

Exhibit A

**CHAMBERS RULING
(Not Open to Public)**

HCMP 116/2012

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 116 OF 2012**

IN THE MATTER of the Mutual
Legal Assistance in Criminal Matters
Ordinance (Cap 525) [Section 27 and
Schedule 2, Section 7]

and

IN THE MATTER of

KIM DOTCOM, also known as 1st Defendant
KIM SCHMITZ, TIM VESTOR and
KIM TIM JIM VESTOR (A National of
Germany and Finland and a Resident of
Hong Kong and New Zealand)

MEGAUPLOAD LIMITED 2nd Defendant
(A Hong Kong Company)

VESTOR LIMITED 3rd Defendant
(A Hong Kong Company)

FINN HABIB BATATO 4th Defendant
(A National of Germany)

JULIUS BENCKO 5th Defendant
(A National of Slovakia)

SVEN HENDRIK MICHAEL THIES 6th Defendant
ECHTERNACH (A National of Germany)

MATHIAS ORTMANN 7th Defendant
(A National of Germany)

ANDRUS NOMM 8th Defendant

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1. This is an inter partes application by the 2nd defendant for variation of the Restraint Order which I made ex parte on 18 January 2012. The variation sought is indicated in very general terms in the summons which the 2nd defendant took out on the 13th of this month.

2. When the summons came on for hearing yesterday morning, leading counsel for the 2nd defendant asked that it be adjourned save in four respects. The first involves the sale of certain items. The second involves legal fees. The third involves salaries and reimbursements owed to employees and salaries to be paid in future. The fourth involves the use of air miles.

3. I adjourn to a date to be fixed the summons save in respect of those four matters.

4. At yesterday's hearing, after leading counsel for the 2nd defendant had addressed me, counsel for Secretary for Justice indicated that the variation sought in respect of the first and fourth matters would not be opposed. In other words, the variation in respect of the sale of certain items and the variation in respect of the use of air miles is not opposed. I make the variation sought in respect of those two matters. I will not spell out the nature of such unopposed variation, leaving it to counsel to spell them out in a draft order to be submitted to my clerk in due course. That is the only way to be safe from misunderstanding.

5. I turn now to the second and third matters, being the ones relating to the variations contested before me.

6. The arguments put forward by counsel for the Secretary for Justice in opposing any variation in respect of the second and third matters include the argument that there has been no sufficient disclosure of assets by the 2nd defendant and the argument that it would be right to leave the question of such variation to the courts in the United States. As to this last argument, counsel for the Secretary for Justice does not go so far as to say that the Hong Kong courts lack jurisdiction.

7. As to disclosure, I do not think that the 2nd defendant has made sufficient disclosure. Leading counsel for the 2nd defendant argues that there has been sufficient disclosure because it has been shown that all the funds no longer held by the 2nd defendant had been paid out by the 2nd defendant to others. That is not sufficient disclosure. The payment out of funds may generate some debt or other entitlement due to the 2nd defendant which the 2nd defendant can realise. The disclosure made does not enable the court to see whether or not there is any such debt or entitlement.

8. Leading counsel for the 2nd defendant also submits that even if there has not been sufficient disclosure, the court nevertheless has a discretion to order variation. I accept that, and proceed to consider what I ought to do in the exercise of this discretion. In cases of this kind, the court is always proceeding before the position is made wholly clear, and the court endeavours to avoid undue hardship. To a certain extent, the court is sometimes driven to acting in almost a rough and ready way.

9. On the figures placed before me in writing on behalf of the 2nd defendant in respect of legal fees incurred, including those anticipated

for (and presumably now incurred on) the present application, those legal fees are well in excess of \$600,000. But in his reply submission, leading counsel for the 2nd defendant said that he was only asking for the release of about \$600,000 in respect of legal fees.

10. The amount sought in respect of salaries owing is \$658,940.25. The amount sought in respect of reimbursements owed to employees is \$80,624.35. The amount sought in respect of salaries to be paid in future for three months is \$479,000.

11. Having regard to the insufficiency of disclosure and the need to bear in mind the desirability of leaving things to the courts in the United States if things can be so left without undue hardship here, I am prepared to vary the Restraint Order only to the extent of permitting release of \$739,564.60 to cover the salaries and reimbursements owed to employees. I am not at present prepared to permit any other release.

12. I say nothing about what variation may or may not be ordered upon any application made with proper disclosure. It is also important to make it clear that I am not suggesting that proper disclosure will necessarily result in further variation. There would still be, quite apart from anything else, the question of whether the matter should be left to the courts in the United States.

(V Bokhary)
Judge of the Court of First Instance
High Court

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Mr Gerard McCoy SC and Mr Daniel Hui, instructed by Haldanes, for the
2nd defendant

Ms Linda Lam, Ms Elizabeth Liu and Ms Ada Chan, of the Department
of Justice, for the Secretary for Justice