

May 9, 2002

Via Facsimile

The Honorable Vaughn R. Walker
United States District Court Judge
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Group Canal+, S.A. v. NDS Group plc, et al.*
Case No. C02-01178 VRW

Dear Judge Walker:

Plaintiffs Groupe Canal+ S.A., Canal+ Technologies, S.A., and Canal+ Technologies, Inc. ("Plaintiffs") submit this letter brief in anticipation of the telephone conference set for 10:00 a.m. on Friday, May 10, 2002. Plaintiffs seek a postponement of the hearing on Defendants' Motion to Dismiss or Transfer for Improper Venue ("Venue Motion"), which is currently scheduled for May 30, 2002, and a postponement of the corresponding briefing schedule,¹ so that they can take limited discovery relating to the issues raised by that motion.

In their Venue Motion, Defendants raise a variety of factual issues to support their claim that they do not have sufficient contact with the Northern District of California to support Canal+'s choice of venue, including information contained in two declarations from Defendants' employees. Canal+ believes that it is entitled to discovery on these and other issues to test the veracity and completeness of the information upon which Plaintiffs rely to dispute venue. *See, e.g., Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 1285 F.2d 1280, 1285 n. 1 (9th Cir. 1977) ("Discovery may appropriately be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary."); *Hayashi v. Red Wing Peat Corp.*, 396 F.2d 13, 14 (1968) ("Of course the trial court may permit discovery on [a motion to dismiss for improper venue], and indeed should do so where discovery may be useful in resolving issues of fact presented by the motion, particularly since the necessity of resolving such issues is created by the movant himself and the relevant evidence is peculiarly within the movant's possession.").

Accordingly, the parties have been trying to negotiate the discovery that Plaintiffs may take to oppose the motion, as well as a revised briefing and hearing schedule on the motion.

¹ Under the current briefing schedule, Plaintiffs' papers in opposition to the Venue Motion are due today, May 9, 2002. The parties today submitted a stipulation and proposed order to postpone the deadline for Plaintiffs' opposition brief at least until tomorrow, so that the Court can consider the parties' discovery and scheduling disputes before Plaintiffs are required to file their opposition papers.

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Defendants apparently agree with Plaintiffs that some discovery is warranted under the current circumstances -- they have agreed to provide certain documents requested by Defendants relating to venue issues. However, the parties have not been able to resolve several other issues. Most fundamentally, Defendants refuse to postpone the May 30, 2002 hearing on the Venue Motion in order to accommodate venue-related discovery. As a result, although Defendants agreed to produce venue-related documents today, they have agreed (1) to provide one Rule 30(b)(6) witness on venue-related issues; (2) that the deposition of the Rule 30(b)(6) witness go forward tomorrow; and (3) that the deadline for Plaintiffs to file their opposition papers be extended only until next Tuesday, May 14, 2002.

Plaintiffs therefore have requested a telephonic conference with the Court to request that the hearing on the Venue Motion be postponed, so that the parties can work out a reasonable schedule for venue-related discovery. This discovery would proceed separately from the discovery the parties have been discussing regarding Plaintiffs' motion for preliminary injunction, but would include the general procedural agreements related to logistics to which the parties have already agreed. Further, Plaintiffs seek an order requiring Defendants to provide venue-related discovery to Plaintiffs, including venue-related document production and depositions, including corporate depositions on venue-related issues and the depositions of the individuals upon whom Defendants rely to support their Venue Motion.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ James A. DiBoise

James A. DiBoise

JAD:kp

cc: Patrick Lynch
Darin Snyder