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UNITED STATES DISTRICT COURT

9

NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

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Groupe Canal+ S.A., et al.,
12
Plaintiffs,

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v.

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NDS Group PLC, et al.,
15
Defendants.

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Case No. C02-01178 (VRW)

**DEFENDANTS NDS GROUP PLC'S &
NDS AMERICAS, INC.'S REPLY
MEMORANDUM IN SUPPORT OF
THEIR MOTION TO DISMISS OR
TRANSFER FOR IMPROPER VENUE**

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

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INTRODUCTION

3 No matter how it strains, Canal+ cannot connect its claims to the Northern
4 District of California, and venue is therefore improper in this district. Canal+ admits that,
5 to establish proper venue as to defendant NDS Americas, it must establish that each of
6 the claims arose out of NDS Americas's contacts with the Northern District. But Canal+
7 cannot satisfy this burden. In its opposition brief, Canal+ does not even bother to
8 attempt to articulate a connection between NDS Americas's minimal Northern District
9 contacts and the claims for copyright infringement and contributory copyright infringement.
10 At minimum, those two claims must be dismissed or transferred to the Southern Division
11 of the Central District.

12 Canal+ also wholly fails to satisfy its burden of showing that the remaining
13 claims arise out of any contacts by NDS Americas with this district. Although Canal+
14 points to NDS partnerships with a group of Northern California companies, Canal+ can
15 demonstrate no connection whatsoever between those partnerships and its claims.
16 Canal+ also asserts that its state-law claims arise out of Northern District contacts
17 because Canal+ USA suffered injury in this District. But Canal+'s evidence does not
18 support its assertion that it was injured here, and in any event the case law Canal+ cites
19 does not support basing venue exclusively on an alleged injury in the district. Canal+'s
20 inability to show that its claims arise out of NDS Americas's Northern District-related
21 activity demonstrates that venue is improper in this district, and it therefore makes no
22 practical difference that venue is proper as to NDS Group. This single lawsuit should
23 proceed where venue is proper as to all of the claims against all of the defendants.
24 Canal+'s claims should either be dismissed or transferred to the Southern Division of the
25 Central District of California, where venue is proper as to all defendants and all claims.

26 The Court should also transfer this action to the Southern Division of the
27 Central District of California for the convenience of the parties and witnesses. Canal+
28 does not identify a single witness located in this district. In fact, the person responsible

1 for Canal+ USA, the only plaintiff with an office in this district, by his own admission
2 resides in France. The identified witnesses and evidence relevant to this action are
3 either located in Southern California or are outside of the state. The Court should
4 therefore transfer the case to the Southern Division of the Central District of California.

5 ARGUMENT

6 I. CANAL+'S CLAIMS ARE NOT PROPERLY VENUED IN THE NORTHERN 7 DISTRICT.

8 Canal+ concedes that it has “the burden of establishing that venue is
9 proper.” Opp. at 2:8. Moreover, Canal+ does not dispute that it must satisfy this burden
10 with respect to each defendant for **each and every** claim, and, if venue is improper over
11 a claim, the Court must dismiss or transfer at least that claim. As NDS made quite clear
12 during the May 10, 2002 telephone hearing with the Court, defendants do not dispute
13 that venue in this district is proper as to NDS Group under the Alien Venue Act. 28
14 U.S.C. § 1391(d). Canal+ cannot, however, meet its burden with respect to its claims
15 against the other defendant, NDS Americas. The Court should therefore either dismiss
16 the case or transfer it to the Southern Division for the Central District of California, where
17 venue is proper for all defendants and for all claims.¹

18 A. Canal+ Must Establish Specific Jurisdiction Over NDS Americas In The 19 Northern District For Each Claim.

20 Following an identical series of steps in legal reasoning, the parties agree
21 that venue in this district depends on showing that this Court has specific jurisdiction
22 over NDS Americas for each of Canal+'s various claims. Opp. at 4:13-5:4 (venue is
23 proper if defendant is subject to personal jurisdiction, i.e., “resides” or “may be found”, in
24 the district).² Although personal jurisdiction may be either general or specific, Canal+

25 ¹ Importantly, Canal+ does not dispute that venue would be proper for all
26 defendants for all claims in the Southern Division of the Central District of California. Nor
27 does Canal+ argue that it would be appropriate to dismiss or transfer only the claims
28 against NDS Americas while retaining the claims against NDS Group.

² In a footnote, Canal+ suggests that its claims are appropriately venued in the
Northern District under the second prong of 28 U.S.C. § 1391(b), which provides that
venue is proper in “a judicial district in which a substantial part of the events or omissions

1 concedes that it cannot show that NDS Americas engaged in sufficient activities in the
2 Northern District to establish general jurisdiction. Opp. at 6 n.5. Therefore, as Canal+
3 acknowledges, to establish proper venue as to NDS Americas, Canal+ must satisfy its
4 burden of showing that “NDS Americas is subject to specific jurisdiction in this district” for
5 each of Canal+’s claims. Opp. at 6:11.

6 Under well-established law, a defendant may be subject to a court’s
7 specific jurisdiction for a claim if (1) the defendant “purposefully avails himself of the
8 privilege of conducting activities in the forum,” (2) the claim “arises out of or results from
9 the defendant’s forum-related activities,” **and** (3) the exercise of jurisdiction would be
10 reasonable. Data Disc, Inc. v. Systems Technol. Assoc., Inc., 557 F.2d 1280, 1287 (9th
11 Cir. 1977); Opp. at 6:14-15.³ Rather than assess the facts and allegations relevant to
12 each claim, Canal+ addresses this test only once, claiming that “the same test applies
13 under each statute.” Opp. at 4:11-12. This error is fatal to Canal+’s choice of venue.

14 Although the general three part test is the same under each of the relevant
15 venue statutes, the court must separately analyze the facts and contacts relevant to
16 each claim to determine whether venue exists. Sheppard v. Jacksonville Marine Supply,
17 Inc., 877 F. Supp. 260, 269 (D.S.C. 1995). Thus, while a defendant’s contacts with a
18 forum may be sufficient to establish proper venue for one kind of claim, the defendant’s

19
20 giving rise to the claim occurred.” Canal+ does not even attempt to explain how the
21 general venue provision in section 1391(b) could have any bearing on the proper venue
22 for the copyright claims, which have a controlling specific venue provision. Moreover,
23 the authority Canal+ cites, Myers v. Bennett Law Offices, 238 F.3d 1068, 1076 (9th Cir.
24 2001), found only that the site of plaintiff’s harm was a “relevant factor” in applying this
25 test. In this case, all of the events “giving rise to the claim” occurred outside this district.
26 The only alleged connection to this district is a vague allegation of injury to an after-
27 created subsidiary named as one of three plaintiffs. [But Canal+’s declaration from Mr.
28 Racine makes clear that Canal+’s Use-Rom was posted on the Internet in March 1989.
Canal+ was doing business out of Beverly Hills in **southern** California. Racine Decl.,
Ex. A.] In the context of this case, this hardly constitutes a “substantial part of the
events or omissions” giving rise to plaintiffs’ claims.

3 Defendants will not contest, for purposes only of this motion, that Canal+ has
made a prima facie showing that NDS Americas satisfies the “purposeful availment”
requirement. However, as Canal+ concedes, it must still satisfy the other two prongs of
the Data Disc test. Opp. at 7:17-18.

1 contacts might be insufficient to establish proper venue for other claims in the same
2 action. See, e.g., Verbis v. Iowa Dept. of Human Serv., 18 F. Supp. 2d 770, 774 (W.D.
3 Mich. 1998) ("Isolating the events giving rise to [plaintiffs'] claims," the court found that
4 only one of several claims "could conceivably be venued in Michigan."); Safferstein v.
5 Paul, Mardinly, Durham, James, Flandreau & Rodger, P.C., 927 F. Supp. 731, 736
6 (S.D.N.Y. 1996) (finding venue proper as to breach of contract claim because the
7 contract was created in the district, but improper as to six other claims because "the
8 factual basis supporting [those] claims occurred outside New York."). In this case, the
9 second "arising out of" prong of the test is dispositive. Canal+ fails to carry the burden of
10 showing that each of Canal+'s eight claims arises out of NDS Americas's forum-related
11 activities.

12 Canal+ agrees that the Ninth Circuit applies a "but for" standard to the
13 "arising out of" prong of the Data Disc test. Opp. at 14:11-14.⁴ Under the "but for"
14 standard, "if a plaintiff would not have suffered a loss 'but for' the defendant's forum-
15 related activities, courts hold that the claim arises out of the defendant's forum-related
16 activities." Multistate Legal Studies, Inc. v. Marino, 41 U.S.P.Q. 2d 1886, CV-96-5188
17 ABC, 1996 WL 786124 (C.D. Cal. Nov. 4, 1996). Applying this standard to the present
18 case demonstrates that each of Canal+'s claims is improperly venued as to NDS
19 Americas.

20 B. Canal+'s Copyright Claims Do Not Arise Out of NDS Americas's Northern
21 District Activities.

22 There should be no doubt that Canal+'s claims for copyright infringement
23 and contributory copyright infringement do not satisfy the "arising out of" prong of the
24 Data Disc test. Canal+ does not even argue that the copyright claims arise out of

25 ⁴ Canal+ incorrectly asserts that the "arising out of" prong "is invariably met where
26 the 'effects test' for the purposeful avilment prong has been satisfied." Opp. at 14 n.9.
27 To the contrary, courts, including courts Canal+ cites, consistently address the "arising
28 out of" prong separately from the "effects test" and its "express aiming" requirement.
See, e.g., Myers, 238 F.3d at 1075 (finding that "arising out of" prong was satisfied);
Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082, 1088 (9th Cir. 2000)
(same).

1 Northern District-related activities. See Opp. at 14:14-15 (claiming only that “Plaintiffs’
2 tortious interference, RICO and unfair competition claims arise out of Defendants’
3 contacts with the Northern District.”). Canal+ does not identify a single act relevant to
4 the two copyright claims that allegedly occurred in the Northern District. Likewise,
5 Canal+ does not identify any harm in the Northern District caused by the alleged
6 copyright infringement. Nor could it. The only domestic Canal+ entity, Canal+ USA,
7 unquestionably does not own the allegedly infringed copyright. Canal+’s two copyright
8 claims are improperly venued, and they must be dismissed or transferred to the
9 Southern Division of the Central District.

10 C. Canal+’s State Law and RICO Claims Do Not Arise Out Of NDS
11 Americas’s Northern District Activities.

12 Canal+’s state law claims for tortious interference and unfair competition
13 and its RICO claim apparently arise out of the same alleged conduct involving Canal+
14 USA as well as the other Canal+ entities. Thus, for purposes of the venue motion, they
15 may be considered together. But they too fail the “arising out of” prong of the Data Disc
16 test. Canal+ claims that “NDS Americas exploited Canal+’s good name and reputation
17 to divert potential business partners and customers in the Northern District of California
18 from contracting with Canal+ USA.” Opp. at 15:2-4. Canal+’s evidence, however, does
19 not support this assertion. For example, Canal+ repeatedly refers to a selection of NDS
20 communications with its sales staff, including sales personnel in the United States. See,
21 e.g., Opp. at 10, n.7; id. at 12 n.8. But not one of these communications was sent from
22 or to someone in Northern California. Not one refers to any potential Canal+ business
23 partners or customers in Northern California. And Canal+ does not even allege that it
24 lost any potential business partners or customers as a result of these communications.

25 Indeed, Canal+ can identify only two potential customers that supposedly
26 “evidence the impact of the piracy of MediaGuard on Canal+’s Northern California
27 operations” – Cablevision and RCN. Racine Decl. ¶ 7. As Canal+’s Mr. Racine
28 explains, Cablevision is in New York, not the Northern District. Likewise, the other

1 potential customer, RCN, is in New Jersey, not the Northern District. Obviously neither
2 of these two customers relate to the Northern District.

3 Moreover, Canal+'s own evidence proves that the "loss" of this business
4 was not due to allegedly tortious conduct, but rather resulted from independent
5 competitive factors. In Canal+'s own words, Cablevision chose NDS "because NDS
6 knew how to combat piracy better than Canal+," not because of any tortious activity by
7 NDS. Id. ¶ 7. And RCN merely "postponed their decision on selecting a supplier for a
8 new end-to-end system." Id. Thus, Canal+ cannot identify a single customer, much less
9 one located in Northern California, that NDS diverted from contracting with Canal+. In
10 fact, Canal+ identifies only one other customer at all, Denver-based MediaOne, and
11 Canal+ "won" the business of that customer in December 1998. Id. ¶ 3.

12 Similarly, Canal+ does not identify a single business partner that NDS kept
13 from doing business with Canal+. Elsewhere in its opposition, Canal+ identifies 43 NDS
14 corporate partners, 12 of which have headquarters in Northern California. Opp. at 8.
15 But Canal+ does not allege that NDS interfered with Canal+ having partnerships with
16 any of those 43 companies, much less the ones with headquarters in Northern
17 California. Similarly, Canal+ does not show that those "partnerships" relate in any way
18 to this case. These unrelated contacts can not establish specific jurisdiction.⁵ See
19 Pacific Atl. Trading Co. v. M/V Main Express, 758 F.2d 1325, 1329-30 (9th Cir. 1985);
20 Thos P. Gonzalez Corp. v. Consejo Nacional, Etc., 614 F.2d 1247, 1255 (9th Cir. 1980).
21 Ultimately, Canal+ identifies no Northern District-related activities that satisfy the "arising
22 out of" prong of the Data Disc test.

23 The absence of Northern-District related activities distinguishes this case
24 from the several cases Canal+ cites. For example, in Nissan Motor Co. v. Nissan

25 ⁵ Canal+ relies on these same partnerships to assert that venue for its RICO claim
26 may be proper in the Northern District because NDS "transacts its affairs" in the Northern
27 District. Opp. at 5:20-6:4. To the contrary, a company "transacts its affairs" in a district
28 for purposes of RICO venue when it is engaged in regular, substantial and continuous
activity within the judicial district. See Dody v. Brown, 659 F. Supp. 541 (W.D. Mo.
1987). NDS Americas's limited alleged contacts with this district do not satisfy this test.

1 Computer Corp., 89 F. Supp. 2d 1154 (C.D. Cal. 2000), the defendant registered an
2 internet domain name and then signed contracts with California companies to display
3 advertisements on the infringing website. Id. at 1157, 1160. Even as described by
4 Canal+, the court relied on “the defendant’s contracts with California-based advertisers”
5 on the specific website at issue to find that the claims arose out of defendants forum-
6 related activities. Opp. at 15:13-15 (citing Nissan, 89 F. Supp. 2d at 1160). In the
7 current case, in contrast, Canal+ does not allege that its claims arise out of any NDS
8 Americas contracts with Northern District companies.

9 In Sinatra v. National Enquirer, Inc., 854 F.2d 1191 (9th Cir. 1988), the
10 court found specific jurisdiction over a Swiss medical clinic that was soliciting business in
11 California because allegedly defamatory statements were made in a national newspaper
12 with substantial California circulation and were an integral part of an advertising
13 campaign aimed at California. See id. at 1193, 1197. In the current case, Canal+ does
14 not allege that any injurious statements were made in the Northern District, that any
15 were ever communicated into the Northern District, or that NDS Americas had any kind
16 of campaign aimed at the Northern District.

17 The other cases Canal+ cites are equally inapplicable. In Rio Prop., Inc. v.
18 Rio Int’l Interlink, 284 F.3d 1007, 1021 (9th Cir. 2002), the court relied on its finding that
19 the defendant had specifically advertised the offending website in the forum state. And
20 in Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 773-74 (1984), jurisdiction was proper
21 because some of the claims arose from defendant’s contacts with the forum – circulation
22 of the magazine. In this case, Canal+ does not allege that NDS Americas made any
23 actionable statements in the Northern District. Nor does Canal+ allege that NDS
24 Americas committed any tortious acts in the Northern District.

25 As with its copyright claims, Canal+ does not identify a single act relevant
26 to their state law claims or RICO claim that occurred in the Northern District. Canal+
27 thus fails to satisfy its burden of showing that its claims arise out of NDS Americas’s
28 contacts with the Northern District. The claims should therefore be dismissed or

1 transferred to the Southern Division of the Central District.

2 **II. THE COURT SHOULD TRANSFER THIS CASE TO THE SOUTHERN DIVISION**
3 **OF THE CENTRAL DISTRICT OF CALIFORNIA FOR THE CONVENIENCE OF**
4 **THE PARTIES AND WITNESSES.**

5 There is no doubt that “[u]nder 28 U.S.C. § 1404(a), the district court has
6 discretion to adjudicate motions for transfer according to an ‘individualized, case-by-case
7 consideration of convenience and fairness.’” Maxon v. Jefferson Pilot Sec. Corp., No. C
8 01-02668, 2002 WL 523575 at *2 (N.D. Cal., April 2, 2002) (citing Jones v. GNC
9 Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000)).⁶ Moreover, Canal+ agrees that
10 defendants “properly identified” the factors courts generally consider, together with the
11 interests of justice, in deciding whether to exercise their discretion transfer a case under
12 § 1404. Opp. at 18:1. Those factors include: “1) plaintiff’s choice of forum, 2)
13 convenience of the parties, 3) convenience of the witnesses, 4) ease of access to the
14 evidence, 5) familiarity of each forum with the applicable law, 6) feasibility of
15 consolidation of other claims, 7) any local interest in the controversy, and 8) the relative
16 court congestion and time of trial in each forum.” Williams v. Bowman, 157 F. Supp. 2d
17 1103, 1106 (N.D. Cal. 2001). Under the relevant factors, this action should be
18 transferred to the Southern Division of the Central District of California because venue is
19 proper there, it would be more convenient for both the parties and the witnesses, and a
20 transfer to the Central District would be in the interests of justice.

21 **A. Given This Case’s Lack Of Connection With The Northern District,**
22 **Plaintiffs’ Choice of Forum Is Entitled To Little Weight.**

23 While courts sometimes consider a plaintiff’s choice of forum in
24 determining whether to exercise their discretion to transfer a case under §1404(a), the
25 weight given this factor appears to depend heavily on the particular circumstances of
26 each case. United States v. Covenant Care, Inc., No. C-97-3814, 1999 WL 760610 at *3
(N.D. Cal. Sept. 21, 1999); see also Fodor v. Berglas, No. 94-CV-4761, 1994 WL

27 ⁶ Because Canal+’s claims are improperly venued, this motion is also brought
28 under 28 U.S.C. § 1406(a), which permits transfer of an improperly venued case to “any
district or division in which it could have been brought.”

1 822477, at *7 (C.D. Cal., Dec. 27, 1994) (“ . . . the weight to be given plaintiff’s choice of
2 forum is a malleable concept that varies with the facts and subject matter of the case”).
3 Simply put, under certain circumstances, “a plaintiff’s choice of forum may have very little
4 impact on the court’s evaluation of whether to transfer an action.” Covenant Care, 1999
5 WL 760610 at *3. This case presents just such a circumstance.

6 Canal+ defends its choice of forum by again focusing on the alleged harm
7 suffered by Canal+ USA in the Northern District. Opp. at 18:11-16. But the only
8 authority Canal+ cites, Myers, 238 F.3d at 1075-76, does not even consider the
9 convenience of the parties and witnesses under 1404(a). Furthermore, Canal+ USA can
10 not identify a single customer or “partner” lost as a result of defendants’ alleged actions,
11 including any lost customers or “partners” in the Northern District. More importantly,
12 Canal+ can not identify any relevant acts that occurred in the Northern District, and its
13 choice of forum should therefore be disregarded. See Fabus Corp. Asiana Express
14 Corp., C-0-3172, 2001 WL 253185 at *4 (N.D. Cal. Mar. 5, 2001) (“[t]he degree to which
15 courts defer to the plaintiff’s chosen venue is substantially reduced where the plaintiff’s
16 venue choice . . . lacks a significant connection to the activities alleged in the
17 complaint.”); Maxon, 2002 WL 523575 at *2 (“[b]ecause the dispute is centered
18 elsewhere, and the underlying agreement was executed elsewhere, plaintiff’s choice of
19 forum is not entitled to significant weight”). As this Court has previously stated, “if the
20 ‘operative facts have not occurred within the forum and the forum has no interest in the
21 parties or subject matter, [plaintiff’s] choice is entitled to only minimal consideration.”
22 United States v. Regents of the Univ. of Cal., 2002 WL 334915 at *3 (citing Lou v.
23 Belzberg, 834 F.2d 730, 739 (9th Cir. 1987)).

24 B. The Most Significant Convenience Factors And The Interests Of Justice
25 Both Favor Transfer To The Central District.

26 Although courts examine several factors in determining whether to transfer
27 a case, the most significant factors are either neutral or favor transfer to the Southern
28 Division of the Central District. First, the convenience of the parties favors transfer to the

1 Southern Division of the Central District. Defendant NDS Americas has its headquarters
2 in Newport Beach, California, in the Southern Division of the Central District.⁷ Lynskey
3 Decl. ¶ 4. With respect to the two foreign plaintiffs, as Canal+ concedes, the Southern
4 Division of the Central District is just as convenient as the Northern District. Opp. at
5 19:7-9. The third plaintiff, Canal+ USA, on the other hand, does not dispute in the
6 opposition that it is not a proper plaintiff for the two copyright claims and thus would
7 suffer no inconvenience with respect to the transfer of those claims. Opp. at 19:24-27.
8 In fact, Canal+ nowhere even asserts that it would be inconvenienced by litigating the
9 entire case in the Southern Division of the Central District.

10 Second, the convenience of the witnesses also favors transfer to the
11 Southern Division of the Central District. While primary consideration may be given to
12 third-party witnesses, Canal+ does not identify a single third-party witness in the
13 Northern District. The only third parties identified anywhere in Canal+'s opposition are
14 Cablevision, located in New York, and RCN, located in New Jersey. Racine Decl. ¶ 7.
15 Neither of these potential witnesses – assuming their testimony is relevant to any of
16 Canal+'s claims – would be inconvenienced by litigation in the Central District, as
17 opposed to the Northern District.

18 Ultimately, Canal+ does not even identify any party-related witnesses in
19 the Northern District. Although Canal+ refers to unnamed “[p]otential witnesses at
20 Canal+ USA, in the Northern District,” the only Canal+ USA witness identified is Mr.
21 Racine, who is “responsible” for Canal+ USA but who resides in Paris. Opp. at 20:24-
22 25; Racine Decl. ¶ 1. Mr. Racine, like the majority of identified witnesses, resides
23 abroad, and the Northern District is no more convenient than the Central District. There

24 ⁷ Canal+ suggests that defendants would not be inconvenienced by having to
25 litigate this case in the Northern District because they have prosecuted claims in
26 Montana and Florida. Opp. at 19:18-20. In addition to not being the lead plaintiff in
27 those cases, defendants litigated in those districts because venue was proper there, just
28 as Canal+ should have to litigate this case where venue is proper. Canal+'s reference to
NDS's partnerships with companies located in the Northern District (Opp. at 19:16-17) is
equally irrelevant, as NDS has no control over where other companies locate their
businesses.

1 are, however, at least two domestic witnesses who are central to Canal+'s allegations,
2 John Norris and Chris Tarnovsky, and both of them are employed by NDS Americas in
3 the Central District. Lynskey Decl. ¶ 8.

4 Similarly, ease of access to evidence also favors transfer of this action to
5 the Southern Division of the Central District. Most evidence in NDS Americas's
6 possession in the United States is located at its headquarters in Newport Beach,
7 California. Lynskey Decl. ¶ 9. As Canal+ concedes, this is where the only domestic acts
8 of copying and publication alleged in plaintiffs' complaint supposedly occurred. Against
9 this, Canal+ offers nothing other than the bald assertion that "evidence relating to both
10 liability and damages will be located in the Northern District." Opp. at 21:3-4. Given that
11 the person "responsible" for Canal+ USA resides in France, it is at least as likely that
12 relevant documents are located there, not in the Northern District. Tellingly, Canal+ did
13 not offer any testimony from Mr. Racine, or anyone else, that relevant documents are in
14 northern California, although it could presumably have done so if such were the case.

15 Finally, Canal+ asserts that the Northern District has a "strong local interest
16 in settling this dispute." Opp. at 21:23-24 (citing Maggos v. Helm, 2000 U.S. Dist. LEXIS
17 12555 (D. Haw., August 10, 2000) (text not available on Westlaw)). But this case is
18 nothing like Maggos. In Maggos, the state of Hawaii had a particular interest in the
19 dispute because the plaintiff was a long-term citizen of Hawaii. Id. ("any event in which
20 Plaintiff was involved concerning this matter must have taken place in Hawaii, as Plaintiff
21 had not left Oahu since 1978.") In this case, however, none of the alleged tortious acts
22 occurred in the Northern District, and no plaintiff resided in the Northern District at the
23 time of any of the wrongful acts. Canal+ USA, a corporation, did not even exist until
24 after the alleged wrongful events alleged in the complaint occurred, and operated out of
25 Southern California when those acts allegedly occurred. The Southern Division of the
26 Central District is equally capable of protecting the rights of a corporate California citizen.

27 On balance, the relevant convenience factors favor transfer to the
28 Southern Division of the Central District of California. This Court should therefore

1 exercise its discretion to transfer this case pursuant to 28 U.S.C. section 1404(a) or
2 1406(a).

3 **III. CONCLUSION**

4 For the foregoing reasons, NDS respectfully requests that the Court
5 dismiss plaintiffs' complaint or transfer this action to the Southern Division of the Central
6 District of California, where it would be properly venued and more conveniently litigated.

7 Dated: May 23, 2002

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