

FROM :

FAX NO. :

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CANAL+ TECHNOLOGIES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GROUPE CANAL+ S.A., CANAL+  
TECHNOLOGIES, S.A., CANAL+  
TECHNOLOGIES, INC.,

Plaintiffs,

v.

NDS GROUP PLC, NDS AMERICAS, INC.,

Defendants.

CASE NO.: C02-01178 VRW

DECLARATION OF OLIVER  
KÖMMERLING IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
EXPEDITED DISCOVERY AND TO  
PRESERVE DOCUMENTS AND  
THINGS

Date: April 18, 2002

Time: 2:00 p.m.

Place: Courtroom 6, 17<sup>th</sup> Floor

I, Oliver Kömmerling, declare as follows:

1. I am the same Oliver Kömmerling that Mr. Peled identifies in his declaration submitted in this action. I am the principal shareholder of ADSR, a company that provides security services to many different businesses. I have provided and continue to provide security services to both Canal+ and to NDS Group.

2. I have read Mr. Peled's declaration and disagree with several of the statements he makes in it and disagree with some of those statements that he attributes to me.

KÖMMERLING DECLARATION  
NO. C02-01178 VRW

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1           3. I have met with Canal+' lawyers at their request and discussed my knowledge  
2 regarding NDS activities concerning the publication of Canal+' smart card software on the website  
3 "DR7" in March 1999. I have through my lawyer made NDS aware that I am prepared to meet  
4 their lawyers also to discuss my knowledge of this matter. I wish to tell the truth concerning what I  
5 know of this matter and would respond to a subpoena to testify issued by this Court in connection  
6 with Canal+' lawsuit against NDS. As long as my costs were paid, it would not be a burden to me  
7 to appear in the United States for a deposition.

8           4. I am fearful that pressure will be brought to bear on me and my friends by NDS to  
9 not testify in this action. NDS' lawyer has already spoken with my lawyer, telling him that I  
10 should be reminded that I am under contractual obligations to NDS not to divulge any confidential  
11 information of NDS. I do not believe that my knowledge of this matter is of a nature that is  
12 subject to any such confidentiality agreement with NDS. I was asked to come to a meeting in  
13 New York City on Tuesday 9<sup>th</sup> or Wednesday 10th April 2002 by lawyers working for NDS and  
14 News Corporation along with all the other NDS people identified by Canal+ for deposition. I  
15 declined to attend that meeting, but did make NDS aware that I was prepared to meet with their  
16 lawyers in London.

17           5. I am also fearful that this action will be damaging to the reputation of my company  
18 ADSR, of which I hold 60% of the shares and NDS holds 40%. I have provided services to both  
19 NDS and Canal+, as well as other third parties, for the past two years. This action has, however,  
20 led to some of ADSR's other customers expressing concern at the ability of ADSR to maintain  
21 confidentiality given that NDS is a shareholder. In addition, Mr. Peled, through an NDS employee,  
22 has informed me that I must not continue providing services to Canal+ if this action proceeds. As  
23 a result, I am seeking to terminate the joint venture with NDS and have offered to acquire their  
24 40% shareholding. They have refused to sell their shares while this action proceeds. The fact that I  
25 have knowledge of NDS' activities concerning the publication of the Canal+ smartcard software  
26 means that this action also involves me. I want to testify to tell the truth regarding my knowledge  
27 of this matter in a fair proceeding with both sides present in order that I may be done with this  
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1 matter so I may take such steps as are necessary to preserve the reputation of ADSR or, if  
2 appropriate, to set up a new business independent of NDS.

3 6. I have provided consultancy services in the field of microelectronics and software  
4 security to NDS since mid-1996. I have also provided consultancy services to and worked closely  
5 with NDS operational security department helping to defeat piracy during the same period. I was  
6 instrumental in the establishment of the NDS research facility in Haifa, Israel in late 1996 and  
7 early 1997 and the recruitment of engineers for that facility. I was responsible for the training of  
8 all the engineers in Haifa at that time.

9 7. Based on my personal knowledge and on information and belief from conversations  
10 with people who were involved in the events, I understand the following to be true:

11 a. NDS engineers in the NDS facility in Haifa, Israel obtained Canal+ smart cards  
12 and using the techniques taught by me (some of which were described in my paper "Design  
13 Principles for Tamper Resistant Smartcards" written with Markus Kuhn) were able to physically  
14 extract the Canal+ machine code embedded in their smart cards.

15 b. NDS engineers disassembled and analyzed the extracted machine code and  
16 were then able to explore methods by which people would be able to circumvent the security  
17 measures contained within that machine code.

18 c. These efforts and the results were put into a written document and circulated  
19 among some NDS employees. I am also in possession of a copy of this report.

20 d. I was informed by a friend of the publication of the Canal+ code on the DR7  
21 website. It became apparent to me that it was the same code that had been extracted and analyzed  
22 in the NDS Haifa laboratories. Subsequently, I was able to confirm this fact with no reasonable  
23 doubt in my mind.

24 e. Later I was told by then current NDS employees that the Canal+ code was  
25 either handed to or sent from Israel to Southern California to Chris Tarnovsky. The same NDS  
26 employees told me that it was agreed that Chris Tarnovsky should arrange for the Canal+ code to  
27 be published on the internet.

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1 f. In a telephone conversation with Ms. Genie Gavenchak, a lawyer for News  
2 Corporation, I said that I believed the factual allegations in the Canal+ complaint were accurate  
3 and truthful. I also told Ms. Gavenchak that I had told all these facts to Mr. Peled. I had done this  
4 at a private dinner with him in late 1999.

5 8. I have read the allegations contained in paragraph 17 of Mr. Peled's declaration and  
6 say the following:

7 a. I did inform Mr. Peled that ADSR would be undertaking work for Canal+ on its  
8 smart card security measures as I was required to under the terms of the agreement between ADSR  
9 and NDS. I informed Mr. Peled in his capacity as a director of ADSR.

10 b. I informed Mr. Peled that Canal+ had supplied me with a development version  
11 of a type of chip which was one of several candidates for use in their latest generation cards and  
12 that Canal+ had asked me to test the security features, not that I had been supplied with a  
13 development version of the latest generation card. I told Mr. Peled that the security features of that  
14 particular chip were not sufficient to use the card for their conditional access system because I  
15 broke those security features in days. I informed Mr. Peled that I had recommended a different,  
16 more secure microprocessor be used. I did not tell him the type to be used, only that minor  
17 customization would be necessary to satisfy me that the security features would be adequate. I  
18 made no comment to Mr. Peled regarding the new generation card itself.

19 c. I never stated to Mr. Peled that Canal+' security measures and smart card were  
20 not state of the art, nor would I, as that would have required me to breach my confidentiality  
21 obligations to Canal+. I do not know why Mr. Peled chose to attribute those statements to me as I  
22 never made them to him. I would question the use of the phrase "state of the art" by Mr. Peled  
23 given that I have much more knowledge of the respective technology employed by NDS and  
24 Canal+ than he has. I do not believe that it is possible to make any reasonable judgment on  
25 whether a chip or card is state of the art or not given the limited information I gave to Mr. Peled  
26 about the work I was undertaking on behalf of Canal+.

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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed on 9 April 2002, in London, England.



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Oliver Kömmerling

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