

*The SHERLOC Newsletter
is pleased to share with you our recent efforts to facilitate the dissemination of
information regarding the implementation of the UN Convention against Transnational
Organized Crime and its three Protocols.*

20 YEARS MAKING THE WORLD A SAFER PLACE

CELEBRATING 20 YEARS OF UNODC & SHERLOC'S ROLE

We open this September Newsletter with an important celebration, 20 years since the United Nations Office on Drugs and Crimes (UNODC) was created.

For this significant anniversary, on the 14th of September, key actors of UNODC gathered at UNODC's Headquarter in Vienna, together with UNDOC's staff to celebrate this important birthday.

UNODC's Executive Director, Yuri Fedotov, highlighted that the environment in which we operate "has been profoundly shaped by globalization and modern technologies".

Features

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As a consequence, criminal organizations are benefiting from this environment, by crossing borders and taking advantage of modern technologies. We see this in burgeoning threats, such as cybercrime, which “has emerged as a truly borderless threat”.

Mr. Fedotov emphasized that “now there is much better understanding of the need for comprehensive, integrated and multi-faceted approaches”. Modern technologies might be a powerful tool for organized criminal groups to facilitate perpetration of crimes, but they are also powerful tools for enabling a wider sharing of knowledge and expertise through online platforms such as SHERLOC.



WHAT IS NEW ON SHERLOC

In accordance with the recommendation of the Working Group on International Cooperation, as endorsed by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in resolution 7/4, the Secretariat of the United Nations Office on Drugs and Crime has prepared an updated version of the Legislative Guide on the Organized Crime Convention, which is now available in English on SHERLOC.



The Legislative Guides intend to assist national legislators, legislative drafters and other appropriate officials in their efforts to develop the legislative and other measures needed for each country to become a party to these instruments or to implement them in compliance with the instruments.

Currently, the legislative guide on SHERLOC is only available in English. Nevertheless, the translations into the official languages of the UN have already been published and are available on UNODC’s website:

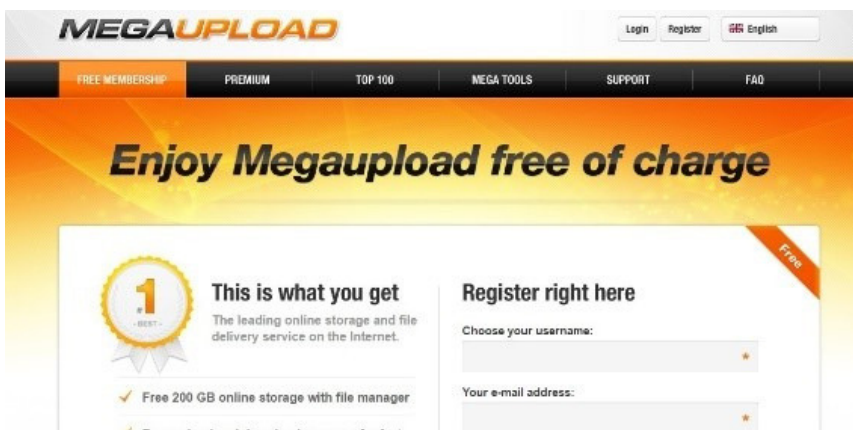
<http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>.

THE 'MEGA CONSPIRACY' CASE

Update on SHERLOC's "Mega Conspiracy" case: a new ruling by New Zealand's High Court

The DOTCOM Case focusses on the creation of a business through a platform called “Megaupload” which “enabled users to upload files for storage in the cloud on one of the many servers leased by Megaupload. The user would be provided with a unique link to the file... [and] the user could then provide a link to others enabling them to access the file”. Through Megaupload and its associated websites, such as Megavideo, users were able to access multimedia content such as movies, TV series, and music.

As outlined by SHERLOC’s Case Law Database, the February 2017 proceedings of *Ortmann et al. v. the United States*, held before the High Court of New Zealand, the Court was required to determine whether the alleged offence is an extraditable offence in relation to the requesting state, in this case the United States. The legal reasoning of the defence is of particular interest, as it explicitly refers to the United Nations Convention against Transnational Organized Crime (UNTOC).



In January 2012, Mathias Ortmann, Bram van der Kolk, Kim Dotcom, and Finn Batato were indicted by an American Grand Jury on charges of membership in a criminal organisation, criminal copyright infringement and money laundering in relation to their involvement in the online datasharing site Megaupload.

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“THE DEFINITION OF AN ORGANISED CRIMINAL GROUP UNDER THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME WAS NOT FULFILLED AND THE GATEWAY TO DEEM THE OFFENCES COULD NOT BE MET”.



MEET OUR NEW CONTRIBUTOR - SUSAN -

Susan Knifed is our featured contributor this issue. Having recently completed her Master’s in Criminology and Criminal Justice at Oxford University, Susan is now an intern in the Organized Crime and Illicit Trafficking Branch of the UNODC. Susan’s research interests lie in the nexus between drug trafficking and the Dark Net – particularly the phenomenon of cryptomarkets. Susan works frequently as a SHERLOC contributor, largely in relation to cybercrime cases and legislation.

Susan notes, “Cybercrime is becoming an increasingly prevalent crime threat that tends to be underestimated. The ability to highlight and focus on cybercrime (and other specific crime types) on SHERLOC is one of strongest features of the portal.”

She adds, “As a student and researcher, this kind of tool is incredibly helpful not only in identifying relevant case law and legislation, but bibliographic resources as well. It’s wonderful to be part of the team that contributes to the growth and success of SHERLOC.”

A NEW RULING BY THE HIGH COURT OF NEW ZEALAND



Access the full case on SHERLOC

In a decision made publicly available by a High Court judgement dated 7th August 2017, the Court “entered two judgements against the Government Communications Security Bureau (GCSB) for **unlawful spying** on Mathias Ortman and Bram van der Kolk”, two of the main defendants in the pending extradition proceedings concerning the “Mega Conspiracy” Case.

i) involved permanent residents, which do not fall within the scope of the Government Communications Security Bureau Act 2003 regulating surveillance actions; and ii) “amounted to unreasonable search in contravention of the New Zealand Bill of Rights Act 1990”. The GCSB’s stated: “the circumstances of the interceptions of Messrs

“ We asked Susan to comment on the recent ruling:

"This entire case is extremely interesting and highlights the complexities of cybercrime and law enforcement efforts to combat them. Many of us are actually complicit in activities like those related to Megaupload.

Countless average Internet users torrent and stream movies, TV shows, music and the like, but rarely consider the wider (criminal) network it is all part of.

I think the long legal battle between Mr. Dotcom/his colleagues and the United States and New Zealand highlights just how difficult it is to adjudicate crimes that occur in a largely virtual space".



The two separate decisions adopted by the High Court give a detailed overview and timeline of the investigations leading to extradition proceedings of Ortman and van der Kolk. The High Court found the GCSB surveillance operation unlawful because “the interception, collection, storage, and disclosure of and enabling access” to the plaintiffs communications:

Ortman and Batato’s communications (and the technical details regarding the other plaintiff’s interceptions) are Top Secret, and it has not proved possible to plead to the allegations the plaintiffs have made without revealing information which would jeopardise the national security of New Zealand”.

UPCOMING EVENTS

Vienna, 9-13 October 2017

// 10th session of the Working Group of Government Experts on Technical Assistance //

// 8th session of the Working Group on International Cooperation //