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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
)
) **CANAL+'S REPLY BRIEF IN**
) **SUPPORT OF MOTION FOR**
) **ORDER EXPEDITING**
) **DISCOVERY AND FOR**
) **PRESERVING DOCUMENTS AND**
) **THINGS**

) Date: Thursday, April 18, 2002
) Time: 2:00 p.m.
) Place: Courtroom 6, 17th Floor
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. POINTS AND AUTHORITIES IN REPLY TO OPPOSITION BRIEF.....	1
A. Canal+ Agrees to Bilateral Expedited Discovery.	2
B. Canal+ Has Evidence of NDS's Wrongdoing.....	3
C. The Discovery Sought is Urgent Because Canal+ is About to Release New Cards.	4
D. This Court May Enjoin NDS Before Determining Venue.....	5
E. There Is No Burden for NDS to Produce the Witnesses for Deposition in the United States.	6
F. NDS Enjoys no Immunity from Reverse Engineering Canal+'s Smart Cards Under Some Blanket "Reverse Engineering" Defense.....	7
G. NDS's Credibility Attacks are Irrelevant and Incorrect.	9
H. Canal+ Agrees that the Nondestruct Order be Made Mutual.	10
III. CONCLUSION.....	11

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Astronics Corp. v. Patecell</i> , 13 U.S.P.Q.2d 1242 (W.D.N.Y. 1989)	5
<i>Bosworth v. Ehrenreich</i> , 823 F. Supp. 1175 (D.N.J. 1993)	5
<i>Central States Pension Fund v. Breeko Corp.</i> , 1989 WL 153547 (N.D. Ill. 1989)	5
<i>Crown Card Serv., Inc. v. Krueger</i> , 1993 WL 87688 (N.D. Cal. 1993)	5
<i>Graham Tech. Solutions v. Thinking Pictures, Inc.</i> , 949 F. Supp. 1427 (N.D. Cal. 1997)	6
<i>Guidant Sales Corp. v. Niebur</i> , 2001 WL 1636502 (D. Minn. 2001)	5
<i>Mediplex, Inc. v. Shalala</i> , 39 F. Supp. 2d 88 (D. Mass. 1999)	5
<i>Nissan Mtr. Co. v. Nissan Computer Corp.</i> , 89 F. Supp. 2d 1154 (C.D. Cal. 2000), <i>aff'd</i> , 246 F.3d 675 (9 th Cir. 2000)	5
<i>Sega Enters. Ltd. v. Accolade, Inc.</i> , 977 F.2d 1510 (9th Cir. 1992)	7
<i>Sony Computer Entertainment, Inc. v. Connectix Corp.</i> , 203 F.3d 596 (9th Cir. 2000), <i>cert. denied</i> , 531 U.S. 871 (2000)	7
<i>UMG Recordings, Inc. v. MP3.com, Inc.</i> , 92 F. Supp. 2d 349, 351 n.2 (S.D.N.Y. 2000)	8
<i>United States Alum. Corp. v. Kawneer Co.</i> , 694 F.2d 193 (9th Cir. 1982)	5
<i>Universal City Studios, Inc. v. Reimerdes</i> , 111 F. Supp. 2d 294 (S.D.N.Y. 2000), <i>aff'd sub nom. Universal City Studios, Inc. v. Corley</i> , 273 F.3d 429 (2d Cir. 2001)	8
<i>Water West, Inc. v. Entek Corp.</i> , 788 F.2d 627 (9th Cir. 1986)	5

STATUTES

17 U.S.C. § 1201(a)(2)	8
17 U.S.C. § 1201(f)(2)	8
17 U.S.C. § 1203(b)(1)	8
17 U.S.C. § 502	7
18 U.S.C. § 1964	7
18 U.S.C. § 1029	7
28 U.S.C. § 1391(d)	6

1	Cal. Bus. & Prof. Code § 17200.....	7
2	Cal. Bus. & Prof. Code § 17203.....	7

RULES

4	Fed. R. Civ. Proc. 12(d).....	6
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1 **I. INTRODUCTION**

2 In 1999 NDS engineers extracted Canal+'s smart card encryption software at an NDS
3 laboratory in Haifa, Israel. Those same engineers analyzed that code to determine the means to
4 circumvent and/or defeat the security measures built into the smart cards. Finally, these same
5 engineers published a report of the code extracted and of their findings of an analysis of that
6 code to others in NDS management. NDS management then put that code in the hands of Chris
7 Tarnovsky, an NDS employee with known ties to the digital television pirate network and
8 directed him to have the code published on the Internet. By these actions NDS facilitated and
9 provided the means for counterfeiters world-wide to create counterfeit Canal+ smart cards.
10 Plaintiffs have been substantially harmed by these actions. Canal+ is entitled to further details
11 regarding these facts to support an injunction prohibiting NDS from attacking Canal+'s next
12 generation smart cards.

13 Right now, as Canal+ Technologies is distributing its next generation smart card to its
14 customers around the world, it faces the risk that NDS will similarly attack this next generation
15 smart card. Therefore, Canal+ requested this Court to permit it to take expedited discovery as an
16 initial step before filing a motion for preliminary injunction. NDS opposes Canal+'s request for
17 a host of reasons, none of which has merit. Its blanket denial of any actionable wrong is not
18 sufficient to overcome Canal+'s request for relief. Indeed, where the evidence of the wrongdoing
19 lies principally in the defendants' hands, the best way to obtain that evidence is to invoke the
20 discovery procedures permitted under the Federal Rules of Civil Procedure. That is the
21 procedure Canal+ follows here, and its need for discovery is urgent so that Canal+ may present
22 to the Court conclusive evidence to support an injunction preventing NDS from attacking the
23 next generation Canal+ smart card.

24 **II. POINTS AND AUTHORITIES IN REPLY TO OPPOSITION BRIEF**

25 NDS's Opposition fails to focus on the real issues bearing on the Court's decision
26 whether to permit expedited discovery. Instead it raises red herrings. For example, NDS chides
27 plaintiffs for failing to meet and confer regarding the proposed discovery. This is simply not
28 true. Counsel for Canal+ has made it clear to counsel for NDS that plaintiffs are willing to

1 discuss an agreed schedule for mutual discovery in this action directed to a preliminary
2 injunction proceeding. NDS also argues that the motion should be denied because Canal+ took
3 too long to file suit. This argument is without merit, and how long it took Canal+ to file suit is
4 irrelevant to the fact that Canal+'s new smart cards are beginning to be deployed in the market
5 and thus will be available for attack by NDS. The facts supporting the urgency of this situation
6 are not dependent upon the date Canal+ filed suit but, rather, the release of its next generation
7 smart card – at a time when NDS retains the knowledge and power to attack once again.

8 NDS's Opposition is also wrong on the law when it claims that the Court must determine
9 venue before permitting expedited discovery and hearing a request for injunctive relief.
10 Similarly, NDS's failure to state a claim arguments, which ignore most of Canal+'s claims for
11 relief, misstate the law and even if correct would not preclude injunctive relief on Canal+'s
12 remaining claims. Finally, NDS's credibility attacks – on which NDS spends a great deal of its
13 opposition brief – are not supported by the evidence NDS itself has submitted. Moreover, none
14 of these attacks would preclude a preliminary injunction even if they were true, and for that
15 reason they are irrelevant to the legal standard for obtaining expedited discovery. For the
16 reasons set forth herein and in Canal+'s motion papers and supporting evidence, the motion for
17 expedited discovery should be granted.

18 **A. Canal+ Agrees to Bilateral Expedited Discovery.**

19 NDS complains loudly that Canal+ has demanded one-sided discovery. The truth is
20 otherwise: Canal+ is happy to work with NDS to develop a plan for limited mutual discovery
21 directed at the basis for preliminary injunctive relief. Indeed, Canal+ invited NDS to discuss a
22 plan for the discovery it would like to take. *See* Declaration of James A. DiBoise ("DiBoise
23 Decl."), Exh. A (April 4 email to counsel for NDS) ("Let me be clear that we are willing to
24 discuss opening two way discovery on a limited basis concerning the grounds and basis upon
25 which Canal+ may seek a preliminary injunction"). NDS responded by stating it opposed
26 expedited discovery, bilateral or otherwise. *See* DiBoise Decl. Exh. B (Lynch e-mail of April 8).
27 Stripped of the rhetoric, NDS's position is simply that should it lose this motion, it wants
28

1 expedited discovery too. Canal+ agrees that discovery can be mutual and believes that it should
2 begin immediately.

3 **B. Canal+ Has Evidence of NDS's Wrongdoing.**

4 NDS argues that Canal+ has not demonstrated the "good cause" necessary to obtain
5 expedited discovery. In conclusory fashion, it denies wrongdoing and challenges Canal+ to
6 supply evidence to back up its claims. To begin with, NDS controls almost all of the relevant
7 evidence. Its argument that Canal+ should not be entitled to expedited discovery because it lacks
8 that evidence is therefore unconvincing. Making matters worse, NDS responded to this motion
9 by contacting at least one of the people Canal+ seeks to depose and suggested that his
10 confidentiality obligations to NDS prevented him from blowing the whistle on NDS's illegal
11 activities. *See* Declaration of Oliver Kömmerling ("Kömmerling Decl.") ¶ 4. These efforts to
12 block Canal+'s ability to obtain relevant evidence undermine the credibility of NDS's assertion
13 that there is no such evidence.

14 In any event, the evidence Canal+ has uncovered thus far is more than enough to
15 underscore the need for discovery from NDS. Mr. Kömmerling has a copy of an internal NDS
16 memorandum describing NDS's extraction of software code from Canal+'s smart card and
17 methods that can be used to circumvent its security protections. *Id.* ¶ 7. Mr. Kömmerling
18 suggests that he has additional documents bearing on these issues which he has been counseled
19 not to reveal absent compulsory process and relief from NDS's claims of confidentiality. *Id.*
20 ¶¶ 3-4. NDS employees also admitted that the extracted code was delivered to NDS employee
21 Chris Tarnovsky in California with instructions that he have it published on the Internet. *Id.* ¶ 7.
22 This code was the same Canal+ code that NDS extracted at its Haifa laboratory. *Id.* And, as will
23 be described below, contrary to NDS's assertion otherwise, the published code was certainly
24 enough to enable pirates to manufacture counterfeit Canal+ smart cards. *See* Declaration of
25 Vincent Labie ("Labie Decl.") ¶ 3.

26 It gets worse. Mr. Tarnovsky admitted to Canal+ employee Gilles Kaehlin that he was
27 responsible for transmitting Canal+'s code to the webmaster of DR7.com on instructions from
28 his NDS superiors. *See* Declaration of Gilles Kaehlin ("Kaehlin Decl.") ¶ 7. Mr. Tarnovsky was

1 hesitant to make these admissions, he said, because he feared for himself and his family. *Id.* ¶ 6.
2 This fact separately and strongly favors expedited discovery. In addition, Canal+ has evidence
3 that at the time the Canal+ code was published, Mr. Tarnovsky responded to a request for some
4 additional code missing from the file posted on DR7.com, never asserting that he did not have
5 the code to send. *See* Declaration of Jan Saggiori ¶¶ 5-6. Mr. Tarnovsky, of course, did not file
6 a declaration on behalf of NDS. Expedited discovery from him is clearly necessary.

7 **C. The Discovery Sought is Urgent Because Canal+ is About to Release New**
8 **Cards.**

9 Canal+ faces imminent harm because it is commencing international distribution of its
10 next generation smart card. Since NDS retains the knowledge and resources to once again
11 undermine the card's security by extracting the software code embedded in it and apparently
12 believes that its conduct in doing so is legally protected (*see* Opposition at 10-11). The
13 requested discovery bears on the threat that NDS will do so once again.

14 Nonetheless, NDS argues that the discovery sought is not urgent because Canal+ filed
15 suit in March, rather than in December. What makes this case urgent, however, is not the date on
16 which Canal+ filed suit, but the upcoming release of the new cards. These events should not be
17 confused. In any event, the fact that Canal+ conducted a lengthy investigation before filing its
18 lawsuit should be commended, not condemned. More important, NDS is responsible for the fact
19 that Canal+ did not file suit in December. In September 2001, Abraham Peled approached
20 François Carayol of Canal+ about the two companies entering merger negotiations. *See*
21 Supplemental Declaration of François Carayol ("Supp. Carayol Decl.") ¶¶ 7-8. When Mr.
22 Carayol met with Mr. Peled in December 2001, he informed him of the charges contained in the
23 complaint herein and stated that there would be no merger without resolution of the issues raised
24 by NDS's illegal actions. *Id.* ¶ 9. In meetings in January, February, and March, 2002, Canal+
25 was consistent in this position. *Id.* ¶¶ 10-14. NDS and its parent, News Corporation, agreed to
26 investigate these charges but never informed Canal+ of the results of that investigation. *Id.* ¶ 16.
27 After three months of promises and no results, Canal+ decided to file suit. *Id.* ¶ 15.

28 Canal+ cannot be denied expedited discovery because it performed a careful, pre-filing
investigation and then tried to resolve the matter informally by giving NDS a fair opportunity to

1 investigate and respond. Had Canal+ sued first and asked questions later, NDS would surely
2 have used that fact as a basis to argue that Canal+ acted improperly.

3 **D. This Court May Enjoin NDS Before Determining Venue.**

4 NDS argues that this Court must first decide whether the lawsuit is properly venued
5 before permitting discovery and entertaining a motion for preliminary injunction. At the same
6 time, NDS has not actually challenged venue, and does not even hint what judicial district it
7 believes is the correct one. The law does not support NDS's argument: the overwhelming
8 majority practice is to concurrently hear and grant requests for injunctive relief while considering
9 requests to transfer venue. *See, e.g., Water West, Inc. v. Entek Corp.*, 788 F.2d 627, 628 (9th Cir.
10 1986) (court affirmed preliminary injunction but denied summary judgment "because of
11 uncertainty whether venue was proper"); *United States Alum. Corp. v. Kawneer Co.*, 694 F.2d
12 193, 194 (9th Cir. 1982) (court concurrently heard motion for preliminary injunction and
13 defendant's motion to transfer venue); *Crown Card Serv., Inc. v. Krueger*, 1993 WL 87688, *3
14 (N.D. Cal. 1993) (same); *Astronics Corp. v. Patecell*, 13 U.S.P.Q.2d 1242 (W.D.N.Y. 1989)
15 (court permitted expedited discovery and put off hearing motion to transfer venue before
16 concurrently hearing request for preliminary injunction and venue motion).¹

17 This makes sense, because the risk of imminent harm is far more important than a venue
18 concern – venue is merely a question of convenience. Indeed, courts may defer ruling on venue
19 until trial. *See* Fed. R. Civ. Proc. 12(d). No matter what district is the correct venue, the risk of
20 imminent harm is exactly the same, the very same discovery will go forward under the very same

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22 ¹ Additional cases include *Guidant Sales Corp. v. Niebur*, 2001 WL 1636502, *4 (D. Minn.
23 2001) (refusing to hear motion to dismiss for lack of venue before hearing application for TRO,
24 and noting that "[c]ourts have consistently found it appropriate to enter a temporary restraining
25 order before considering a motion to dismiss for lack of venue." (collecting cases not cited here);
26 *Nissan Mtr. Co. v. Nissan Computer Corp.*, 89 F. Supp. 2d 1154, 1157-58 (C.D. Cal. 2000),
27 *aff'd*, 246 F.3d 675 (9th Cir. Cal. 2000) (court approved expedited discovery, and when
28 defendant moved to dismiss on jurisdiction and venue grounds, court deferred hearing request for
preliminary injunction to allow briefing for concurrent hearing on all the issues); *Mediplex, Inc.*
v. Shalala, 39 F. Supp. 2d 88, 92 (D. Mass. 1999) (court entered TRO before transferring venue);
Bosworth v. Ehrenreich, 823 F. Supp. 1175, 1184 (D.N.J. 1993) (concurrently hearing request
for preliminary injunction and motion to transfer venue); *Central States Pension Fund v. Breeko*
Corp., 1989 WL 153547, *1 (N.D. Ill. 1989) (same).

1 rules, and the very same standards will apply for injunctive relief. And if the Court may hear the
2 request for preliminary injunction in the face of a venue motion, it may certainly order expedited
3 discovery to facilitate a full and fair hearing on the request.

4 In fact, the single case NDS relies on for the proposition that “the issue of venue must be
5 resolved prior to any other procedural or substantive issue in this case” was one where a
6 contractual forum selection clause required that the lawsuit be brought in another district. This
7 case does not stand for a rule of general application. *See* Opposition at 12; *Graham Tech.*
8 *Solutions v. Thinking Pictures, Inc.*, 949 F. Supp. 1427, 1428 (N.D. Cal. 1997).

9 NDS is also wrong on the venue question itself. To begin with, even if NDS had filed a
10 motion to transfer venue, Canal+ need only show a prima facie case that venue is proper to
11 defeat the motion. *See Nissan*, 89 F. Supp. 2d at 1161. This is a simple matter. NDS Group plc
12 is a foreign company amenable to suit in any district. *See* 28 U.S.C. § 1391(d). NDS Americas
13 purposefully directed its tortious activities towards Canal+ in this district, and both pose a risk of
14 imminent harm to Canal+ in this district. NDS hints that Canal+’s venue choice is wrong
15 because Canal+ did not incorporate in this district until after the code was published on DR7.com
16 in March 1999. This is both wrong and irrelevant. It is wrong because Canal+ was doing
17 business in this district since at least September 1998, before it incorporated the U.S. subsidiary.
18 It is irrelevant because Canal+ brought this action not solely to recover for past wrongs but rather
19 seeks relief for threatened and continuing harm as well. As Canal+ alleges, it continues to be
20 injured in this district and elsewhere as a result of NDS’s actions that led to publication of
21 Canal+’s software code and by NDS’s unfair competition based on the counterfeiting that
22 followed. *See* Complaint ¶¶ 29-32.

23 **E. There Is No Burden for NDS to Produce the Witnesses for Deposition in the**
24 **United States.**

25 NDS argues that the discovery Canal+ seeks is "unusual" and "exceptionally expensive."
26 There is nothing unusual about limited depositions and document requests. Notably, NDS does
27 not deny the relevance of the discovery sought. Equally important, the logistical hurdles are easily
28 overcome. NDS and Canal+ are both large multinational corporations with operations that span
the Atlantic and Pacific Oceans. The business logistics of dealing with these global operations are

1 certainly more daunting than organizing a few employees to appear for deposition and the
2 collection of a limited set of documents. Indeed, NDS had no difficulty in organizing a meeting
3 this very week at News Corporation headquarters in New York City for 9 of the 12 witnesses
4 identified by Canal+ in its opening papers. *See* DiBoise Decl. ¶ 4; Kömmerling Decl. ¶ 4. NDS
5 can just as easily gather them again for depositions and the attorneys for the parties and witnesses
6 can easily work out the discovery logistics.

7 **F. NDS Enjoys no Immunity from Reverse Engineering Canal+’s Smart Cards**
8 **Under Some Blanket “Reverse Engineering” Defense.**

9 Perhaps recognizing that it cannot credibly dispute its responsibility for the copying of
10 Canal+’s protected smart card code, NDS argues that its actions are “legal” under some
11 unarticulated “reverse engineering” defense. *See* Opposition at 10-11. While arguing that its
12 actions are allowed under the Copyright Act and the Digital Millennium Copyright Act
13 (DMCA), NDS ignores six of the eight counts in Canal+’s complaint. NDS sensibly does not
14 attempt to argue that its purported defense applies to Canal+’s claims for RICO violations,
15 contributory copyright infringement, common law unfair competition, tortious interference, civil
16 conspiracy, or Cal. Bus. & Prof. Code § 17200. These claims provide independent bases for
17 liability, as well as injunctive relief. *See, e.g.*, 17 U.S.C. § 502; 18 U.S.C. § 1964; Cal. Bus. &
18 Prof. Code § 17203. To provide but one example, NDS’s violation of 18 U.S.C. § 1029’s
19 prohibition on certain activities regarding access devices forms the basis for Canal+’s claims
20 under RICO and Cal. Bus. & Prof. Code § 17200, each of which provides for injunctive relief.
21 Thus, even if true, NDS’s reverse engineering argument has no bearing on Canal+’s entitlement
22 to injunctive relief, much less expedited discovery.

23 Moreover, even as to the Copyright Act and DMCA claims, NDS’s legal arguments fail.
24 Contrary to NDS’s assertion, there is no blanket “reverse engineering defense” to the Copyright
25 Act. The Ninth Circuit in *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992), and
26 *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F.3d 596 (9th Cir. 2000), *cert.*
27 *denied*, 531 U.S. 871 (2000), recognized a limited “fair use” defense under a vastly different set
28 of facts than are present here. In both cases, the defendants made intermediate copies for the
sole purpose of allowing them to develop new, transformative works — compatible software

1 products for use with plaintiffs' game systems — which the courts held to be a fair use under the
2 Copyright Act's four factor test. *See Sega*, 977 F.2d at 1527-28; *Sony*, 203 F.3d at 607-08.

3 Here, NDS's copying was done for the purpose of assisting in the creation of counterfeit
4 smart cards, thereby *supplanting* the demand for Canal+'s cards. Because the copying was not
5 done to create a new, transformative software product, the defense does not apply. *See UMG*
6 *Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349, 351 n.2 (S.D.N.Y. 2000) (distinguishing
7 *Sega* and *Sony* where MP3.com "copied CDs onto its servers not to create any new form of
8 expression but rather to retransmit the same expression in a different medium"). Accordingly,
9 NDS's conduct does not qualify as a "fair use."

10 Nor does NDS's "reverse engineering defense" apply to the DMCA. *See Universal City*
11 *Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294, 321-22 (S.D.N.Y. 2000), *aff'd sub nom.*
12 *Universal City Studios, Inc. v. Corley*, 273 F.3d 429 (2d Cir. 2001) (DMCA not subject to
13 Copyright Act's fair use defense).² However, without citing any authority, NDS asserts that its
14 actions do not fall under the DMCA because it merely distributed the "encryption measure
15 itself." *See* Opposition at 11 & n.11. Contrary to NDS's assertion, its distribution of the reverse
16 engineered code in the form of the SECAROM.ZIP file, which was created for the sole purpose
17 of defeating Canal+'s access control, falls squarely under the DMCA. *See* 17 U.S.C.
18 § 1201(a)(2) (unlawful to "manufacture, import, offer to the public, provide, or otherwise traffic
19 in any technology, product, service, device, component, or part thereof, that (A) is primarily
20 designed or produced for the purpose of circumventing a technological measure that effectively
21 controls access to a work protected under the [Copyright Act]."). It is therefore enjoined. *See*
22 17 U.S.C. § 1203(b)(1). Rather than providing a basis for denying expedited discovery, NDS's
23 arguments merely highlight its lack of defenses to Canal+'s claims.

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26 ² As discussed above, NDS did not engage in any conduct for the purpose of achieving
27 compatibility or interoperability. Accordingly, it cannot qualify for the limited reverse
28 engineering exemption of the DMCA. *See* 17 U.S.C. § 1201(f)(2); *Universal City Studios, Inc.*
v. Reimerdes, 111 F. Supp. 2d 294, 320 (S.D.N.Y. 2000) (limiting exemption to development
and employment of technological means whose sole purpose is to achieve interoperability).

1 **G. NDS's Credibility Attacks are Irrelevant and Incorrect.**

2 To deflect attention from its wrongdoing, NDS makes three credibility attacks against
3 Canal+: (i) that Canal+'s cards were first hacked in 1997, not 1999; (ii) that what DR7
4 published in 1999 was not sufficient to enable pirates to manufacture counterfeit smart cards; and
5 (iii) that Canal+ acted in a manner inconsistent with its claims by talking to Mr. Tarnovsky in
6 2001.

7 In the first place, none of these assertions is relevant to the legal standard for expedited
8 discovery. Even if NDS were correct about these matters, it could still be found liable under
9 each of Canal+'s causes of action, and these arguments would not affect the availability of
10 injunctive relief at this early stage. But even if the Court considers NDS's credibility attacks,
11 NDS is wrong on each of them:

12 ? **The alleged 1997-98 hacking:** NDS offers an anonymous and unsubstantiated
13 statement in an industry gossip publication to argue that Canal+'s smart cards were actually
14 attacked in 1997, before NDS's disclosure to DR7.com. *See* Opposition at 6. Canal+'s security
15 personnel have investigated such matters for years and have never uncovered any evidence of
16 any such attack before March 1999. *See* Supp. Carayol Decl. ¶¶ 1-2, 6. NDS also offers files
17 posted on the web in 1998 to back up its allegation. *See* Opposition at 6. Canal+'s engineers
18 have studied these files. NDS has confused unrelated pirate activity – attempts to hack
19 information that is not contained in the smart card – with extraction of the UserROM code from
20 the Canal+ smart card. The materials cited by NDS make clear that before March 1999, hackers
21 *did not* have the code at issue in this lawsuit and *could not* create counterfeit Canal+ smart cards.
22 *See, e.g.,* Supp. Carayol Decl. ¶¶ 3-5 (“The problem is...the signing algorithm is secret....”).
23 The materials NDS submitted support, rather than undermine, Canal+'s position that nobody
24 other than NDS copied and disclosed Canal+'s smart card software code.

25 ? **The contents of the DR7 publication:** NDS claims that what was posted on DR7.com
26 in March 1999 was not sufficient to enable counterfeiters to create counterfeit Canal+ smart
27 cards. *See* Opposition at 6. This appears to be a preview of NDS's likely defense in this case
28 once its blanket denials have been refuted by Canal+'s evidence. The truth, however, is that the

1 software code posted on DR7.com can be translated into human readable source code using
2 generally known skills and generally available tools. After this easy conversion, counterfeiters
3 were able to take the steps required to create counterfeit smart cards. The extraordinarily
4 difficult and extremely costly step of extracting the object code from the card was the primary
5 barrier to counterfeiting the Canal+ smart card. *See* Labie Decl. ¶¶ 2-3. NDS accomplished that
6 task, had the results published on DR7.com, and caused the counterfeiting.

7 ? **Canal+'s contacts with Mr. Tarnovsky:** NDS argues that because a Canal+
8 employee met with Mr. Tarnovsky in 2001 and gave him smart cards to test his engineering
9 skills, it must be lying when it accuses Mr. Tarnovsky of sending the extracted copy of Canal+'s
10 code to DR7.com in March 1999. *See* Opposition at 7. In fact, Mr. Tarnovsky initiated contact
11 with Canal+ and implied that he might want a job at Canal+. *See* Kaehlin Decl. ¶¶ 2-3. Part of
12 the reason Mr. Kaehlin agreed to meet with Mr. Tarnovsky was because he wanted information
13 about the source of the DR7.com publication. *Id.* ¶ 3-4. To test Mr. Tarnovsky's skills, Mr.
14 Kaehlin gave him old generation smart cards that were already deployed in the field and were
15 loaded only with test programs rather than any valuable information (and certainly not Canal+'s
16 next generation conditional access software code). *Id.* ¶ 5. After confirming that NDS was in
17 fact responsible for the DR7.com publication, Mr. Tarnovsky never showed his skills by working
18 on the test smart cards, and Canal+ never offered him employment. *Id.* ¶¶ 6-8. After all of this,
19 Mr. Tarnovsky suddenly told Mr. Kaehlin in an email that he did not wish to talk to Canal+
20 again; he never returned the test cards. *Id.* ¶ 8. In short, NDS has misconstrued Canal+'s
21 contacts with Chris Tarnovsky.

22 In sum, none of NDS's attacks cast any doubt on NDS's liability and none have anything
23 to do with the standard for obtaining expedited discovery.

24 **H. Canal+ Agrees that the Nondestruct Order be Made Mutual.**

25 NDS requests that the Court's nondestruct order be made mutual. Canal+ agrees.
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1 **III. CONCLUSION**

2 For the reasons set forth above and in the pleadings and papers filed herein, Canal+
3 respectfully requests that the Court permit Canal+ to take limited, expedited discovery in
4 accordance with its proposed order and enter a mutual nondestruct order.

5 Dated: April 10, 2002.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

6
7 By: /s/James A.DiBoise
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