



1 of NDS as stated in this suit led to the counterfeiting that has adversely affected Canal+'s  
2 businesses. I understand that NDS denies is that it played a part in the publication of our code  
3 on the Internet. I do not believe these denials and believe instead that discovery in this matter  
4 will show NDS management's involvement in the publication of Canal+'s code on the internet.

5       2. I will first address NDS's claims about alleged deficiencies in Canal+'s  
6 conditional access technology. Canal+ has done extensive investigation into all rumored pirating  
7 of digital pay television that Canal+'s MediaGuard conditional access system protects. Without  
8 exception Canal+ has found no evidence of unauthorized decryption of such digital pay  
9 television prior to publication of the MediaGuard UserROM code on DR7. I am not aware of  
10 any evidence that the algorithm, substitution matrix or keys of a Canal+ MediaGuard smart card  
11 were known outside Canal+ before the DR7 publication (except by NDS). I am informed and  
12 believe that no one at Canal+ is aware of any such information.

13       3. NDS's papers reflect a misunderstanding of the relevant technology. The  
14 Declaration of David R. Eberhart in Support of Defendants' Opposition to Motion to Expedite  
15 Discovery ("Eberhart Decl.") contains the statement: "'new.htm'[a file in the archive] also  
16 indicates that 'People interested in 'fooling' SECA can get some answers' in one of the other  
17 files in the archive." Eberhart Decl., ¶ 9. Mr. Eberhart did not provide a copy of any "other file"  
18 to which "new.htm" was referring. However, the archive "seca\_hack.zip" that Mr. Eberhart  
19 referred to in his declaration contains a frequently asked questions, or "FAQ," file on which Mr.  
20 Eberhart appears to rely. *See* Eberhart Decl. ¶ 9, Exs. G, H. That file, "faq.htm," explicitly  
21 disavows any knowledge of the contents of the algorithm that was later published on DR7. The  
22 FAQ states:

23       **changing the current date in SECA ins 0x3C?**

24       This instruction is cryptographically signed. This means that you can't change anything  
25       in the instruction without reapplying the signature. *The problem is... the signing*  
26       *algorithm is secret*, furthermore you'll also need a secret key. This secret key is the  
27       parameter for the signing algorithm. So you can see but you can't touch:-)

28       **changing something in SECA ins 0x40?**

      And what exactly would you change? *These instructions, while being the most interesting*  
      *ones, are the most protected ones. They are completely encrypted. Again with a secret*  
      *algorithm parametrized by a secret key. In this case you can't even see anything, let alone*  
      *make some changes...*

1 See Exhibit A to this declaration (emphasis added).

2 4. Canal+ engineers also reviewed the source code included in the “seca\_hack.zip”  
3 archive relied on by Mr. Eberhart and it likewise shows that no unauthorized access to digital  
4 pay television signals protected by MediaGuard was possible using the programs available in the  
5 archive. For example, the only “readme.txt” documentation file that even claims to be able to  
6 descramble signals is for the 3MacsBeta1 program, which states that a valid smart card is  
7 required to view digital signals:

8 Included is an SCC file that should allow you to view scrambled channels in the  
9 GateKeeper mode of operation (*needs a valid smartcard!*)

10 See Exhibit B attached to this declaration (emphasis added).

11 5. This evidence put forth by Mr. Eberhart does nothing more than show that the  
12 UserROM code from the MediaGuard smart cards was *not* available before the DR7 publication.  
13 Indeed, it is clear that after the MediaGuard smart cards first appeared in the market in 1995,  
14 there were no counterfeit Canal+ smart cards in the market until late 1999 after the DR7  
15 publication.

16 6. I have read the article dated March 13, 2002 entitled “Canal Plus, NDS Wage  
17 Legal Battle Over Security Break” attached as Exhibit F to the Eberhart Decl., which claims that  
18 Canal+’s conditional access system was broken and posted in 1997. This article is an example  
19 unsubstantiated, unreliable and false gossip. I am not aware of any evidence to support the  
20 assertions of the anonymous source of the unnamed writer of that article in the section quoted by  
21 Mr. Eberhart. See Eberhart Decl., ¶ 8. I am aware of no evidence of piracy of digital pay  
22 television signals protected by Canal+’s MediaGuard technology prior to the DR7 publication of  
23 Canal+’s MediaGuard UserROM code.

24 7. I will now address NDS’s mischaracterizations of my pre-lawsuit  
25 communications with NDS and my alleged motivations and alleged delay in pursuing Canal+’s  
26 claims. Canal+ has diligently pursued its claims since uncovering evidence of NDS’s  
27 wrongdoing. Beginning in December 2001 I had several meetings with Abe Peled of NDS and  
28 subsequently with Mr. Arthur Siskind of News Corporation and these meetings form the only

1 basis for any delay by Canal+ in filing the complaint in this matter. The NDS claim that these  
2 meetings were an attempt at extortion is ludicrous.

3 8. On September 26, 2001 I attended a conference in London where I sat next to Abe  
4 Peled, as we were both speakers on the subject of digital interactive television. After the  
5 conference, Mr. Peled asked to speak with me privately. During this private meeting Mr. Peled  
6 offered to enter into discussions between NDS and Canal+ Technologies to possibly merge the  
7 two companies. I told him that I would need to think about this proposal and said I would get  
8 back to him. After this meeting, I learned that investment bankers working for NDS had  
9 contacted Canal+'s parent corporation, Vivendi Universal, and proposed a meeting between  
10 Vivendi and Abe Peled to discuss a possible deal regarding Canal+ Technologies. NDS was  
11 clearly interested in trying to take over Canal+ Technologies.

12 9. At this time, Canal+ was completing its investigation of the counterfeiting of its  
13 smart cards and I was informed that some evidence connected the counterfeiting to NDS. After I  
14 assessed this evidence I realized that no deal could occur between our two companies until we  
15 resolved this issue. I called Mr. Peled back in late November and we decided to meet again on  
16 December 12, 2001 at his office. At this meeting, I decided to present some of the evidence we  
17 had uncovered because we could not enter a business deal until the issue was resolved. I wanted  
18 to present the evidence because I thought it would be fair to allow the management of NDS a  
19 chance to provide an explanation for what NDS had done. And since NDS had proposed a  
20 merger, I knew that any merger would have to deal with compensation to Canal+ for these  
21 wrongs and would have to provide assurances that neither NDS nor any merged entity would  
22 engage in such illegal conduct in the future. After the presentation, Mr. Peled claimed to not  
23 know what we were talking about but said he would commence an investigation and get back to  
24 me with the results of that investigation. When Mr. Peled and I talked privately, I said I would  
25 discuss a merger between the two companies only if we achieved a resolution of the smart card  
26 counterfeiting issue that had so severely damaged Canal+'s business.

27 10. After this, Mr. Peled called to set up another meeting. During this call Mr. Peled  
28 mentioned that he had discussed the potential deal with News Corporation. He said that Chase

1 Carey, a News Corporation executive, was involved in the discussions and wanted to talk about  
2 the potential deal with Vivendi. Thereafter, Mr. Peled and I met in Paris on January 9 and 10,  
3 2002. At this meeting Mr. Peled offered no results of any investigation, but he asked me if  
4 Canal+ had any further evidence of NDS's wrongdoing that we had not presented and I told him  
5 we did. After I described some of this evidence to him, I made it clear to Mr. Peled that while we  
6 could discuss a business deal, we could not do a deal without resolving the issue of NDS's  
7 wrongdoing. Mr. Peled said he wanted to discuss a merger but did not want to discuss Canal+'s  
8 other issue.

9 11. On January 14, 2002 I called Chase Carey. I indicated to him that Canal+ was  
10 willing to talk about a merger but said that we needed to address and resolve the Canal+'s  
11 counterfeiting issue. He said he would talk about a merger but did not want to hear about any  
12 claims. I told him we needed to talk about the issue of NDS's wrongdoing. I told him a  
13 resolution of this issue was a condition to going forward with merger talks. It was clear we  
14 wanted a resolution as part of any deal.

15 12. Abe Peled then called me from New York on January 30 to discuss a possible  
16 merger but continued to refuse to deal with the counterfeiting issues. He said that while he saw a  
17 compelling strategic rationale to the merger, he was not concerned or intimidated by our claims  
18 and called my position - that we resolve the prejudice caused to Canal+ by NDS - "extortion".

19 13. I could see that raising Canal+'s concerns with NDS and News Corporation were  
20 not getting any satisfactory results. I did not think NDS was taking our claims seriously and  
21 decided that the only way to protect Canal+'s rights would be to file the lawsuit. We took steps  
22 to do this promptly.

23 14. At this point, now February, I was informed that Arthur Siskind, the General  
24 Counsel of News Corporation had called Vivendi's outside lawyers in New York and requested a  
25 meeting to discuss Canal+'s possible lawsuit. Canal+ refrained from filing the lawsuit until after  
26 Vivendi had investigated and talked to the News Corporation General Counsel. I insisted on  
27 attending the meeting and met with Mr. Siskind in late February. At this meeting I again set  
28 forth Canal+'s claims. Mr. Siskind, like Mr. Peled before him, said he would investigate and get

1 back to us. I was told and agreed that this meeting was privileged for settlement purposes, so I  
2 will go into no further detail. I believe, however, that NDS has already breached that agreement.

3 15. On March 8, 2002, Vivendi's lawyers and I had a follow-up meeting with Arthur  
4 Siskind at his request. There was still no resolution acceptable to Canal+. At this point there  
5 was no reason to refrain from filing the lawsuit and the next working day we did so.

6 16. Canal + has acted diligently to pursue its claims against NDS and to try to resolve  
7 them with NDS prior to commencing litigation. The only delays in our actual filing were due  
8 NDS's and News Corporation's requests for meetings and promises to investigate our claims.  
9 We never received a meaningful response from them.

10  
11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct. Executed on April 8, 2002 at Paris, France.

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15 /s/Francois Carayol

16 Francois Carayol  
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