

PATRICK LYNCH (S.B. #39749)  
DARIN W. SNYDER (S.B. #136003)  
DAVID R. EBERHART (S.B. #195474)  
RANDALL W. EDWARDS (S.B. #179053)  
O'MELVENY & MYERS LLP  
Embarcadero Center West  
275 Battery Street  
San Francisco, California 94111-3305  
Telephone: (415) 984-8700  
Facsimile: (415) 984-8701

Attorneys for Defendants  
NDS Group PLC and NDS Americas, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

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

Plaintiffs,

v.

NDS Group PLC, et al.,

Defendants.

Case No. C02-01178 (VRW)

**DECLARATION OF ABRAHAM  
PELED IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
MOTION TO EXPEDITE  
DISCOVERY**

Judge: Hon. Vaughn R.  
Walker

Date of Hearing: April 18, 2002

I, ABRAHAM PELED, hereby declare as follows:

1. I am the Chief Executive Officer of NDS Group PLC ("NDS Group"). The facts stated herein are based on my personal knowledge or, where so indicated, are based on information and belief. The opinions stated herein are my true opinions.

2. I have a degree in electrical engineering from The Technion, Israel Institute of Technology and a Ph.D. in electrical engineering, digital signal processing from Princeton University. Between 1974 and 1993, I worked for IBM in various research and management positions, ultimately serving as IBM's Research Division Vice President for systems and software research worldwide. In 1993, I left IBM and returned to Israel,

PELED DECLARATION IN SUPPORT OF  
OPPOSITION TO EXPEDITE DISCOVERY  
C02-01178 (VRW)

1 serving as the Senior Vice President for business development for Elron Electronic  
2 Industries, Ltd. In 1995, I joined News Datacom Limited in England as the Chief  
3 Executive Officer . Following a group restructuring, NDS Group plc (“NDS”) was  
4 established in 1999.

5 3. NDS Group plc is the leading supplier of open conditional access software  
6 and interactive systems for the secure delivery of entertainment and information to  
7 television set-top boxes and personal computers. The company also develops secure data  
8 broadcasting products for the distribution of data and multimedia content. NDS systems  
9 enable network operators and content providers to obtain revenue from the distribution of  
10 digital TV content and its associated interactive services. NDS also provides consulting,  
11 systems design and integration, and support and maintenance services. NDS is  
12 headquartered in the United Kingdom and has research centers in the United Kingdom,  
13 Israel, China and India.

### 14 **The Satellite Television Industry**

15 4. Beginning with the commercial deployment of digital satellite television,  
16 certain individuals and groups – none of whom are named as parties in the complaint in  
17 this action – have consistently sought to avoid or disable conditional access restrictions to  
18 obtain free access to restricted television signals. This practice of signal theft may be  
19 broadly termed piracy. Piracy deprives satellite television companies – including  
20 customers of NDS – of television revenues to which they are entitled.

21 5. NDS does not tolerate or support piracy. Canal+’s charges to the contrary  
22 are baseless. In particular, I have never approved any public dissemination of the content  
23 of any Canal+ product or any other information that might assist pirates in defeating  
24 Canal+’s – or any other competitors’ – conditional access systems. To my knowledge, no  
25 one at NDS approved any such activity.

26 6. NDS spends millions of dollars every year fighting piracy. NDS has filed  
27 numerous civil lawsuits against signal pirates, and NDS has co-operated with and  
28 provided information to law enforcement agencies worldwide that resulted in numerous

1 criminal prosecutions for signal theft.

2 7. NDS, like Canal+, has suffered invasions of its security system, and has  
3 been forced to expend considerable effort and expense to constantly upgrade its  
4 technologies to stay ahead of piracy attempts. NDS uses different “smartcards” for each  
5 of its pay-TV customers. NDS spends considerable resources in researching the security  
6 of standard chips available from vendors, and then invests additionally to customise these  
7 chips extensively. NDS also designs its cards so as to accept electronic counter measures  
8 to minimise and combat any piracy. Finally, NDS also routinely replaces its smartcards as  
9 part of its efforts to counter piracy. By contrast, upon information and belief, Canal+ has  
10 been notably slow and ineffective to protect itself. One basis for this conclusion is that, as  
11 they admit in their complaint, they are still using a smartcard introduced in 1996, and  
12 which they admit was widely compromised in 1999.

### 13 **Canal+’s Accusations**

14 8. Francois Carayol is Chief Executive Officer of one of the plaintiffs in this  
15 action, Canal+ Technologies S.A. (“Canal+ Technologies”). In December 2001, I spoke  
16 with Mr. Carayol about the possibility of a merger between NDS Group and Canal+  
17 Technologies. I agreed in good faith to meet with Mr. Carayol to discuss a possible  
18 merger.

19 9. The meeting was held on December 12, 2001. To my surprise, Mr. Carayol  
20 arrived at the meeting with counsel, James DiBoise and Gilles Kaehlin. I understand that  
21 Mr. DiBoise is also litigation counsel in this case, representing Canal+ Technologies,  
22 Groupe Canal+ S.A., and Canal+ Technologies, Inc. (collectively, “Canal+”).

23 10. In the meeting, Canal+ took the position that it had a claim against NDS  
24 based on an alleged publication of information from a Canal+ smartcard. Canal+’s  
25 representatives described the theory alleged in its complaint in this litigation, and they  
26 argued that these allegations justified placing a value on Canal+ for merger purposes that  
27 far exceeds the value that is justified by Canal+’s market performance. Mr. DiBoise also  
28 provided a diagram of Canal+’s allegations. I have attached a true and correct copy of

1 that diagram as Exhibit A.

2 11. During the December 12, 2001, meeting, NDS rejected Canal+'s allegations  
3 as completely untrue, stating that we do not condone or engage in such actions. I did  
4 state that we are interested in discussing a merger on its commercial and strategic merit.  
5 The discussion continued on the merger with only Mr Carayol and myself in the room.

6 12. Subsequently, there were further discussions between Canal+ and NDS.  
7 NDS repeatedly told Canal+ that it would not discuss merger valuation based on an  
8 alleged liability to Canal+, and that NDS had not published information concerning  
9 Canal+ 's smartcard.

### 10 **Oliver Kommerling**

11 13. Oliver Kommerling, a German national who spends substantial time in  
12 England, works for and is a majority shareholder of a joint venture with NDS named  
13 ADSR. Mr. Kommerling owns 60% and NDS owns 40% of this joint venture. That joint  
14 venture is currently under contract with Canal+, seemingly for the design of its so-called  
15 "latest generation" smartcards.

16 14. In very broad terms, a smartcard employs (a) a sort of microcomputer, in  
17 conjunction with (b) certain programming instructions that unscramble encrypted over-  
18 the-air signals and (c) certain secret code-keys that, in effect, "unlock" the software.

19 15. The UserROM, like all computer data, is encoded in ones and zeros ("object  
20 code"), a language that can be made intelligible to human beings only with very great  
21 effort. Even if translated into a human-readable format ("source code"), effective use of  
22 the information contained in the UserROM requires reverse engineering of the code-keys.  
23 These are usually found in a separate, "EPROM" (Erasable Programmable Read Only  
24 Memory) or "EEPROM" (Electrically Erasable Programmable Read Only Memory)  
25 portion of the smartcard.

26 16. The UserROM object code for the Canal+ smartcard published on the  
27 Internet in March 1999 did not include, even in object code, the code keys necessary to  
28 clone Canal+ smart cards. In fact, the UserROM information, as such, is information that

1 an experienced engineer – or signal pirate – could obtain rather easily using the facilities  
2 of any number of publicly available laboratories or service bureaus. The hard work of  
3 completing the circumvention of the conditional access system would only begin with that  
4 information.

5 17. I have stated in the past that Canal+'s new generation smartcard is not  
6 believed to be state of the art. The basis for that statement is as follows: Oliver  
7 Kommerling informed me that Canal+ retained him, through his joint venture with NDS,  
8 to assist in developing Canal+'s new generation smartcard. Mr. Kommerling also  
9 informed me that prior to that time, Canal+ supplied him with a development version of  
10 their new generation card and asked him to test the security features. Mr. Kommerling  
11 told me that the security features on that card were not state of the art, and that he broke  
12 the security features in days. Mr. Kommerling also told me that, following his crack of  
13 the Canal+ card, he suggested that a different, more secure microprocessor be used for  
14 that card to improve its security features. Mr. Kommerling told me that Canal+ included  
15 the suggested microprocessor, but that Canal+ chose to undertake only very limited  
16 customization of that chip. It is my belief that such limited customization of the chip  
17 would result in a smartcard that is less than the state of the art.

18 **Chris Tarnovsky**

19 18. Chris Tarnovsky is currently employed by NDS Americas. Mr. Tarnovsky  
20 is one of the individuals whom Canal+ alleges was involved in providing secret Canal+  
21 information to a pirate website. Upon information and belief, Canal+ attempted to recruit  
22 Chris Tarnovsky away from NDS in October 2001. Upon information and belief, Canal+  
23 made these attempts through its chief of security, Gilles Kaehlin.

24 19. In the course of his discussions with Mr. Tarnovsky, upon information and  
25 belief, Mr. Kaehlin delivered new Canal+ smartcards to Mr. Tarnovsky and asked him to  
26 see if he could find a way to break their security measures. Upon information and belief,  
27 Mr. Kaehlin provided to Mr. Tarnovsky a handwritten agreement dated October 5, 2001,  
28 that reflected this request. A true and correct copy of this handwritten agreement is

1 attached hereto as Exhibit B.

2 20. Upon information and belief, Mr. Tarnovsky declined Canal+'s overtures.

3

4 I declare under penalty of perjury under the laws of The United States of  
5 America that the foregoing is true and correct and that this declaration was executed on  
6 April 2, 2002 at LONDON, UK.

7

8

  
ABRAHAM PELED

9

SF1:463417.2

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

# Proliferation of Pirate SECA Cards

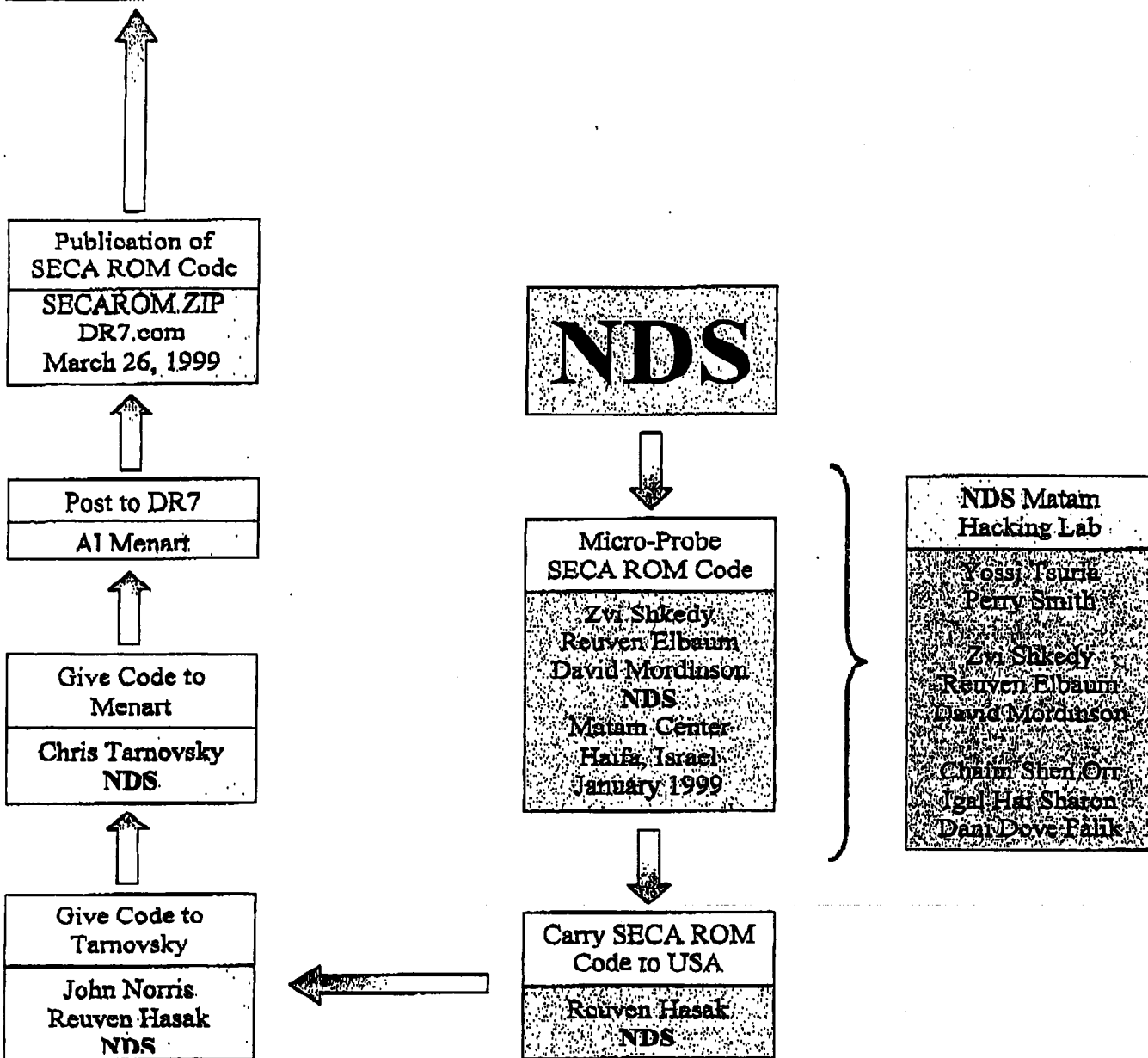




EXHIBIT B

Le 05 Octobre 2001

Je soussigné Gilles KAEHLIN,  
directeur des Moyens généraux du  
groupe CANAL+, a bien remis  
ce jour à Chris TARNOVSKY un  
lot de 24 cartes provenant du groupe  
CANAL+, personnalisées par la société  
CT Technologies et supportant des programmes  
permettant de décrypter les programmes  
audiovisuels du groupe.

Ce lot lui a été remis aux  
fins d'analyse et de tests tant hardware  
que software permettant de mettre à jour  
d'éventuelles faiblesses.

A l'issue de ces tests, M<sup>r</sup>  
TARNOVSKY s'engage à nous faire retour des  
cartes même endommagées, et à garder  
confidentiel les résultats obtenus, qu'il  
ne pourra en aucune façon communiquer  
à des tiers, en dehors du groupe CT représenté  
par Gilles KAEHLIN.

Le groupe CT s'engage pour sa part  
à ne pas poursuivre M<sup>r</sup> TARNOVSKY, tant pour la  
détention de ces cartes que pour le résultat  
de ses analyses.

en 2 exemplaires  
