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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

Groupe Canal+ S.A., et al.,  
Plaintiffs,  
v.  
NDS Group PLC, et al.,  
Defendants.

Case No. C02-01178 (VRW)

**DEFENDANTS NDS GROUP PLC'S  
& NDS AMERICAS, INC.'S NOTICE  
OF MOTION AND MOTION TO  
DISMISS OR TRANSFER FOR  
IMPROPER VENUE**

Date: May 30, 2001  
Time: 2:00 p.m.  
Place: Courtroom 6

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This motion is based on this notice of motion and motion, the attached memorandum of points and authorities, and the concurrently filed declarations of Abraham Peled, Peter Lynskey, and Joshua Kussman, along with the pleadings and papers on file in this action, and on such further evidence and argument as may be presented at the hearing of this matter.

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DEFENDANTS' MOTION TO DISMISS OR  
TRANSFER FOR IMPROPER VENUE  
C02-01178 (VRW)

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This case does not belong in the Northern District of California. The alleged claims have no connection whatsoever to this District. Plaintiffs do not – and cannot – allege that any relevant act occurred in the Northern District. Plaintiffs do not – and cannot – allege that either defendant resides in the Northern District. Plaintiffs do not – and cannot – allege that either defendant does business in the Northern District.

Rather than allege facts demonstrating proper venue, Canal+ suggests that venue is proper in the Northern District because a Canal+ subsidiary has allegedly suffered harm in this District. But Canal+'s argument is misplaced. The owner of the allegedly infringed copyright is located in France, not the Northern District. More importantly, venue for Canal+'s claims depends on the defendants' contacts with the Northern District, not Canal+'s contacts. Accordingly, venue in the Northern District is improper with respect to each of Canal+'s claims for relief, and the Court accordingly must dismiss Canal+'s complaint or transfer this action to the Southern Division of the United States District Court for the Central District of California, where NDS Americas maintains its headquarters and where venue would be proper.

The Court should also transfer this action to the Southern Division of the Central District of California for the convenience of the parties and witnesses. As Canal+ has already conceded in its motion to expedite discovery, all witnesses and evidence relevant to this action are located either in Southern California or outside the United States. If this action must proceed in the United States, the Southern Division of the Central District of California is the most logical and convenient venue.

## II. FACTUAL BACKGROUND

The defendants have no discernable connection to this District. Defendant NDS Group is a corporation existing under the laws of the United Kingdom with its principal place of business in England, and defendant NDS Americas is a Delaware corporation with its principal place of business in Newport Beach, California. (Complaint ¶¶ 9 and 10; Declaration Of Abraham Peled In Support Of Defendants' Motion To Transfer ("Peled Decl.") at ¶¶ 3, 4; Declaration Of Peter Lynskey In Support Of Defendants' Motion To Transfer ("Lynskey Decl.") at ¶ 4.) Neither Defendant has its principle place of business in the Northern District. (Lynskey Decl. at ¶ 4; Peled Decl. at ¶ 4.) None of Defendants' employees, officers or directors works in the Northern District. (Lynskey Decl. at ¶ 5; Peled Decl. at ¶ 5.) None of Defendants' shareholders or board of directors meetings have taken place in the Northern District. (Peled Decl. at ¶ 6.) Defendants have no branch offices, telephone listings, or mailing addresses in the Northern District. (Lynskey Decl. at ¶ 5; Peled Decl. at ¶ 5.) They own no real property in the Northern District. (Lynskey Decl. at ¶ 5; Peled Decl. at ¶ 5.) Defendants have no customers in the Northern District. (Lynskey Decl. at ¶ 7; Peled Decl. at ¶ 7.) Defendants pay no franchise or corporate taxes based on business activities in the Northern District. (Lynskey Decl. at ¶ 7; Peled Decl. at ¶ 7.) Moreover, Defendants have not contracted with persons residing in the Northern District to act on their behalf with respect to marketing, distributing or servicing any of their products or services. (Lynskey Decl. at ¶ 7; Peled Decl. at ¶ 7.) Canal+'s complaint alleges nothing to the contrary.

Moreover, Canal+'s Complaint does not allege that any relevant act took place in the Northern District. The Complaint describes allegedly tortious conduct occurring almost exclusively outside the United States. With the exception of perhaps two email transmissions allegedly sent through Southern California, every allegedly tortious act identified in the Complaint is alleged to



1 have occurred in another country. The only location where the Complaint alleges  
2 that Canal+'s counterfeit smartcards have been sold is Italy. (Complaint, ¶ 26.)

3 The complaint alleges only a single thin connection between this  
4 matter and the Northern District -- the location of plaintiff Canal+ Technologies,  
5 Inc. However, that company does not own the allegedly infringed copyright  
6 (Complaint, ¶ 45.) and was not even incorporated until AFTER the conduct  
7 described in the Complaint allegedly occurred. (Declaration Of Joshua Kussman  
8 In Support Of Defendants' Motion To Dismiss or Transfer for Improper Venue  
9 ("Kussman Decl.") at ¶ 2.) As a matter of law, this does not make venue proper in  
10 this District.

### 11 12 **III. VENUE IN THE NORTHERN DISTRICT OF CALIFORNIA IS IMPROPER**

#### 13 **A. Standard of Review.**

14 Plaintiffs have the burden of establishing that venue is proper. See  
15 Piedmont Label Co. V. Sun Garden Packing Co., 598 F.2d 491, 496 (9th Cir.  
16 1979) ("Plaintiff had the burden of showing that venue was properly laid in the  
17 Northern District of California."). Where multiple claims are alleged against  
18 multiple defendants, venue must be proper as to each defendant and for each  
19 claim. Hoover Group, Inc. v. Custom Metalcraft, Inc., 84 F.3d 1408, 1410 (Fed.  
20 Cir. 1996). See also Sheppard v. Jacksonville Marine Supply, Inc., 877 F. Supp.  
21 260, 269 (D. S.C. 1995) ("plaintiffs have the burden of proving that venue is  
22 proper as to each claim asserted in their complaint and as to each defendant").

23 If venue is improper over a claim, a court must dismiss or transfer at  
24 least that claim. Shell v. Shell Oil Co., 165 F. Supp. 2d 1096, 1102 (C.D. Cal.  
25 2001) ("where venue is improper, a court must dismiss or transfer under 28  
26 U.S.C. § 1406"). Accordingly, the complaint should not proceed in this District  
27 unless all eight claims are properly venued here. Under the facts of this case,  
28 venue in the Northern District of California is improper for all of Plaintiffs' claims.

1 The Court should therefore either dismiss the case or transfer it to the Southern  
2 Division for the Central District of California, where venue is proper.

3 **B. Venue Is Improper in the Northern District for Canal+'s**  
4 **Copyright Claims.**

5 1. Venue is proper for copyright claims only in a district where the  
6 defendant is subject to personal jurisdiction

7 In a copyright infringement action, venue is exclusively governed by  
8 28 U.S.C. § 1400(a), which specifies that venue for a copyright claim is proper “in  
9 the district in which the defendant or his agent resides or may be found.” 28  
10 U.S.C. § 1400(a). Under this provision, a defendant “may be found” in any  
11 judicial district where personal jurisdiction would be proper. Multistate Legal  
12 Studies, Inc. v. Marino, 1996 U.S. Dist. LEXIS 20752 \*14, 27 (C.D. Cal. 1996).

13 To determine whether a defendant “may be found” in a particular  
14 district, a court must consider a defendant’s contacts with that district and not  
15 merely with the entire state containing that district. Milwaukee Concrete Studios,  
16 Ltd. v. Fjeld Manufacturing Co., 8 F.3d 441, 445 (7th Cir. 1993) (“section 1400(a)  
17 requires district courts to consider a defendant’s contacts with a particular judicial  
18 district in determining where that defendant may be found”). In Milwaukee  
19 Concrete, the court upheld a district court’s dismissal for improper venue of a  
20 complaint alleging copyright claims. The court held that, because the defendant  
21 was subject to personal jurisdiction in the Western District of Wisconsin but not  
22 the Eastern District of Wisconsin, venue for the complaint was proper in the  
23 Western District but was improper in the Eastern District. Id. at 448.

24 The Ninth Circuit has expressly adopted Milwaukee Concrete.  
25 Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc., 106  
26 F.3d 284, 289 (9th Cir. 1997) (“[v]enue under 28 U.S.C. § 1400(a) is proper in any  
27 judicial district in which the defendant would be amenable to personal jurisdiction  
28 if the district were a separate state”), rev’d on other grounds, Feltner v. Columbia  
Pictures Television, Inc., 523 U.S. 340 (1998). The Milwaukee Concrete rule is

1 widely followed. See Haaretz Daily Newspapers, Ltd. v. Chani Inc., 1999 U.S.  
2 Dist. LEXIS 15581 \*6 (S.D.N.Y. 1999) (“§1400(a) requires that the defendant be  
3 found in a particular judicial district, not merely within the state where the district  
4 court sits, so the jurisdictional contacts relied on for venue purposes must be  
5 specific to the district.”); Johnson v. Tuff N Rumble Mgmt., Inc., 1999 U.S. Dist.  
6 LEXIS 19574 \*25-26 (E.D. La. 1999) (citing Milwaukee Concrete for the  
7 proposition that venue must be analyzed with respect to a particular judicial  
8 district); Blackburn v. Walker Oriental Rug Galleries, Inc., 999 F. Supp. 636, 638  
9 (E.D. Pa. 1998) (“venue in a copyright action is proper in any judicial district in  
10 which the defendant would be amenable to personal jurisdiction if the district were  
11 a separate state”); Gaines, Emhof, Metzler & Kriner v. Nisberg, 843 F. Supp.  
12 851, 854 (W.D.N.Y. 1994) (transferring copyright infringement case from Western  
13 District of New York to Southern District of New York, following Milwaukee  
14 Concrete and finding that “case for maintaining venue in this district under 28  
15 U.S.C. § 1400(a) is very weak” where defendant has limited contacts with district).

16 2. NDS is not subject to personal jurisdiction in the Northern  
17 District

18 a. NDS is not subject to general jurisdiction in the Northern  
19 District.

20 If the nonresident defendant’s activities are sufficiently “substantial”  
21 or “continuous and systematic,” the defendant is subject to the forum court’s  
22 general jurisdiction and may be sued in that forum on any matter. Helicopteros  
23 Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16 (1984); Data Disc,  
24 Inc. v. Systems Technology Assoc., Inc., 557 F.2d 1280, 1287 (9th Cir. 1977).  
25 The standard for general jurisdiction is “fairly high . . . and requires that the  
26 defendant’s contacts be of the sort that approximate physical presence.” Bancroft  
27 & Masters, Inc. v. Augusta Nat’l, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). In  
28 applying that standard, the Ninth Circuit has “regularly . . . declined to find  
general jurisdiction” even when a defendant’s contacts with the forum “were quite

1 extensive.” Amoco Egypt Oil Co. v. Leonis Navigation Co., 1 F.3d 848, 851 n.3  
2 (9th Cir. 1993).

3 Under Ninth Circuit and California law, courts determine whether  
4 general jurisdiction exists by looking at whether the defendant: (1) owns a  
5 residence, real property or personal property in the forum; (2) pays taxes in the  
6 forum; (3) holds a bank account in the forum; (4) operates an office in the forum;  
7 (5) maintains a registered agent or employees in the forum or (6) transacts  
8 business or derives revenue from business in the forum. See, e.g., Brown v.  
9 Watson, 207 Cal. App. 3d 1306, 1313 (1989); E.I.C., Inc. v. Bank of Virginia, 108  
10 Cal. App. 3d 148, 155 (1980); see also LeDuc v. Kentucky Cent. Life Ins. Co., 814  
11 F. Supp. 820, 824 (N.D. Cal. 1992).

12 In this case, the defendants unquestionably lack the contacts with the  
13 Northern District necessary for general jurisdiction. NDS Group is a corporation  
14 existing under the laws of the United Kingdom with its principal place of business  
15 in England, and NDS Americas is a Delaware corporation with its principal place  
16 of business in Newport Beach, California. (Lynskey Decl. at ¶ 4; Peled Decl. at  
17 ¶¶ 3-4.) Neither defendant owns real property in the Northern District or has  
18 employees in the Northern District. (Lynskey Decl. at ¶ 5; Peled Decl. at ¶ 5.)  
19 Neither defendant operates an office in the Northern District. (Lynskey Decl. at ¶  
20 5; Peled Decl. at ¶ 5.) Neither defendant has a registered agent for service of  
21 process in the Northern District. (Lynskey Decl. at ¶ 6; Peled Decl. at ¶ 6.)  
22 Neither defendant has customers in the Northern District. (Lynskey Decl. at ¶ 7;  
23 Peled Decl. at ¶ 7.) These facts make it clear that neither defendant has contacts  
24 with the Northern District that “approximate physical presence.” See Oacis Health  
25 Care Systems, Inc. v. Allcare Health Management Sys., Inc., 2000 U.S. Dist.  
26 LEXIS 5902 \*\*4 (N.D. Cal.2000) (defendant who “has no offices, facilities, bank  
27 accounts, real estate, telephone number or postal address” in forum is not subject  
28 to general jurisdiction).

1                                   b.     NDS is not subject to specific jurisdiction in the Northern  
2                                   District

3                                   Likewise, NDS is not subject to specific jurisdiction in the Northern  
4     District. A defendant may also be subject to a court's specific jurisdiction in the  
5     following circumstances:

- 6                                   (1) The nonresident defendant must do some act or consummate  
7                                   some transaction with the forum or perform some act by which he  
8                                   purposefully avails himself of the privilege of conducting activities in  
9                                   the forum, thereby invoking the benefits and protections of its laws.  
10                                  (2) The claim must be one which arises out of or results from the  
                                  defendant's forum-related activities.  
                                  (3) Exercise of jurisdiction must be reasonable.

11     Data Disc, Inc., 557 F.2d at 1287.

12                                  Defendants have not done any act or consummated any transaction  
13     in the Northern District. Additionally, even as alleged in the complaint, Canal+'s  
14     claims do not arise from any act committed in the Northern District. Thus, neither  
15     of the first two prongs of the Ninth Circuit's test for specific jurisdiction has been  
16     met.

17                                  (1)     NDS has not purposefully availed itself of the  
18                                  Northern District

19                                  The purposeful availment requirement protects a defendant from  
20     being "haled into a jurisdiction solely because of 'random,' 'fortuitous,' or  
21     'attenuated' contacts, or the unilateral activity of another party or third person."  
22     Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985) (case citation  
23     omitted). Judicial analysis accordingly centers on whether the defendant's  
24     contacts "proximately result[ed] from actions by the defendant himself that  
25     creat[ed] a 'substantial connection' with the forum State." Id. (emphasis in  
26     original) (case citation omitted).

27                                  Here, neither NDS Group nor NDS Americas has purposefully  
28     availed itself of the Northern District of California. Neither defendant operates an

1 office, has employees, has a telephone listing or mailing address, holds meetings,  
2 owns real property or has customers in the Northern District. (Lynskey Decl. at ¶¶  
3 5, 7; Peled Decl. at ¶¶ 5, 7.) Canal+'s Complaint alleges no facts suggesting that  
4 defendants have purposefully availed themselves of the privilege of conducting  
5 activities in the Northern District of California.

6 (2) Canal+'s claims do not arise from NDS's forum-  
7 related activities

8 Even if defendants had purposefully availed themselves of the  
9 privilege of conducting business in the Northern District (which they have not),  
10 specific jurisdiction over defendants would nonetheless be improper because  
11 Canal+'s claims do not arise from any act occurring in the Northern District. The  
12 Ninth Circuit follows a "but for" analysis for the second prong of the specific  
13 jurisdiction test. "Specifically, if a plaintiff would not have suffered a loss 'but for'  
14 the defendant's forum-related activities, courts hold that the claim arises out of the  
15 defendant's forum-related activities." Multistate Legal Studies, Inc. v. Marino,  
16 1996 U.S. Dist. LEXIS 20752 \*16 (C.D. Cal. 1996). This test is simply not met in  
17 this case.

18 Canal+ has not alleged that any relevant act whatsoever occurred in  
19 the Northern District. Instead, Canal+'s Complaint describes acts that allegedly  
20 occurred almost entirely in Israel and Canada. Although Canal+ has argued that  
21 one of the three named plaintiffs suffered harm in the Northern District  
22 (Complaint, ¶ 29), that plaintiff does not own the allegedly infringed copyright.  
23 More importantly, venue analysis focuses on the defendant's contacts with the  
24 forum, not the plaintiff's. Moreover, at the time the events in the Complaint are  
25 alleged to have occurred, Canal+ did not even have a subsidiary in Northern  
26 California. (Kussman Decl. at ¶ 2.) Even if Canal+'s contacts with the Northern  
27 District were relevant, Canal+'s complaint identifies only Italy as a location where  
28 counterfeit Canal+ smart cards have allegedly appeared on the market.

1 (Complaint, ¶ 26.) In other words, plaintiffs' claimed losses would be exactly the  
2 same "but-for" defendants' forum-related activities.

3 Because defendants are not subject to either general or specific  
4 jurisdiction in the Northern District of California, plaintiffs' copyright claims are  
5 improperly venued. Those claims should either be dismissed or transferred.

6 **C. Venue is improper in the Northern District for Canal+'s Unfair**  
7 **Competition, Tortious Interference and Conspiracy Claims**

8 The general venue provisions of 28 U.S.C. § 1391 govern plaintiffs'  
9 purported claims for statutory and common-law unfair competition, tortious  
10 interference and conspiracy. Where jurisdiction is not founded solely on diversity  
11 of citizenship, 28 U.S.C. § 1391(b) provides that suit may be filed:

12 only in (1) a judicial district where any defendant resides,  
13 if all defendants reside in the same State, (2) a judicial  
14 district in which a substantial part of the events or  
15 omissions giving rise to the claim occurred . . . or (3) a  
16 judicial district in which any defendant is subject to  
personal jurisdiction at the time the action is  
commenced, if there is no district in which the action  
may otherwise be brought.

17 28 U.S.C. § 1391(b). Venue for Canal+'s claims is improper under each of these  
18 three provisions of 28 U.S.C. § 1391(b).

19 Venue may be proper under 28 U.S.C. § 1391 (b)(1) in "a judicial  
20 district where any defendant resides, if all defendants reside in the same State."  
21 Under this provision, venue is not proper in the Northern District for two  
22 independent reasons. First, NDS Americas Inc. and NDS Group PLC do not  
23 reside in the same state, so the subsection is irrelevant. (Lynskey Decl. at ¶ 4;  
24 Peled Decl. at ¶¶ 3, 4.)

25 Second, no defendant resides in the Northern District. Pursuant to  
26 28 U.S.C. § 1391 (c), "a defendant that is a corporation shall be deemed to reside  
27 in any judicial district in which it is subject to personal jurisdiction at the time the  
28 action is commenced." The statute further provides that "[i]n a State which has

1 more than one judicial district and in which a defendant that is a corporation is  
2 subject to personal jurisdiction at the time an action is commenced, such  
3 corporation shall be deemed to reside in any district in that State within which its  
4 contacts would be sufficient to subject it to personal jurisdiction if that district were  
5 a separate State, and, if there is no such district, the corporation shall be deemed  
6 to reside in the district within which it has the most significant contacts.” As  
7 previously discussed, defendant NDS Americas, Inc. is not subject to personal  
8 jurisdiction in the Northern District. Likewise, NDS Group PLC simply does not  
9 have the contacts that would subject it to personal jurisdiction in the Northern  
10 District. (Peled Decl. at ¶¶ 5-7.)

11 Nor are Canal+’s claims appropriately venued in the Northern District  
12 under the second prong of 28 U.S.C. § 1391 (b), which provides that venue is  
13 proper in “a judicial district in which a substantial part of the events or omissions  
14 giving rise to the claim occurred.” “The Ninth Circuit utilizes a substantial contacts  
15 test in determining where a claim arose for purposes of venue.” Olson v. Entre  
16 Computer Centers, Inc., 1988 U.S. Dist. LEXIS 17473 \*9 (N.D. Cal. 1988).  
17 “According to this test, venue is proper ‘in any district in which a substantial part  
18 of the acts, events or omissions occurred that gave rise to the claim for relief.’” Id.  
19 As previously explained, Canal+’s Complaint identifies no relevant act that  
20 allegedly occurred in the Northern District. Clearly, a “substantial part of the  
21 events or omissions” giving rise to Canal+’s claims did not occur in the Northern  
22 District.

23 Likewise, the third prong of 28 U.S.C. § 1391 (b), governing venue “if  
24 there is no district in which the action may otherwise be brought,” is inapplicable  
25 here. Venue for Canal+’s claims would be proper in the Southern Division of the  
26 Central District of California, where defendant NDS Americas, Inc. maintains its  
27 principal place of business and would be subject to personal jurisdiction.  
28 (Lynskey Decl. at ¶ 4.)



1           **D. Venue Is Improper in the Northern District for Canal+'s RICO**  
2           **claim.**

3           Like copyright claims, RICO claims have a particular venue provision.  
4           18 U.S.C. § 1965(a) provides that a RICO action may only be brought in a  
5           **district** in which the defendant “resides, is found, has an agent, or transacts its  
6           affairs.”<sup>1</sup> King v. Vesco, 342 F. Supp. 120, 122 (N.D.Cal. 1972).

7           For venue purposes under U.S.C. § 1965(a), a corporate defendant  
8           is “found” in a district only where the corporation is present by its officers or  
9           agents. See Cobra Partners, L.P. v. Liegl, 990 F. Supp. 332, 335 (N.D.N.Y.  
10          1998) (“a corporate defendant is ‘found’ in a district for the purposes of [18 U.S.C.  
11          § 1965(a)] if its officers or agents regularly carry on the business of the  
12          corporation there.”) (Citation omitted).

13          Under this test, neither NDS Group nor NDS Americas is “found” in  
14          the Northern District. Neither NDS Group nor NDS Americas has an office or  
15          employees in the Northern District, and neither carries on regular business in the  
16          District. (Lynskey Decl. at ¶¶ 5, 7; Peled Decl. at ¶¶ 5-7.) Canal+'s RICO claim  
17          should thus be dismissed or transferred to a district where it would be properly  
18          venued. King v. Vesco, 342 F. Supp. 120, 122 (N.D. Cal. 1972) (dismissing RICO  
19          claim against defendant corporation because corporation was not “found” in  
20          district where corporation “maintains no offices in the Northern District of  
21          California . . . has no officers or employees carrying on its business here, nor  
22          does it perform any services or sell any services or products within this district”).

23           **IV. THIS CASE SHOULD BE TRANSFERRED TO THE SOUTHERN**  
24           **DIVISION OF THE CENTRAL DISTRICT OF CALIFORNIA FOR THE**  
25           **CONVENIENCE OF THE PARTIES AND WITNESSES**

26           A district court may “[f]or the convenience of parties and witnesses

27           <sup>1</sup> 18 U.S.C. § 1965(a) is not an exclusive provision, and venue for RICO claims may also be established under the  
28           general venue provision of 28 U.S.C. § 1391. However, as discussed above, venue for Canal+'s claims is improper  
          under 28 U.S.C. § 1391.

1 [and] in the interest of justice,” transfer “any civil action to any other district or  
2 division where it might have been brought.” 28 U.S.C. § 1404 (a). Canal+  
3 unquestionably could have brought this action in the Central District of California  
4 because NDS Americas has its principal place of business in Newport Beach,  
5 California, in the Southern Division of the Central District. (Lynskey Decl. at ¶ 4.)  
6 In addition to providing a forum in which this case would properly be venued, this  
7 action should be transferred to the Southern Division of the Central District of  
8 California because that venue would be more convenient for both the parties and  
9 the witnesses and because a transfer would be in the interests of justice.

10 “The purpose of section 1404(a) is to prevent waste of time, energy  
11 and money and to protect litigants, witnesses and the public against unnecessary  
12 inconvenience and expense.” Hoefer v. U.S. Dept. of Commerce, 2000 U.S. Dist.  
13 LEXIS 9299 \*8 (N.D. Cal. 2000). Although there is no established test, courts in  
14 the Ninth Circuit consider a number of factors, in addition to the interests of  
15 justice, in deciding whether to transfer a case under § 1404: “1) plaintiff’s choice  
16 of forum, 2) convenience of the parties, 3) convenience of the witnesses, 4) ease  
17 of access to the evidence, 5) familiarity of each forum with the applicable law, 6)  
18 feasibility of consolidation of other claims, 7) any local interest in the controversy,  
19 and 8) the relative court congestion and time of trial in each forum.” Williams v.  
20 Bowman, 157 F. Supp.2d 1103, 1106 (N.D. Cal. 2001). With the exception of  
21 plaintiff’s choice of forum, each of these factors is either neutral or favors transfer  
22 to the Southern Division of the Central District.

23 The interests of justice do not favor maintaining this action in the  
24 Northern District because this litigation is in its earliest stages. See United States  
25 v. Covenant Care, Inc., 1999 U.S. Dist. LEXIS 15287 at \*10 (N.D. Cal. 1999)  
26 (“Further, the interests of justice do not weigh in favor of allowing the action to  
27 remain in the Northern District. Plaintiffs will not be inconvenienced by a transfer  
28 of the action because the litigation is relatively young, and this court has not yet

1 become greatly involved in this litigation.”). Moreover, the Southern Division of  
2 the Central District will apply the same law to Canal+’s claims as the Northern  
3 District, and Canal+ is equally likely to obtain a fair trial in the Central District.

4 Although Canal+ chose the Northern District to file this action,  
5 Canal+’s choice should be accorded little weight because the Northern District’s  
6 connection to the allegations in the Complaint is, at best, highly attenuated and, at  
7 worst, wholly manufactured. Fabus Corp. v. Asiana Express Corp, 2001 U.S.  
8 Dist. LEXIS 2568 \*4 (N.D. Cal. 2001) (“The degree to which courts defer to the  
9 plaintiff’s chosen venue is substantially reduced where the plaintiff’s venue choice  
10 is not its residence or where the forum chosen lacks a significant connection to  
11 the activities alleged in the complaint.”); Covenant Care, Inc., 1999 U.S. Dist.  
12 LEXIS 15287 at \*11 (“Sometimes, a plaintiff’s choice of forum may have very little  
13 impact on the court’s evaluation of whether to transfer an action.”). Here, as  
14 already explained, Canal+ has chosen a venue entirely unconnected to the facts  
15 alleged in its complaint. Indeed, the plaintiff located in the Northern District was  
16 incorporated only after the alleged events took place. (Kussman Decl. at ¶ 2.)  
17 Plaintiffs’ decision to sue in the Northern District should thus be given little weight.

18 On balance, the convenience of the parties also favors transfer to the  
19 Southern Division of the Central District. Defendant NDS Americas has its  
20 headquarters in Newport Beach, California, in the Southern Division of the Central  
21 District, (Lynskey Decl. at ¶ 4.), and it would be inconvenienced to have to defend  
22 this action in the Northern District. With respect to the foreign plaintiffs, the  
23 Central District is equally convenient to the Northern District. See Fabus Corp.,  
24 2001 U.S. Dist. LEXIS 2568 at \*6. (“For the two plaintiffs located in Korea, the  
25 Northern District cannot be presumed to be more convenient than the Central  
26 District.”). Plaintiff Canal+ Technologies, Inc. is not a proper plaintiff and would  
27 hardly be inconvenienced by prosecuting this action in the Southern Division of  
28 the Central District compared to the Northern District given that it did not exist at

1 the time of the alleged events and, by its own admission, does not own the  
2 copyright at issue. (Complaint, ¶ 45.)

3           The convenience of the witnesses clearly favors transfer to the  
4 Southern Division of the Central District. “One of the most important factors to  
5 consider is the convenience to the witnesses, and a motion to transfer may be  
6 granted if another forum is more convenient to the witnesses.” Covenant Care,  
7 Inc., 1999 U.S. Dist. LEXIS 15287 at \*5 (transferring case from the Northern  
8 District of California to the Eastern District of California to reduce inconvenience  
9 to witnesses). The majority of witnesses identified to date are abroad. The only  
10 domestic witnesses in this action identified to date are John Norris and Chris  
11 Tarnovsky, both of whom are employed by NDS Americas in the Central District.  
12 (Lynskey Decl. at ¶ 8.) The alleged acts of these witnesses – transmitting the  
13 SECAROM.zip file – are in fact the only acts in the entire case that allegedly  
14 occurred in the United States. (Complaint, ¶ 25.)

15           Ease of access to evidence also favors transfer of this action to the  
16 Southern Division of the Central District. Any domestically-located evidence in  
17 NDS Americas’ possession is likely to be located at its headquarters in Newport  
18 Beach, California, in the Southern Division of the Central District. (Lynskey Decl.  
19 at ¶ 9.) Because the Complaint identifies no acts that allegedly occurred in the  
20 Northern District and plaintiff Canal+ Technologies, Inc. did not even exist when  
21 the alleged acts occurred, it is quite unlikely that any relevant evidence is located  
22 in the Northern District.

23           The remaining relevant factors appear neutral. The Central and  
24 Northern Districts are equally familiar with California and federal law. Carolina  
25 Casualty Co. v. Data Broadcasting Corp., 158 F. Supp.2d 1044, 1049 (N.D. Cal.  
26 2001) (“There is no reason to believe that a judge in the Central District will be  
27 more familiar with the applicable law than the judges of [the Northern District.]”).  
28 There are currently no claims with which to consolidate this action. And neither

1 the Northern District nor the Central District appears to have a strong local  
2 interest in the controversy.

3 The sum of these various factors is clear. There are several good  
4 reasons to transfer the case to the Southern Division of the Central District but  
5 none to keep it in the Northern District. Pursuant to 28 U.S.C. §1404 (a), the  
6 Court should transfer this matter to the Southern Division of the Central District.

7  
8 **V. CONCLUSION**

9 For the foregoing reasons, NDS respectfully requests that the Court  
10 dismiss Canal+'s complaint or transfer this action to the Southern Division of the  
11 Central District of California, where it would be properly venued and more  
12 conveniently litigated.

13 Dated: April 22, 2002

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