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10 GROUPE CANAL+ S.A.,  
11 CANAL+ TECHNOLOGIES, S.A. and  
12 CANAL+ TECHNOLOGIES, INC.

13 UNITED STATES DISTRICT COURT  
14  
15 NORTHERN DISTRICT OF CALIFORNIA  
16  
17 SAN FRANCISCO DIVISION

18 GROUPE CANAL+ S.A., CANAL+  
19 TECHNOLOGIES, S.A., CANAL+  
20 TECHNOLOGIES, INC.,

21 Plaintiffs,

22 v.

23 NDS GROUP PLC, NDS AMERICAS, INC.,

24 Defendants.

) CASE NO.: C02-01178 VRW

)  
)  
) **DECLARATION OF JEAN-MARC**  
) **RACINE IN SUPPORT OF**  
) **CANAL+'S OPPOSITION TO**  
) **MOTION TO TRANSFER VENUE**

)  
) Date: May 30, 2002  
) Time: 2:00 p.m.  
) Place: Courtroom 6

25 I, Jean-Marc Racine, declare as follows:

26 1. I am the Director of Marketing for Canal+ Technologies, S.A. I have held this  
27 position since October 1, 2001. In this job, I am responsible for Canal+'s U. S. subsidiary,  
28 Canal+ Technologies, Inc. Prior to moving back to Paris to become Director of Marketing, I  
started and was the CEO of Canal+ Technologies, Inc., which is located in Cupertino, California  
and is a plaintiff in this case. I have personal and firsthand knowledge of the matters set forth in  
this declaration.

1           2.       Canal+ Technologies began doing business in Milpitas, California, in September  
2 1998, after we received a Request for Proposal (RFP) from MediaOne for a complete end-to-end  
3 digital television system, including conditional access, interactivity and set top box technology.  
4 A conditional access company cannot respond to such an RFP or complete such an end-to-end  
5 system without technology partners to provide other key components. Two of Canal+’s  
6 important technology partners on the MediaOne project were located in Milpitas: DiviCom (for  
7 the “head end” or digital video compression equipment) and C-Cube (for the set top box chip  
8 set). Due to the large amount of work Canal+ needed to do with its partners in order to respond  
9 to the Media One proposal, Canal+ spent a significant amount of time working on the proposal in  
10 Northern California from September 1998 to December 1998.

11           3.       In December 1998, MediaOne awarded the contract related to the RFP to Canal+.  
12 At the beginning of 1999, MediaOne announced that the contract had been awarded to Canal+,  
13 and I believe that the players in the industry, including NDS, were aware of our presence in  
14 Northern California by that time. We began setting up an office in Milpitas in C-Cube’s building  
15 in mid-January 1999. We entered a formal lease agreement for this space, dated April 13, 1999  
16 (attached here as Exhibit A), but I as well as other Canal+ employees had been spending a  
17 significant amount of time at the Milpitas office on behalf of Canal+ prior to the signing of the  
18 lease. We initially set up the company as a division of Canal+ (US), a movie production  
19 company located in Beverly Hills. The Canal+ US Technologies division has always been  
20 located in Northern California. I recruited employees for Canal+ in Northern California, and by  
21 December we formally incorporated a U.S. technology subsidiary, first called Canal+ US  
22 Technologies, Inc. and later renamed Canal+ Technologies, Inc. So, the various corporations  
23 that became what Canal+ Technologies, Inc. is today, have had operations in Silicon Valley  
24 (which I understand is within the Northern District of California) since September 1998.

25           4.       In addition to the fact that our MediaOne partners were located in Milpitas, the  
26 purpose of setting up operations in Silicon Valley was to have the base of our U.S. operations  
27 near the center of the high technology industry. The clear center of gravity for software  
28 companies targeting the digital television market in the United States was and still is in Silicon

1 Valley. Conditional access (smart card security) is an essential element of an end-to-end digital  
2 television system, but the key to success in this market is the overall integration between (i) the  
3 set top box chip set, (ii) set top box software and hardware, (iii) the conditional access system,  
4 and (iv) the head end equipment. The integration work related to the MediaOne program was to  
5 be done in Northern California because the other partners in the MediaOne program (Philips in  
6 Sunnyvale, DiviCom in Milpitas and C-Cube in Milpitas) had their base in Northern California.  
7 This was one of the reasons why we had to locate our integration team in Northern California.  
8 The choice of this location was in line with our corporate objective (i) to send a strong message  
9 to U.S. pay TV network operators that we intended to be a major technology player in this  
10 market and (ii) to find sufficient human and technical resources to execute on the MediaOne deal  
11 and other potential deals we hoped to obtain.

12 5. Canal+ specifically targeted the U.S. for growth in the sales of its digital  
13 television products, including conditional access systems. The general purpose of setting up  
14 operations in the U.S. was to gain market share for MediaGuard and MediaHighway. We  
15 targeted network operators and cable overbuilders throughout the country, including those in  
16 Northern California. The U.S. market offered great potential for customers and our aim was to  
17 get these companies as Canal+ customers.

18 6. It is important to emphasize that MediaOne signed an agreement with Canal+ to  
19 design and deploy an open system adapted to the needs of U.S. cable operators. By "open"  
20 system I mean a digital television system built by several different vendors providing  
21 interoperable solutions. The open system enables competition for the sourcing of key  
22 components --specifically, the set top box-- bringing about cost reductions for the network  
23 operators and ultimately for pay television consumers. At the time we won the MediaOne  
24 business, Canal+ was considered to be the open system champion by the U.S. cable industry.  
25 However, just as Canal+ was getting a foothold in the U.S., the piracy of our conditional access  
26 system became known and Canal+'s efforts to gain U.S. market share, based out of Milpitas and  
27 later Cupertino, were negatively impacted. A company's reputation, as well as market  
28

1 perception of the quality of its product, is important in order to win new business, and the piracy  
2 of MediaGuard had a negative impact on Canal+.

3         7. I had several experiences with Canal+ customers that to me evidence the impact  
4 of the piracy of MediaGuard on Canal+'s Northern California operations. For example, Canal+  
5 Technologies, Inc. expended a great deal of resources trying to win a contract with Cablevision  
6 in New York. We lost this contract to NDS, and Cablevision told us that it was choosing NDS  
7 because NDS knew how to combat piracy better than Canal+. In another instance, I believe that  
8 NDS actively flaunted the hacking of Canal+'s conditional access system when it was in  
9 competition with Canal+ to win a full end-to-end system contract from RCN, an over-builder  
10 based in Princeton, New Jersey, which has significant operations in major U.S. cities, including  
11 San Francisco. Canal+ Technologies, Inc.'s only real competition for the RCN business was  
12 NDS. Several times, RCN, which was in contact with NDS at the time, mentioned the piracy of  
13 MediaGuard that had occurred after our codes were published on DR7. On May 29, 2001, RCN  
14 asked us to comment on several articles and other information contained on web sites regarding  
15 the hacking and counterfeiting of Canal+'s smart cards. (A copy of this email is attached here as  
16 Exhibit B.) This set of articles is extensive and had to take more than a few hours to prepare. It  
17 was sent by an RCN engineer who I believe was also in contact with NDS in this competition  
18 with Canal+. RCN asked us to justify why there was a piracy problem with our smart cards and  
19 told us that NDS had a much better solution and no piracy problem in Europe. RCN postponed  
20 their decision on selecting a supplier for a new end-to-end system, but I believe that the piracy  
21 problem caused confusion and created doubts at RCN about the performance and quality of  
22 Canal+'s products.

23         8. Since then, Canal+ Technologies, Inc. has successfully won only one contract in  
24 the United States, WinFirst in Sacramento. As the piracy of Media Guard became known, we  
25 have put management time and efforts into reassuring the customer. We had to set up a Security  
26 Committee and explain to the customer how to fight piracy, the legal actions taken in Europe,  
27 and the engineering steps that we would use and were using to combat piracy. These efforts  
28 would not have been needed if MediaGuard had remained secure. The security problems

1 associated with our conditional access system have had a negative impact on the sales efforts in  
2 the United States of Canal+ Technologies, Inc, based in Cupertino.

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7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct. Executed on May 13, 2002 at Paris France.

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/s/Jean-Marc Racine

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Jean-Marc Racine

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