May)…we have approx. 3.2M of prevmium revenue and 600K of ad revenue." In other words, according to ORTMANN, Mega's profits during that time period were roughly $2 million per month.

c. On or about March 9, 2009, via Skype, VAN DER KOLK asked ORTMANN, "Kim does most of our business through the Tim Vestor name right?" and ORTMANN responded, "mixed" "50/50." ORTMANN added, "Cogent I'm not sure," "Carpathia: Kim," "Conceiva: Tim," "I always have to be careful in phone confs :)"

d. On or about April 2, 2009, via Skype, VAN DER KOLK told ORTMANN, "France accepted the controversial anti piracy law where they will disconnect users. But that's only good for us as it will mainly affect p2p piracy." ORTMANN responded, "unless they assume that _all_ traffic from us is piracy or sniff peoples' download URLs, it's kinda hard to catch someone using MU/MV for piracy form a purely technical perspective." To which VAN DER KOLK replied, "yes."

e. On or about May 2, 2009, via Skype, ORTMANN told VAN DER KOLK, "the workload incurred by the account blocking is consuming excessive resources. I am now implementing a different approach: Autoblocking, autounblocking, with initially 4 hours of suspension, doubled upon every reoccurrence…" VAN DER KOLK responded, "thats a very smart

approach!" A few hours later, ORTMANN said, "now unblocking all 11000 blocked users :)" and VAN DER KOLK responded, "wow!!"

f. On or about May 6, 2009, via Skype, ORTMANN told VAN DER KOLK, "Ponzi scheme," and VAN DER KOLK responded, "yes that's Kim style indeed." ORTMANN replied, "worked well so far," "luckily," and VAN DER KOLK responded, "Most Ponzi schemes pay much more frequently though :)" Then VAN DER KOLK said, "yeah but the likelyness that we'll triple our profit again in 2010 is quite small," "while at the same time the likeliness of us getting in trouble for some reason is getting bigger." ORTMANN responded, "very true," and VAN DER KOLK replied, "and the fact is when there's no way out, Kim [DOTCOM] will also grab the last couple of millions and go on hiding mode again when that happens." ORTMANN responded, "yes," "or he'll spend them and then ask ME to save him." VAN DER KOLK replied, "HAHA" "how ironic," and ORTMANN responded, "I already see that coming."