

1 assistance of Tarnovsky and NDS, was the only person (besides NDS) who had the
2 ability to reprogram, alter, or modify EchoStar Access Cards enabling unauthorized
3 access to DISH Network's Programming.

4 150. The initial monopoly in the production of altered EchoStar Access
5 Cards set up by Tarnovsky and Menard, with the assistance and knowledge of
6 NDS, was unique. Generally speaking, the original developer of a method or device
7 designed to circumvent video encryption technology tries to get as much immediate
8 cash as possible by selling the method or device to multiple sources at once. The
9 NDS/Tarnovsky/Menard distribution model is however, in Plaintiffs' knowledge,
10 the only time in the history of satellite and cable piracy where the developer of a
11 method or device designed to circumvent encryption technology worked with only
12 one outlet source. Plaintiffs are informed and believe that NDS devised this
13 particular distribution model so that NDS could control the hacks of both DirecTV
14 and Plaintiffs' CAS, among others.

15 151. NDS, directly and through its employees and/or agents, provided
16 Tarnovsky and Menard the information necessary to accomplish the acts
17 complained of herein with such information being sent by NDS to Tarnovsky in the
18 State of California, and then, pursuant to NDS's instruction, from Tarnovsky to
19 Menard in Canada.

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27 engineers around the world were then able to design and build their own card reprogrammers
28 thereby exacerbating the piracy of Plaintiffs' signal.

1 **3. Step 3: NDS, Tarnovsky, Menard and others Conspired to Place**
2 **Pirated EchoStar Access Cards into the Illegal Black Market in a**
3 **“Controlled” Manner.**

4 **a. NDS, through its Employee Tarnovsky and other**
5 **Defendants, Including Menard, Created a Distribution**
6 **Network Illegally Altered Access Cards and Other**
7 **Circumvention Devices Designed to Thwart Plaintiffs’**
8 **Security System.**

9 152. With the assistance of NDS by way of, among others, Tarnovsky,
10 Menard produced altered Access Cards using a machine known as a Reprogrammer
11 to place the Access Card microprocessor in a mode that permits reprogramming.
12 NDS provided Menard this initial reprogrammer via Tarnovsky. With the assistance
13 of NDS, Tarnovsky was able to develop, design and create this reprogrammer
14 which he coined, the “stinger.” Menard then loaded the modified software
15 described above, containing programs, information, codes, or commands onto the
16 Access Card, which when re-programmed in this fashion permits access to DISH
17 Network programming services by unauthorized users. None of which would be
18 possible without NDS initially cracking the Security System and providing the
19 proprietary information to Menard through Tarnovsky. Tarnovsky was directed by
20 NDS to provide the information to Menard.

21 153. In so doing, NDS initially, and Menard with the reprogrammer
22 provided by Tarnovsky, effectively damaged the Access Card by impairing the
23 integrity or availability of the data, program systems and information placed on the
24 microprocessor and in associated memory by Plaintiffs to implement the
25 conditional access system for the DISH Network.

26 154. From 1999 to at least June 25, 2003, Menard used retail sales outlets
27 over the Internet to distribute Pirated EchoStar Access Cards and other
28 circumvention or signal theft devices designed to enable users to illegally modify or

1 alter EchoStar Access Cards and/or Plaintiffs' Security System. These retail outlets
2 were operated as websites including, but not limited to: www.discountsatellite.com
3 and www.DSScanada.com ("Discount Satellite"), owned and operated by
4 Defendant Dawson; www.koinvizion.com ("Koinvizion"), owned and operated by
5 Defendant Sergei; www.hitecsat.com ("Hi-Tec Satellite"), owned and operated by
6 Defendant Quinn; and www.thenewfrontiergroup.com a/k/a the "Blazer Group,"
7 owned and operated by Defendant Stanley Frost.

8 155. Advertisements and "links" to these retail outlet sites were placed on
9 Menard's website, www.dr7.com. Menard's website also maintained chat forums
10 and message boards where other pirates and hackers could discuss and share
11 information about the theft of DISH Network programming services and the
12 alteration and modification of EchoStar Access Cards and other circumvention or
13 signal theft devices designed to enable users to illegally modify or alter EchoStar
14 Access Cards and/or Plaintiffs' Security System to facilitate such theft.

15 156. Through Menard and his dealers' websites, and the NDS/Tarnovsky
16 distribution network, satellite signal "pirates" obtain EchoStar Access Cards and
17 alter them in a manner to circumvent Plaintiffs' Security System. Specifically,
18 satellite signal pirates alter Access Cards to interfere with the communication
19 between the Plaintiffs' microprocessor on the Access Card and the IRD that
20 ordinarily authenticates the programming services that the subscriber is entitled to
21 view. As a result, Pirated EchoStar Access Cards, when inserted into an IRD, will
22 cause the IRD to descramble the satellite signal and permit access to EchoStar's
23 Programming services on the DISH Network without payment of the subscription
24 fees or other fees ordinarily required to obtain the right to view such Programming
25 from EchoStar.

26 157. With the assistance of NDS, its agents and employees, Menard and his
27 distribution chain actively marketed these altered Access Cards for the specific
28 purpose of enabling their customers to circumvent the protection of copyright

1 owners' rights and the rights of owners of protected works, which were
2 implemented through the DISH Network subscription process. Moreover, such
3 circumvention of DISH Network's conditional access system allowed the pirates'
4 consumers to avoid paying the ordinary subscription and use fees charged for DISH
5 Network services.

6 158. NDS facilitated Menard and his distribution network in offering the
7 public and trafficking in the altered Access Cards through various websites,
8 including: www.dr7.com; www.hucardcentral.com; www.discountsatellite.com;
9 www.koinvizion.com; www.dsscanada.com; www.hitecsat.com;
10 www.thenewfrontier.com. Through the foregoing websites, up to and including
11 June 25, 2003, Defendants Tarnovsky, Menard, Frost, Dale, Sergei, Quinn and
12 Dawson, and those acting in concert with them, as a direct result of NDS's actions
13 of providing Tarnovsky and Menard with the information necessary to alter Access
14 Cards on a large scale, offered:

- 15 a. to sell Pirated EchoStar Access Cards and other circumvention or
16 signal theft devices designed to enable users to illegally modify or alter
17 EchoStar Access Cards and/or Plaintiffs' Security System that permit
18 unauthorized access to DISH Network programming services;
- 19 b. to perform the service (for a fee) of altering EchoStar Access Cards for
20 members of the public who submit the EchoStar Access Cards through
21 the mail;
- 22 c. to purchase EchoStar Access Cards from members of the public,
23 presumably to permit alteration and resale of the Pirated EchoStar
24 Access Cards for unauthorized access to DISH Network programming
25 services; and
- 26 d. to exchange several deactivated EchoStar Access Cards submitted by
27 members of the public for a Pirated EchoStar Access Card that would
28 provide unauthorized access to DISH Network programming services.

1 159. On or about May 1999, DirecTV raided Scullion's house in Riguan,
2 Quebec, Canada. Jim Whalen, a retired FBI Agent employed by DirecTV was on
3 the raid. Whalen observed a handwritten note by Scullion and videotaped it and
4 later had it transcribed. Concerning the illegal pirating activity by Tarnovsky,
5 NDS, and Menard, the note stated that Scullion had been contacted by Menard in
6 about April 1999, and states in relevant part:

7
8 *As an administrator on his [Menard's] forums [www.DR7.com] he*
9 *[Menard] personally made me aware that he was programming E3M*
10 *cards about April 1999 and wanted to know if Avantec Bahamas LTD*
11 *[one of Scullions d/b/a's] would be interested in carrying this product*
12 *developed by Chris Tarnovsky. He stated that although I had*
13 *previously had many run ins with Mr. Tarnovsky as BG or Big Gun*
14 *that I should not let this be an impediment to good business.*

15 *He [Al Menard] told me [Scullion] at the time that Chris Tarnovsky*
16 *had done this [EchoStar] fix at the request of NDS and that it had their*
17 *sanction and would cause no legal problems.*

18 *A few nights later, he [Menard] actually stated that my selling these*
19 *[EchoStar hacked cards] could cause me not to be bothered as much*
20 *by NDS and that he had been assured by Chris [Tarnovsky] that they*
21 *would look favorably on this and that I would curry favor with them by*
22 *doing this.*

23
24 **b. Tarnovsky and Menard Set Up a Distribution**
25 **Network in a "Controlled" manner at NDS's**
26 **Instruction, By Using Only Five Distributors,**
27 **Defendants David Dawson, Todd Dales, Andrei Sergei,**
28 **Stanley Frost and Sean Quinn.**

1 160. Satellite pirates use the information produced from NDS's efforts, and
2 provided by NDS and its employees and agents, to access the microprocessor
3 embedded in EchoStar Access Cards and to reprogram individual EchoStar Access
4 Cards and other circumvention or signal theft devices designed to enable users to
5 illegally modify or alter EchoStar Access Cards and/or Plaintiffs' Security System.

6 161. As a result of NDS's and Defendants intentional acts, and those acting
7 in concert with NDS, pirates have and are actively engaged in the manufacture,
8 import, export, offering to the public, or otherwise trafficking in technological

1 devices and services, including altered Access Cards and Reprogrammers, that
2 permit unauthorized users to access DISH Network programming services without
3 paying subscription and other fees normally charged for such access.

4 162. Through this scheme to create an underground supply of Pirated
5 EchoStar Access Cards and other circumvention or signal theft devices designed to
6 enable users to illegally modify or alter EchoStar Access Cards and/or Plaintiffs'
7 Security System, NDS has furthered its intended fraud of facilitating others in
8 obtaining unauthorized access to valuable DISH Network Programming, free of
9 charge. At the same time, Menard and his distribution network were able to, and
10 did, obtain valuable consideration for the Pirated EchoStar Access Cards and other
11 circumvention or signal theft devices designed to enable users to illegally modify or
12 alter EchoStar Access Cards and/or Plaintiffs' Security System they sold to other
13 members of the public.

14 163. In addition to Frost, Sergei, Dawson, Quinn and Dale, Menard also
15 approached Reginald Scullion with an offer to participate in the NDS/Tarnovsky
16 and Menard "CONTROLLED" distribution of the "EchoStar hack" in furtherance
17 of the overriding NDS conspiracy to effectuate and facilitate others in effectuating a
18 wide-spread compromise of Plaintiffs' security system. In his sworn Declaration
19 attached hereto, Scullion testifies as follows:

20
21 In or about fall 1998, Al Menard ("Menard"), owner and operator of
22 www.dr7.com, first approached me wherein he informed me that he
23 was involved in a plan to be the Canadian leader in distributing
Pirated EchoStar Access Cards.

24 (Scullion Declaration ¶ 11) (emphasis added).

25
26 On or about April 1999, Menard approached me a second time to
27 solicit my participation in his distribution network to sell Pirated
28 EchoStar Access Cards. During this conversation, Menard informed

1 me that he was “close to receiving a full hack of the EchoStar system”
2 and, because of the pirate community’s past interest in Swiss Cheese
3 Production’s products, Menard’s distribution plan was a guaranteed
4 money maker. Menard also informed me that the distribution network
5 was going to have something special attached with its operation: the
6 protection and control of NDS. Menard informed me that NDS was
7 the entity whom had ordered the hack and the distribution of Pirated
8 EchoStar Access Cards through Menard’s distribution network via
9 Tarnovsky. Menard informed me that NDS had an arrangement with
10 Tarnovsky to provide the support and facilitation of the hacked
11 EchoStar ROM Code to be sent to Menard to be used in the
12 distribution network. Menard also informed me that I had nothing to
13 worry about with respect to being raided by the RCMP due to the fact
14 that NDS would be running interference in the distribution network
15 and that NDS was connected and had a solid relationship with the
16 RCMP.

17 (Scullion Declaration ¶ 17) (emphasis added).

18 164. On or about October/November 1999, Menard contacted Scullion
19 again wherein Menard informed Scullion that the Pirated EchoStar Access Cards
20 were “ready to be distributed to the public.” Menard admitted that he had certain
21 vendors already established to distribute Pirated EchoStar Access Cards including,
22 but not limited to, Dawson, Quinn, Sergei, Frost, among others. Menard solicited
23 Scullion to be another one of his network dealers.

24 165. On or about April 20, 1999, Dawson and Discount Satellite were
25 raided in Edmonton by the RCMP after local reports regarding Dawson’s selling
26 pirated DSS and EchoStar access cards and other illegal signal theft devices on the
27 Internet through his website, www.discountsatellite.com. Among the items
28 confiscated were illegal satellite access cards, computers, and other equipment used
to program access cards, approximately \$69,500 in U.S. and Canadian money
orders and cash, and drugs. Notwithstanding the raid on the confiscation of his
pirating equipment, Dawson continued to operate his illegal business in Canada

1 through his website, www.discountsatellite.com. Specifically, Dawson continued
2 to engage in the distribution and/or trafficking in unlawfully altered EchoStar
3 access cards and/or other circumvention devices up to and including June 19, 2003.

4 166. On or about August 24, 1999, a post to the Internet by “DR7”
5 [Menard] responding to a request by a member that “JD” [Dawson] release the
6 information regarding E3Ms [EchoStar hacked ROM Code] in order to increase the
7 number of [pirated EchoStar Access] cards in the market and provide information
8 to those who can support their own cards with this information. *DR7 [Menard]*
9 *responds by stating that there is one party in control of the E3Ms [NDS] and that*
10 *revealing any information will never happen.*

11 167. On or about September 29, 1999, a post to the Internet by “DR7”
12 [Menard] states that he talked to “JD” [Dawson] on the phone about 20 minutes ago
13 and JD [Dawson] said that he would also just “sell the programmed [DISH
14 Network] chip” if there was a demand for it. A later post to the Internet, on the
15 same date, by “DR7” [Menard] states that he “*confirmed with JD [Dawson] that the*
16 *keys in the latest talk.cfg file are not for AVR freeware and will only work on JD’s*
17 *[Dawson’s] AVR.*”

18 168. On or about February 2, 2000, Dawson and Discount Satellite were
19 raided a second time by the RCMP after local reports regarding
20 Dawson’s continued selling of pirated DSS and EchoStar access cards and other
21 illegal signal theft devices on the Internet through his website,
22 www.discountsatellite.com. On or about early 2000, DirecTV brought suit against
23 Dawson, among other satellite pirates, for selling pirated DSS access cards in the
24 United States wherein judgment was entered against Dawson for \$14.7 million.

25 169. On or about March 29, 2000, DirecTV executed and seized Dawson’s
26 business in satisfaction of the judgment obtained by DirecTV against Dawson.
27 Shortly thereafter, Dawson posted a public statement on his website,
28 www.discountsatellite.com, regarding the status of his business’s operations.

1 Included in this statement, Dawson provided a link to www.DSScanada.com,
2 another website owned, operated, and maintained by Dawson. Through this
3 website, Dawson continued to solicit business from his large customer base in
4 addition to new customers up to and including June 19, 2003.

5 170. On or about June 21, 2000, a post to the Internet by "Hitec" [Quinn],
6 concerning "Koin" [Sergei], states "[f]or the time being... I am removing all dealer
7 links from the site... Koin is closing the website but still accepting orders at
8 Koin@koinvision.com . . . now its cash no money orders at all and no site.... I think
9 it was a wise choice for Koin in my opinion. . . . Any other files that are required to
10 help out the Koinster will be posted here from now on."

11 171. On or about June 27, 2000, a post to the Internet by "Hitec" [Quinn],
12 concerning business operations of Koin [Sergei], stating "Koin [Sergei] is closing
13 the website but still accepting orders at Koin@Koinvision.com . . . My self I
14 personally vouch for Koin and his support. Even with his one complaint the guy
15 has to admit that *Koin did send his package originally although it was seized and*
16 *he did make up for it after a couple of weeks . . . Any other files that are required to*
17 *help out the Koinster will be posted here [www.hitecsat.com] from now on." A*
18 *later post on the same date by "Hitec" [Quinn] stating "as I already said . . . no*
19 *money order now and only email . . . I will post any files needed to help out Koin*
20 *[Sergei]. His email addy again is Koin@koinvizion.com."*

21 172. On or about December 8, 2000, a post to the Internet by
22 "hammertime3m" stating "DR7 is responsible for the E3M [EchoStar hack], he is
23 the only one loading cards, always has been! He bought the product from a group
24 [NDS via Tarnovsky], he established dealers and started loading cards. That's a
25 FACT! . . . Don't you people find it ODD that he never bashed or attacked the
26 E3M once when it was released. Hell, he went as far as promoting it, praising the
27 dealers, defending it when it was ECM'd. . ."

28

1 **4. Step 4: NDS Sought to Eliminate Plaintiffs' from the CAS**
2 **Marketplace.**

3 173. In response to the Pirated EchoStar Access Cards being distributed by
4 NDS through Tarnovsky, Menard, and the distribution network, Plaintiffs began
5 launching ECMs in an effort to detect and disable these unauthorized EchoStar
6 Access Cards.

7 174. NDS initially labored to counteract Plaintiffs' ECMs. Specifically,
8 NDS, either directly or indirectly through Tarnovsky, developed additional
9 hardware and software to be distributed via Menard which would protect or
10 "repair" the Pirated EchoStar Access Cards attacked by Plaintiffs' ECMs. NDS,
11 either directly or indirectly through Tarnovsky and Menard, also distributed
12 software codes and "fixes" via the Internet that were used to circumvent Plaintiffs'
13 ECMs.

14 175. From late 1999 up to and including late December 2000 and beyond
15 (including posts on the distributor websites operated by Defendants Menard, Frost,
16 Dale, Quinn, Sergei and Dawson up to and including June 25, 2003), NDS via
17 Tarnovsky, provided continual technical support in the form of 'patches', 'fixes',
18 software 'updates', and instructional codes and/or commands to combat and/or
19 guard against ECMs launched by Plaintiffs to disable unlawfully reprogrammed
20 Access Cards and other circumvention devices.

21 176. Based upon information and belief, NDS committed these acts in,
22 among other places, the State of California, the Country of Canada, and the Country
23 of Israel.

- 1 a. On December 23 – 24, 2000, NDS Through Tarnovsky
2 and Menard Published the Necessary Instructional
3 Codes and Related Technical Information to Access
4 Plaintiffs' Microprocessor and Read/Write to Same
5 Resulting in a Wide-Spread and Uncontrollable
6 'Public' Compromise of Plaintiffs' Security System.

7 177. On or about December 23, 2000, a post by "xbr21" [Tarnovsky],
8 responding to invitation by other members wishing "Nipper Clauze" [Tarnovsky]
9 would reappear and provide information, and states "*you want nipper clauze*
10 *[Tarnovsky] here,*" and then states "*there will be no boxes anymore! There will be*
11 *no more fights amongst us. Learn from this and prosper. Works across the world!*
12 *Do the following: get atr, wait 500ms to ensure card is idle. Send this packet to*
13 *288-02 or equivalent ROM 3 nagra cam! Rx 4+4096 bytes and you have entire*
14 *eeprom. Send this, then rx 4 bytes + 4096 bytes of eeprom.*"

15 178. This December 23, 2000 publication by Tarnovsky on the Internet was the critical
16 moment when the keys to Plaintiffs' safe of proprietary information contained in its Access Cards
17 and Security System were given to the world. In this publication, NDS via Tarnovsky provided
18 the hacker community for the first time a sequence of events and data, along with accompanying
19 instructional code, that provided satellite pirates around the world the "road map" and requisite
20 instructions for: (a) the full dump of Plaintiffs' secret ROM Code; (b) the full dump of
21 Plaintiffs' EEPROM Code and accompanying secret keys; and (c) the instructions on how to
22 internally 'hack' or access Plaintiffs' microprocessor thereby granting the ability to 'read' and
23 'write' to Plaintiffs' Access Cards. In essence, Tarnovsky's December 23 and 24, 2000 postings
24 provided hackers for the first time with the 'Exploit key' or method necessary to gain access to
25 Plaintiffs' microprocessor and subsequently read and write to Plaintiffs' Access Cards. The result
26 of such dump also enabled a pirate/hacker to locate and identify Plaintiffs' secret "box keys" and
27 secret "decrypt keys."

28 179. A later post by "willdog" states "*wow thanks nipper clauze*

1 *[Tarnovsky] And it works too.” A later post by “grasshopper” states “I’ve got to*
2 *agree, this is a totally awesome gift to the Dish community.”*

3 180. On December 24, 2000, a post to the Internet by “Nipper 2000”
4 *[Tarnovsky] at 3:26 a.m. publishing the FULL Echo ROM Code on*
5 *www.piratesden.com, Discussion Forum. “Nipper 2000’s” [Tarnovsky’s] post,*
6 *entitled “tHe ReAl V3 DuMp!,” states: “tHeRe WiLl bE nO bOxEs aNyMoRe!*
7 *tHeRe WiLl bE nO mOrE fIgHtInG aMoNgSt uS. LeArN fRoM ThIs aNd*
8 *pRosPer. tHiS WiLl Be PoStEd To ALL NeWsGrOuPs ArOuNd ThE WoRiD!*
9 *ThIs Is Dr7’S cOdE (WeSt 3M v3) tHe rEaL sTuFf!!” Tarnovsky then goes on*
10 *to state: “I wILL dUmP ALL vErSiOnS oF tHe WeSt CoDe LoOk FoR iT hErE!*
11 *nIpPeR cLaUz 00” [Tarnovsky].*

12 181. The first harmful effect of Tarnovsky providing this information was
13 that every ROM3 EchoStar Access Card (approximately 7.6 million in circulation
14 at that time) could then be compromised and forced to dump the EEPROM Code
15 segment revealing the location and identity of Plaintiffs’ secret “pairing keys.”
16 Prior to Tarnovsky providing this information to the world, a full dump of
17 Plaintiffs’ EEPROM Code segment had never been done. As a result, a
18 pirate/hacker was now able to personally update a Pirated EchoStar Access Card or
19 other Circumvention or Signal Theft Device to comport with Plaintiffs’ frequent
20 “pairing key” changes. Before December 23, 2000, a pirate/hacker was dependent
21 on Defendants Tarnovsky, Menard, Quinn, Sergei, Dawson, and Frost, among
22 others, acting under the control and direction of NDS, to either (1) have Nipper
23 [Tarnovsky] provide the new “pairing keys” on pirate websites, or (2) send the
24 disabled Pirated EchoStar Access Card back to the dealers for updating. However,
25 as a result of Tarnovsky’s publication on December 23, 2000, hackers around the
26 world now had the information necessary to personally circumvent any future
27 EchoStar pairing key change to a ROM3 Access Card. Users now simply inserted
28 the disabled Access Card into a card reader, perform the sequence of events and

1 data provided by Tarnovsky which would identify the new pairing key change, and
2 update the Access Card with the new pairing keys. After performing these steps, the
3 user's Pirated EchoStar Access Card or other signal theft device was no longer
4 disabled and could once again receive unauthorized access to EchoStar
5 Programming.

6 182. Approximately 24 hours after the EEPROM Code segment dump by
7 Tarnovsky, or about December 24, 2003, the first harmful effect of Tarnovsky's
8 publication evolved into the outright destruction and full compromise of Plaintiffs'
9 Security System. Given the information Tarnovsky provided, "Johnny ASIC" was
10 able to create and publish a modified version of Tarnovsky's information consisting
11 of another sequence of events and data that a pirate/hacker could use to dump the
12 entire ROM Code segment. The result of such dump enabled the person to possess
13 the intimate personal knowledge of how Plaintiffs' Security System works. As a
14 result of Tarnovsky's post on December 23, 2000, the piracy world was now able to
15 gain access, retrieve, and steal the heart and soul of Plaintiffs' Security System and
16 to dump both the EEPROM Code segment and the requisite Nagra ROM Code
17 segment.

18 183. NDS's wrongful conduct also gave other satellite pirates the ability to
19 design, manufacture, sell, or otherwise traffic in Pirated EchoStar Access Cards and
20 other Circumvention or Signal Theft Devices for a profit and the ability to release
21 Plaintiffs' proprietary information to other satellite pirates for the same or similar
22 purpose.

23 184. On or about December 29, 2000, a post to the Internet by "hitek"
24 [Quinn], entitled "e3m cards," states "*the new group wants to sell the machines*
25 *now. We do not want to directly sell them, but if you are interested in one, please*
26 *e-mail us and we will give you info on the machines as well as where you can order*
27 *it from. Information is not illegal and support for the machine will be through the*
28 *new group and not us. They have 30 machines ready to go.*"

1 185. On or about May 31, 2001, a Pirates Den "DISH Network" File Search
2 yielded the following downloadable illegal files related to circumvention of
3 Plaintiffs' Security System in order to receive the unauthorized viewing of DISH
4 Network programming services: (1) sorry Charlie 2.8 (sc28.exe); (2) 2 Piece AVR
5 (2pieceavr.zip); (3) msg306src (mcg306src.zip); (4) EEEedit (eepedit.zip); (5)
6 Mracttv2 (mracttv2.zip); (6) Nagra Blocker (nagra_blocker21.zip); (7) Rom2
7 Disassembly (rom2.zip); (8) Talk10 (talk10.zip); (9) Dish500 (dish500.zip); (10)
8 Edit305 (edit305v1.zip); (11) Virgin Bin (virgin.zip); (12) Stuntguy's NagraVision
9 hacking FAQ (erom_faq_012000.zip); (13) E3m Disassembly (e3ms.zip); (14) 288-
10 02 disassembly (disasm.zip); (15) Simple ATME: Programmer \$5 in parts
11 (13418eprog.zip); (16) Wbininfo150 (wbininfo150.zip); (17) Dish 3m (dish3m.zip);
12 (18) Sorry Charlie (sorrycharlie.zip); (19) Talk 31d (talk31d.zip); (20) 01-02
13 Dumps (0102dumps.zip); (21) Talk3.1b (talk31b.zip); (22) Fbprg16 (fbprg.zip);
14 (24) Dish Blank Bin (dishblank.zip); (25) Dish PPV Wipe (dishppvwiipe.zip); (26)
15 EDump (edump.zip); (27) Dish Hardware FAQ (faqdishhdwr.zip); (28) MCG305
16 (mcg305.zip); (29) **E3m code (wese3mv3.zip)**; and (30) Talk 3.1 (talk31.zip).

17 186. On or about June 24, 2001, a post to the Internet by "SatMedic" on
18 www.innermatrix.net "Satellite Chat" regarding "A note from DR7" in which he
19 posts the following authored by "DR7" [Menard] "*I have been here since day one
20 and ran the site [www.dr7.com] for almost 6 years now, 4 of those years I paid for
21 it out of my pockets with 0 advertisers and being one of the largest sites there was. I
22 lost my first real love who I had been with 5 years because I was addicted to this
23 fucking computer shit, I am now facing multimillion dollar lawsuits and the site is
24 done...so sad.*"

25 187. On or about December 16, 2001, Tarnovsky admits to Giles Kaehlin,
26 Head of Security for Canal+, at a meeting in London that NDS was responsible for
27 the hack and publication of the DISH Network ROM Code on the internet.
28 Tarnovsky admits that the DISH Network code was sent to him by Reuven Hasak,

1 head of security for NDS in Israel, from John Norris, head of security for NDS
2 Americas. Tarnovsky later sent an email stating that he [Tarnovsky] wanted no
3 further communications to occur between Tarnovsky and Kaehlin.

4 188. On or about January 9, 2002, *Norris purchased a "Karl Suss Probe"*
5 *manufactured by K&S, model 4524, serial number 610009, with a manual, for the*
6 *amount of \$18,500 for Tarnovsky. On or about January 17, 2002, the item was*
7 *shipped via Atlas Van Lines to "Chris Tarnovsky at [XXX XXXXX, XXX,]*
8 *California USA [XXXXXX,] phone number [xxx-xxx-xxxx,] fax number [xxx-xxx-*
9 *xxxx]." The invoice lists the "End User" to be Chris Tarnovsky at the same*
10 *address.*

11 189. On or about August 30, 2002, *Norris purchased a "Karl Suss Probe (2*
12 *units), \$1,700" and had them sent to Chris Tarnovsky. One item, manufactured by*
13 *Karl Suss, was a model Probe for the amount of \$850. The other item was also*
14 *manufactured by Karl Suss and is a model Probe for the amount of \$850. On*
15 *August 30, 2002, the items were shipped via Federal Express to "Chris Tarnovsky*
16 *at [XXX XXXXX, XXX,] California USA [XXXXXX,] phone number [xxx-xxx-*
17 *xxxx,] fax number [xxx-xxx-xxxx]." The invoice lists the "End User" to be Chris*
18 *Tarnovsky.*

19 **b. Law Enforcement's Investigation of Christopher**
20 **Tarnovsky, NDS Employee and Hacker for Satellite**
21 **Piracy.**

22 190. On or about July 29, 2000, "*Chris Tarnovsky*" of "*XXX XXXX,*
23 *XXXXX, CA XXXXX, phone number xxx-xxx-xxxx, DL # xxxxxxxx*", signed a
24 "*Mailbox Rental Agreement*" with "*Mail and More, 925 E Hwy 80 PMB #245, San*
25 *Marcos, TX 78666.*" Tarnovsky agreed to pay a \$7.00 per month rate for box #245,
26 for a total of \$84.00 for one year. He wrote into the agreement the following
27 instructions: "*Forward all mail as arriving next day including Saturday. For voice*
28

1 verification, ask xxx xxxx: answer "XXXXXXXX." For payment, Tarnovsky used
2 credit card number "xxxx-xxxx-xxxx-xxxx, expiration xx-xx."

3 191. Tarnovsky received the following packages on the following dates at
4 "Mail and More" at his post office box address noted above:

- 5
- 6 (a) On or about August 2, 2000, "X-Factor, X-Factor Design [Allen
7 Menard's company], # 108-280 Nelson St., Vancouver, BC Canada,
8 phone number 604-408-7762, UPS account number 49W-W48" sent a
9 package to "CT [Tarnovsky], 925 E. highway 80 PMB #245, San
10 Marcos, Texas 78666 USA, phone number 716-259-1580." The item
11 enclosed was described as a "Sony Play Station manufactured in
12 Japan" with tracking number "W601 911 651 5." The "Declaration of
13 Contents and Shipper's Letter of Instruction" states that "X-Factor, X-
14 Factor Design" shipped the package and describe the items enclosed
15 as "one (1) Sony Psx Z, manufactured in Japan, valuing \$900.00; one
16 (1) Sony Controller, manufactured in Japan, valuing \$30.00, and three
17 (3) Sony CDs, manufactured in Japan, valuing \$60.00." The remarks
18 section of the declaration reads "Birthday Gift." Tarnovsky's birthday
19 listed on his California driver's license is xxxxx xx, xxxx.
- 20 (b) On or about August 11, 2000, the "Declaration of Contents and
21 Shipper's Letter of Instruction" states that "Hi-Fi Exchange, 1750
22 Davie St. Suite 201, Vancouver, BC VGG-3B7, phone number 808-
23 6026," sent one package weighing 11 pounds to "CT [Chris
24 Tarnovsky] Electronics, 925 E Hwy 80 PMB #245, San Marcos, TX
25 78666." The item enclosed is described as "one (1) Technics Cassette
26 Deck, manufactured in Singapore valued at \$350.00."
- 27 (c) On or about August 15, 2000, the "Declaration of Contents and
28 Shipper's Letter of Instruction" states that "Regency Audio, 1750
Drive, V663B7, Canada, phone number 604-808-6061" sent one
package weighing 10 pounds to "CT [Chris Tarnovsky] Electronics,
925 E Hwy 80 #245, San Marcos, TX 78666, phone number 512-897-
1677." The item enclosed is described as "one (1) Graphic Equalizer,
manufactured in the USA, valuing \$300.00."
- (d) On or about August 23, 2000, a "Declaration of Contents and
Shipper's Letter of Instruction" states that "Regency Audio, 1750
Davie #201, Van BC V663B1", sent one package weighing 10 pounds

1 to "Owner, CT [Tarnovsky] Electronics, 925E Hwy 80 #245, San
2 Marcos, TX 78666, phone number 396-1247." The item sent is
3 described as "one (1) Sony Minidisk, manufactured in the USA,
4 valuing \$350.00." The shipment was charged a \$62.78 transportation
5 charge.

6 (e) On or about August 25, 2000, "Regency, Regency Audio, 1750 Davie
7 3201, Van, BC VGB3B7, phone number 807-2262, UPS account
8 number 638X87", sent one package, with a weight of 11 pounds to
9 "CT [Tarnovsky], 925 E. highway 80 Suite 245, San Marcos, Texas
10 78666 USA, phone number 512-369-29." The item is described as a
11 "compact disc player manufactured in the USA." The tracking number
12 on the package was "W619 045 603 0." The package was sent
13 "expedited" with the special instructions "Zone 351."

14 (f) On or about August 28, 2000, "Regency, Regency Audio, 1750 Davie
15 3201, Van, BC VGB3B7, phone number 807-2262, UPS account
16 number 638X87", sent one package, with an actual weight of 9 pounds
17 to "CT [Tarnovsky] Electronics, 925 E. highway 80 Suite 245, San
18 Marcos, Texas 78666 USA, phone number 512-369-4242." The item
19 was described as a "DVD Player manufactured in the USA." The
20 tracking number on the package was "W619 045 602 1", and the
21 package was sent "expedited."

22 (g) On or about August 28, 2000, a package was sent to "Von,"
23 [Tarnovsky] from "8132 Washburn Ct, Luling, TX 78648, phone
24 number 703-850-2337", with FedEx letter to "Chris Tarnovsky, 925 E.
25 Hwy 80 #245, San Marcos, TX 78666, phone number 703-850-2337."
26 The parcel was sent FedEx Priority Overnight with the tracking
27 number "8153 1564 6118." The sender, "Von," has an account that
28 will be billed to pay for the shipment. The parcel was to be delivered
by August 29, 2000.

(h) On or about August 29, 2000 a package was sent to "Von" [Tarnovsky]
from Mail & More, 925 Highway 80, San Marcos, Texas 78666, phone
number 703-850-2337, with a FedEx Envelope/Letter to "Chris
Tarnovsky, XXX XXXX XXXX., XXX XXXXX, CA XXXXX." The parcel
was sent FedEx Priority Overnight with the tracking number "xxxx
xxxx xxxx." Tarnovsky, "Von," has an account, number 1700-1825-7
that is billed for the shipment. The FedEx tag is marked "XENIRA."

1 192. On or about August 29, 2000, an investigation by the Hays County
2 Narcotics Task Force was conducted in response to an anonymous call from a
3 concerned citizen stating that a suspicious parcel had been mailed from Luling,
4 Texas to San Marcos, Texas, and then forwarded to San Marcos, California at
5 Christopher Tarnovsky's expense. The caller advised "*there was no reason for the*
6 *parcel to be mailed to San Marcos, TX before being mailed to San Marcos, CA.*"
7 The investigation revealed that the return address and phone number on this parcel
8 was invalid. The name for the return address was "*Von*" [Tarnovsky].

9 193. The investigation further revealed that Tarnovsky was living at XXX
10 XXXX XX, XXX XXXX, California XXXXXX. On July 29, 2000, and that he
11 rented mailbox number 245 at "Mail and More, 925 E.HWY 80, San Marcos, Hays
12 County, Texas." *Tarnovsky instructed the store manager to forward all of his mail*
13 *as arriving next day including Saturday to XXX XXXX XX, XXX XXXX,*
14 *California XXXXXX. The store manager had been forwarding parcels to*
15 *Tarnovsky approximately "every day or every other day."* Tarnovsky falsely told
16 the store manager of Mail and More that he was a student at Southwest Texas State
17 University and was returning home to XXX XXXXX, California. However, the
18 investigation revealed that there was no record of Tarnovsky ever attending
19 Southwest Texas State University or living in the San Marcos, Texas area.

20 194. On or about August 30, 2000, the store manager notified Detectives
21 that he received another parcel to be forwarded to Tarnovsky. The parcel was in a
22 JVC compact disc box with a return address of "*Regency Audio, 1750 Davis #201,*
23 *Van BC VGG3B7*" and addressed to "*CT [Tarnovsky] Electronics, 925 W HWY*
24 *suite 245, San Marcos, TX.*" Canines gave a positive alert at the presence of the
25 odor of marijuana or other illegal drugs after smelling the parcel. A search warrant
26 was then executed and \$20,100.00 in US currency was discovered inside a medium
27 brown envelope taped to the circuitry inside the JVC compact disc player.
28

1 195. On or about August 31, 2000, the store manager again notified the
2 investigating detective that a parcel had arrived. The parcel was identical to the one
3 received the day before, except the box was from a "*Pioneer DVD.*" Canines again
4 gave a positive alert at the suspected parcel. A second search warrant was executed
5 and *\$20,000.00 in US currency was found in a medium sized envelope taped to the*
6 *circuitry of the DVD player.*

7 196. On or about September 18, 2000, a 2 pound parcel with the dimensions
8 26 x 6 x 6 was shipped "PRIORITY OVERNIGHT" to "*Chris Tarnovsky, 925 3*
9 *Hwy 80 PMB 245, San Marcos, TX 78666.*" The tracking number on the parcel was
10 4796 4348 4020. The parcel was to be delivered by September 19, 2000. The tag
11 is identified by account # 100467461, REP 7952771,1,9664120 (1), cad # 0052421
12 18SEP00, and the letters "*XENIRA.*" The tag also shows "*Digi-Key Corp., 701*
13 *Brooks Ave. S., Thief River Falls, MN 56701, (218)681-6674*" as labeled
14 "Shipping."

15 197. On or about September 19, 2000, it was discovered that *Tarnovsky*
16 *placed approximately 80 phone calls to Israel [NDS] and 120 to Belgium.*
17 *Tarnovsky* also traveled over seas twice every six months going to Brussels and
18 other European countries. *Tarnovsky* had received two parcels at his residence from
19 Minnesota and *Virginia [Tarnovsky Sr.]*.

20 198. On or about December 14, 2000, U.S. Customs advised the Hays
21 County Narcotics Task Force that *Tarnovsky worked for NDS in California and was*
22 *believed to be counterfeiting or pirating satellite T.V. access cards.* U.S. Customs
23 was, and currently is, working with Direct TV's private security company who was,
24 and currently is, also investigating *Tarnovsky*. Plaintiffs are informed and believe
25 that U.S. Customs also investigated *Tarnovsky* on a case in the States of Oregon
26 and Washington.

27 199. On or about January 9, 2001, a "knock and talk" by U.S. Customs
28 agents Flannigan and Spears, as well as Ruben Romero of Galaxy Latin America,

1 takes place at Tarnovsky's house in California. During the walkthrough, Agent
2 Flannigan witnesses a card emulator [a device used for reprogramming Access
3 Cards] pushing out Pirated EchoStar Access Cards.

4 200. On or about February 9, 2001, U.S. Customs agents perform a raid on
5 Tarnovsky's house.

6 201. On or about March 8, 2001, at a meeting with Menard in Canada with
7 Ereiser present, *Menard stated that "Tarnovsky would lose his job"* if Menard
8 provided any information as to how the initial hack of Plaintiffs' conditional access
9 system occurred. Tarnovsky was an employee and agent of NDS at this time.

10
11 **VII. PLAINTIFFS HAVE BEEN, AND CONTINUE TO BE,**
12 **SUBSTANTIALLY INJURED BY DEFENDANTS' ILLEGAL**
13 **CONDUCT**

14 **1. As a Direct Result of Defendants Posting Plaintiffs'**
15 **Proprietary Codes on the Internet, Plaintiffs Were Forced**
16 **To Employ Their Very First Card Swap of Approximately**
17 **More Than 7 Million EchoStar Access Cards.**

18 202. Since NDS's hacking EchoStar's Access Card and posting its
19 EEPROM and ROM Codes on the Internet, Pirated EchoStar Access Cards and
20 other Circumvention or Signal Theft Devices have become available.

21 203. These Pirated EchoStar Access Cards and other Circumvention or
22 Signal Theft Devices enable, assist, and facilitate the decryption of DISH
23 Network's Programming services without EchoStar's authorization or viewers'
24 payment of the necessary and required fees. These Pirated EchoStar Access Cards
25 and other Circumvention or Signal Theft Devices have been, and continue to be,
26 advertised, marketed, distributed, and sold via the Internet, local publications, and
27 in underground satellite publications, in addition to being often times sold by
28 satellite equipment retail dealers. Regardless of how these Pirated EchoStar Access

1 Cards and other Circumvention or Signal Theft Devices are advertised, marketed,
2 distributed, or sold, the fact of the matter is that these Pirated EchoStar Access
3 Cards and other Circumvention or Signal Theft Devices would not presently exist
4 but for the wrongful conduct of Defendants, as described herein.

5 204. Defendants' wrongful conduct has injured, and will continue to injure,
6 Plaintiffs by depriving Plaintiffs of subscription and pay-per-view revenues and
7 other valuable consideration, compromising Plaintiffs' conditional access system,
8 infringing on Plaintiffs' trade secrets and proprietary information, and interfering
9 with Plaintiffs' contractual and prospective business relations.

10
11 **VIII. PLAINTIFFS' MOTION TO INTERVENE IN THE CANAL+ V. NDS**
12 **LITIGATION**

13 **A. On September 27, 2002, Plaintiffs Filed a Motion to Intervene in**
14 **the *Canal + v. NDS* Litigation, Which Concerned Allegations that**
15 **NDS Had Cracked Canal+'s Security System Using the Same**
16 **Common Plan NDS Employed to Attack Plaintiffs' Security**
17 **System.**

18 205. Hacking Plaintiffs' Security System is not the first time NDS has
19 engaged in wrongful behavior against a competitor's Security System. On or about
20 April 9, 2002, Oliver Kommerling, NDS's employee and agent, explained the
21 methods that NDS used to break the Security System of another encryption
22 competitor, Canal+, and to distribute that information to foster satellite piracy.

23 206. Kommerling testified that "NDS engineers in the NDS facility in
24 Haifa, Israel obtained Canal+ Access Cards and using the techniques taught by me
25 [Kommerling] (some of which were described in my paper Design Principles for
26 Tamper Resistant Smartcards written with Markus Kuhn) were able to physically
27 extract the Canal+ machine code embedded in their Access Cards." Further
28 Kommerling testified that "NDS engineers disassembled and analyzed the extracted
machine code . . ." which was later confirmed by Kommerling as the same code

1 that was published on the “DR7 website” by NDS agent Christopher Tarnovsky.
2 (Kommerling Dec. ¶ 6(a)-(e), attached hereto.)

3 207. Upon further investigation, in approximately early September 2002,
4 Plaintiffs discovered the sworn declaration of Jan Saggiori, an employee of SSS
5 LLC, based in Geneva Switzerland. Saggiori testified that he “asked Chris
6 Tarnovsky if he could obtain the [missing] code present at the 2000 address from
7 Al Menard. By an email exchange from Chris Tarnovsky [on March 28, 1999],
8 Chris sent me [Saggiori] an 8kb binary file that he claimed contained the requested
9 code extracted from the Canal+ smart card.” (Saggiori Dec. ¶ 5 and Exhibits to his
10 declaration, attached hereto)

11 208. Upon Plaintiffs’ receipt and review of the code sent from NDS
12 employee Tarnovsky to Saggiori, Plaintiffs discovered that the code was actually
13 from an ST microchip that NagraStar used within its Access Cards. As evidenced
14 by this code, and the well pleaded facts herein, Plaintiffs are now informed and
15 believe that NDS may have cracked Plaintiffs’ Security System as early as March
16 28, 1999 and distributed Plaintiffs’ illegally obtained proprietary codes at this time
17 through its employee and agent Tarnovsky, among other Defendants, with the
18 intent and common plan to facilitate the piracy of Plaintiffs’ Security System and
19 cause harm to Plaintiffs.

20 209. Upon discovering that NDS was responsible for the acts complained
21 of herein in approximately early September 2002, Plaintiffs immediately brought an
22 action against NDS on September 27, 2002 by filing a Motion to Intervene in
23 Canal+’s pending lawsuit against NDS – which was based upon similar facts and
24 circumstances. The *Canal+ v. NDS et al.* case settled before Plaintiffs’ Motion to
25 Intervene could be granted. Accordingly, Plaintiffs immediately filed this suit on
26 June 6, 2003.

1 **IX. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Circumventing Technological Measures Concerning Protected and**
4 **Copyrighted Works in Violation of the Digital Millennium Copyright Act, 17**
5 **U.S.C. § 1201(a)(1)(A))**

6 210. Plaintiffs re-allege and incorporate the above paragraphs as if fully set
7 forth in this cause of action.

8 211. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
9 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Dawson, Quinn, Sergei, Dale,
10 Frost, Sommerfield, Bruce, "Beavis", "Jazzercz" and "Stuntguy" circumvented
11 Plaintiffs' technological measures contained within EchoStar Access Cards which
12 effectively control access to works protected under Title 17 of the United States
13 Code, namely DISH Network's satellite television programming services and the
14 protected works broadcasted thereon, by altering, modifying, compromising,
15 pirating, and/or reprogramming EchoStar Access Cards to bypass EchoStar's
16 encryption protection contained therein and to enable the unauthorized access of
17 copyrighted satellite television programming, with each instance in violation of 17
18 U.S.C. § 1201(a)(1)(A).

19 212. Defendants NDS, NDS Americas, Norris, Hasak and Tarnovsky
20 additionally circumvented Plaintiffs' technological measures contained within
21 EchoStar Access Cards which effectively control access to works protected under
22 Title 17 of the United States Code, namely DISH Network's satellite television
23 programming services and the protected works broadcasted thereon, by conspiring
24 with themselves as well as Defendant Menard via NDS employee Tarnovsky, to
25 alter, modify, compromise, pirate, and/or reprogram EchoStar Access Cards to
26 bypass EchoStar's encryption protection contained therein and to enable the
27 unauthorized access of copyrighted satellite television programming, with said acts
28 and/or omissions constituting a violation of 17 U.S.C. § 1201(a)(1)(A).

1 213. Defendants NDS, NDS Americas, Norris, Hasak and Tarnovsky
2 additionally circumvented Plaintiffs' technological measures contained within
3 EchoStar Access Cards which effectively control access to works protected under
4 Title 17 of the United States Code, namely DISH Network's satellite television
5 programming services and the protected works broadcasted thereon, through their
6 agents and/or sub-agents including Defendants Menard, Dawson, Quinn, Dale,
7 Frost, Sergei and Dale, by altering, modifying, compromising, pirating, and/or
8 reprogramming EchoStar Access Cards to bypass EchoStar's encryption protection
9 contained therein and to enable the unauthorized access of copyrighted satellite
10 television programming, with said acts and/or omissions engaged in by NDS's
11 agents and/or subagents constituting a violation of 17 U.S.C. § 1201(a)(1)(A).

12 214. Defendants NDS and NDS Americas are additionally indirectly liable
13 under the foregoing statutory provisions for subsequently ratifying the unlawful
14 conduct of Defendants Norris, Hasak, Tarnovsky, Tarnovsky Sr., Menard, Frost,
15 Dale, Quinn, Sergei, Dawson, Main and Wilson after having full knowledge of said
16 unlawful acts outlined herein and concurrently and subsequently accepting and/or
17 retaining the commercial and/or economic benefit of same.

18 215. Defendants NDS, NDS Americas, Norris and Hasak are additionally
19 liable under the foregoing statutory provisions for encouraging, assisting,
20 facilitating and/or aiding and abetting in the unlawful acts outlined herein by
21 Defendants Tarnovsky, Menard, Frost, Dawson, Quinn, Dale, Sergei, Tarnovsky
22 Sr., Kommerling, Donev, Luyando and Nedeltchev.

23 216. Defendant Tarnovsky is additionally liable under the foregoing
24 statutory provisions for conspiring with, encouraging, assisting, facilitating and/or
25 aiding and abetting in the unlawful acts outlined herein by Defendants Menard,
26 Frost, Dale, Quinn, Sergei, and Dawson.

27 217. Defendants NDS and NDS Americas are additionally liable under the
28 foregoing statutory provisions for the unlawful acts outlined herein by their

1 Employees and/or agents Norris, Hasak, Tarnovsky, Tarnovsky Sr., Kommerling,
2 Donev, Luyando, Nedeltchev, and Menard.

3 218. These acts complained of herein occurred in, amongst other places, the
4 State of California, Canada, and Israel.

5 219. Each of the foregoing Defendants' direct and indirect acts of
6 circumvention have been and continue to be performed without the permission,
7 authorization, or consent of Plaintiffs or any owner of copyrighted programming
8 broadcasted on the DISH Network.

9 220. Each of the foregoing Defendants have violated Section 1201(a)(1) of
10 the DMCA willfully, and for purposes of commercial advantage or private financial
11 gain.

12 221. Each of the foregoing Defendants are additionally liable under the
13 foregoing statutory provisions for encouraging, assisting, facilitating, aiding and
14 abetting, and/or materially contributing to the direct violation of the foregoing
15 statutory provisions by other third party individuals and/or entities who obtained
16 unlawfully altered, modified, accessed, pirated and/or reprogrammed EchoStar
17 Access Cards either directly or as a direct result of the acts or omissions of each of
18 the foregoing Defendants outlined herein.

19 222. Pursuant to 17 U.S.C. § 1203, Plaintiffs are entitled to equitable relief,
20 damages (either statutory damages of \$200 to \$2,500 per violation, or actual
21 damages plus any profits realized by Defendants as a result of this unlawful
22 conduct), reasonable attorney's fees, and costs, in addition to all other relief to
23 which they may be entitled.

24 **SECOND CAUSE OF ACTION**
25 **(Manufacture of and Traffic in Signal Theft Devices in Violation of the Digital**
26 **Millennium Copyright Act, 17 U.S.C. § 1201(a)(2))**

27 223. Plaintiffs re-allege and incorporate the above as if fully set forth in this
28 cause of action.

1 224. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
2 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
3 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce were and are actively
4 engaged in the business of manufacturing, importing (to the United States), offering
5 to the public, providing, or otherwise trafficking in altered, modified, compromised,
6 and/or counterfeit Pirated EchoStar Access Cards and/or other Circumvention or
7 Signal Theft Devices knowing that such Pirated EchoStar Access Cards and/or
8 other Circumvention or Signal Theft Devices: (a) are primarily designed or
9 produced for the purpose of circumventing Plaintiffs' encryption and conditional
10 access technological measures that effectively control access to copyrighted
11 satellite television programming; (b) have only limited commercially significant
12 purpose or use other than to circumvent Plaintiffs' encryption and conditional
13 access technological measures that effectively controls access to copyrighted
14 programming; or (c) were marketed by Defendants, or others acting in concert with
15 Defendants with Defendants' knowledge, for use in circumventing Plaintiffs'
16 encryption and conditional access technological measures Plaintiffs' encryption and
17 conditional access technological measures that effectively controls access to
18 copyrighted programming, in violation of 17 U.S.C. § 1201(a)(2).

19 225. Plaintiffs hereby incorporate by reference as if fully set forth herein
20 each separate and distinct theory of direct and indirect liability outlined above in
21 Count I of Plaintiffs' Third Amended Complaint.

22 226. These acts complained of herein occurred in, amongst other places, the
23 State of California, Canada, and Israel.

24 227. Each of the foregoing Defendants' violations have injured, and will
25 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
26 view revenues and other valuable consideration, compromising Plaintiffs' security
27 and accounting systems, infringing Plaintiffs' trade secrets and proprietary
28 information, and interfering with Plaintiffs' contractual and prospective business

1 relations.

2 228. Each of the foregoing Defendants' acts of circumvention have been,
3 and continue to be, performed without the permission, authorization, or consent of
4 Plaintiffs or any owner of copyrighted programming.

5 229. Each of the foregoing Defendants have violated Section 1201(a)(2) of
6 the Digital Millennium Copyright Act willfully, and for purposes of commercial
7 advantage or private financial gain.

8 230. Each of the foregoing Defendants knew that manufacturing, importing
9 (to the United States), offering to the public, providing, and trafficking in Pirated
10 EchoStar Access Cards and other Circumvention or Signal Theft Devices was and
11 is illegal and prohibited.

12 231. Such violations have caused, and will continue to cause, Plaintiffs
13 irreparable harm, and Plaintiffs have no adequate remedy at law to redress any such
14 continued violations. Unless restrained by this Court, Defendants will continue to
15 violate 17 U.S.C. § 1201(a)(2).

16 **THIRD CAUSE OF ACTION**

17 **(Manufacture of and Traffic in Signal Theft Devices in Violation of the**
18 **Digital Millennium Copyright Act, 17 U.S.C. § 1201(b)(1))**

19 232. Plaintiffs re-allege and incorporate the above as if fully set forth in this
20 cause of action.

21 233. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
22 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
23 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce were and are actively
24 engaged in the business of manufacturing, importing (to the United States), offering
25 to the public, providing, or otherwise trafficking in Pirated EchoStar Access Cards
26 and other Circumvention or Signal Theft Devices knowing that such Pirated
27 EchoStar Access Cards and other Circumvention or Signal Theft Devices: (a) are
28

1 primarily designed or produced for the purpose of circumventing the protection
2 afforded by Plaintiffs' encryption and conditional access technological measures
3 that effectively protects rights of copyright owners in a work or portion thereof; (b)
4 have only limited commercially significant purpose or use other than to circumvent
5 the protection afforded by Plaintiffs' encryption and conditional access
6 technological measures that effectively protects rights of copyright owners in a
7 work or portion thereof; or (c) were marketed by Defendants, or others acting in
8 concert with Defendants with Defendants' knowledge, for use in circumventing
9 Plaintiffs' encryption and conditional access technological measures Plaintiffs'
10 encryption and conditional access technological measures that effectively protects
11 rights of copyright owners in a work or portion thereof, in violation of 17 U.S.C. §
12 1201(b)(1).

13 234. Plaintiffs hereby incorporate by reference as if fully set forth herein
14 each separate and distinct theory of direct and indirect liability outlined above in
15 Count I of Plaintiffs' Third Amended Complaint.

16 235. These acts complained of herein occurred in, amongst other places, the
17 State of California, Canada, and Israel.

18 236. Each of the foregoing Defendants' violations have injured, and will
19 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
20 view revenues and other valuable consideration, compromising Plaintiffs' security
21 and accounting systems, infringing Plaintiffs' trade secrets and proprietary
22 information, and interfering with Plaintiffs' contractual and prospective business
23 relations.

24 237. Each of the foregoing Defendants' acts of circumvention have been,
25 and continue to be, performed without the permission, authorization, or consent of
26 Plaintiffs or any owner of copyrighted programming.

27 238. Each of the foregoing Defendants have violated Section 1201(b)(1) of
28 the Digital Millennium Copyright Act willfully, and for purposes of commercial

1 advantage or private financial gain.

2 239. Each of the foregoing Defendants knew that manufacturing, importing
3 (to the United States), offering to the public, providing, and trafficking in Pirated
4 EchoStar Access Cards and other Circumvention or Signal Theft Devices was and
5 is illegal and prohibited.

6 240. Such violations have caused, and will continue to cause, Plaintiffs
7 irreparable harm, and Plaintiffs have no adequate remedy at law to redress any such
8 continued violations. Unless restrained by this Court, Defendants will continue to
9 violate 17 U.S.C. § 1201(b)(1).

10 **FOURTH CAUSE OF ACTION**
11 **(Facilitating the Unauthorized Reception of Satellite Signals in Violation of the**
12 **Communications Act of 1934, as amended, 47 U.S.C. § 605(a))**

13 241. Plaintiffs re-allege and incorporate the above as if fully set forth in this
14 cause of action.

15 242. By designing, manufacturing, developing, manufacturing, assembling,
16 modifying, importing (to the United States), trafficking, distributing, and selling
17 Pirated EchoStar Access Cards and other Circumvention or Signal Theft Devices,
18 Defendants NDS, NDS Americas, Norris, Hasak, Kommerling, Luyando, Donev,
19 Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn, Sergei, Dale,
20 Frost, Tarnovsky Sr., Sommerfield, and Bruce have assisted the unauthorized
21 reception of use of EchoStar's satellite transmissions of television programming by
22 persons not authorized to receive such transmissions, in violation of 47 U.S.C. §
23 605(a).

24 243. Plaintiffs hereby incorporate by reference as if fully set forth herein
25 each separate and distinct theory of direct and indirect liability outlined above in
26 Count I of Plaintiffs' Third Amended Complaint.

27 244. These acts complained of herein occurred in, amongst other places, the
28 State of California, Canada, and Israel.

1 245. Each of the foregoing Defendants' violations have injured, and will
2 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
3 view revenues and other valuable consideration, compromising Plaintiffs' security
4 and accounting systems, infringing Plaintiffs' trade secrets and proprietary
5 information, and interfering with Plaintiffs' contractual and prospective business
6 relations.

7 246. Each of the foregoing Defendants' acts of circumvention have been,
8 and continue to be, performed without the permission, authorization, or consent of
9 Plaintiffs or any owner of copyrighted programming.

10 247. Each of the foregoing Defendants have violated Section 605(a) the
11 Communications Act willfully, and for purposes of commercial advantage or
12 private financial gain.

13 248. Each of the foregoing Defendants knew that assisting third person in
14 the reception and use of EchoStar's satellite transmissions of television
15 programming, without authorization, was and is illegal and prohibited.

16 249. Each of the foregoing Defendants' violations of 47 U.S.C. § 605(a)
17 have injured, and will continue to injure, EchoStar's ability to maximize the
18 revenues which it seeks to derive from its satellite television programming as
19 EchoStar has been deprived of the benefit of subscribers to EchoStar's satellite
20 television programming.

21 250. Pursuant to 47 U.S.C. § 605(e)(3), Plaintiffs are entitled to equitable
22 relief, damages (either statutory damages of \$1,000 to \$10,000 per violation, or
23 actual damages plus any profits realized by Defendants for each violation of 47
24 U.S.C. § 605(a)), and reasonable attorney's fees and costs. Plaintiffs seek all other
25 relief to which they may be entitled.

1 **FIFTH CAUSE OF ACTION**

2 **(Manufacture and Sale of Signal Theft Devices in Violation of the**
3 **Communications Act of 1934, as amended, 47 U.S.C. § 605(e)(4))**

4 251. Plaintiffs re-allege and incorporate the above as if fully set forth in this
5 cause of action.

6 252. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
7 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
8 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce have engaged in the
9 business of manufacturing, assembling, modifying, importing (to the United
10 States), exporting, selling, and distributing Pirated EchoStar Access Cards and
11 other Circumvention or Signal Theft Devices knowing that such Pirated EchoStar
12 Access Cards and other Circumvention or Signal Theft Devices are primarily of
13 assistance in the unauthorized decryption of EchoStar's satellite television
14 programming services, or are intended by Defendants to assist other persons in the
15 unauthorized reception and use of EchoStar's satellite television programming
16 services, in violation of 47 U.S.C. § 605(e)(4).

17 253. Plaintiffs hereby incorporate by reference as if fully set forth herein
18 each separate and distinct theory of direct and indirect liability outlined above in
19 Count I of Plaintiffs' Third Amended Complaint.

20 254. These acts complained of herein occurred in, amongst other places, the
21 State of California, Canada, and Israel.

22 255. Each of the foregoing Defendants' acts of circumvention have been,
23 and continue to be, performed without the permission, authorization, or consent of
24 Plaintiffs or any owner of copyrighted programming.

25 256. Each of the foregoing Defendants' violations have injured, and will
26 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
27 view revenues and other valuable consideration, compromising Plaintiffs' security
28 and accounting systems, infringing Plaintiffs' trade secrets and proprietary

1 information, and interfering with Plaintiffs' contractual and prospective business
2 relations.

3 257. Each of the foregoing Defendants have violated Section 605(e)(4) the
4 Communications Act willfully and for purposes of commercial advantage or private
5 financial gain.

6 258. Each of the foregoing Defendants knew that manufacturing,
7 assembling, modifying, importing (to the United States), exporting, selling, and
8 distributing Pirated EchoStar Access Cards and other Circumvention or Signal
9 Theft Devices that are primarily of assistance in the unauthorized reception and
10 decryption of EchoStar's satellite television programming services, was and is
11 illegal and prohibited.

12 259. Pursuant to 47 U.S.C. § 605(e)(3), Plaintiffs are entitled to equitable
13 relief, damages (either statutory damages of \$1,000 to \$10,000 per violation, or
14 actual damages plus any profits realized by the Defendants and/or their agents as a
15 result of this unlawful conduct), and reasonable attorney's fees and costs. Plaintiffs
16 seek all other relief to which they may be entitled.

17 **SIXTH CAUSE OF ACTION**

18 **(Unauthorized Interception of Electronic Communications in Violation of the 19 **Electronic Communications Privacy Act, 18 U.S.C. § 2511(1)(a)**)**

20 260. Plaintiffs re-allege and incorporate the above as if fully set forth in this
21 cause of action.

22 261. By designing, developing, manufacturing, assembling, modifying,
23 importing (to the United States), exporting, trafficking, selling, and distributing
24 Pirated EchoStar Access Cards and other Circumvention or Signal Theft Devices,
25 and advertising and providing software, information, and technical support services
26 relating to Pirated EchoStar Access Cards and other Circumvention or Signal Theft
27 Devices, Defendants NDS, NDS Americas, Norris, Hasak, Kommerling, Luyando,
28 Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn, Sergei,

1 Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce intentionally intercepted,
2 endeavored to intercept, or procured other persons to intercept or endeavor to
3 intercept, EchoStar's satellite transmissions of television programming, in violation
4 of 18 U.S.C. § 2511(1)(a).

5 262. Plaintiffs hereby incorporate by reference as if fully set forth herein
6 each separate and distinct theory of direct and indirect liability outlined above in
7 Count I of Plaintiffs Third Amended Complaint.

8 263. These acts complained of herein occurred in, amongst other places, the
9 State of California, Canada, and Israel.

10 264. Each of the foregoing Defendants' violations have injured, and will
11 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
12 view revenues and other valuable consideration, compromising Plaintiffs' security
13 and accounting systems, infringing Plaintiffs' trade secrets and proprietary
14 information, and interfering with Plaintiffs' contractual and prospective business
15 relations.

16 265. Each of the foregoing Defendants have engaged in conduct in violation
17 of Section 2511(1)(a) of the Electronic Communications Privacy Act for a tortious
18 or illegal purpose, or for purposes of direct or indirect commercial advantage or
19 private commercial gain.

20 266. Each of the foregoing Defendants knew that such interception of
21 EchoStar's satellite transmissions of television programming was and is illegal and
22 prohibited.

23 267. Such violations have caused and will continue to cause Plaintiffs
24 irreparable harm and Plaintiffs have no adequate remedy at law to redress any such
25 continued violations. Unless restrained by this Court, Defendants will continue to
26 violate 18 U.S.C. § 2511(1)(a).

1 **SEVENTH CAUSE OF ACTION**

2 **(Trademark Infringement in Violation of the Lanham Act, 15 U.S.C. § 1114)**

3 268. Plaintiffs re-allege and incorporate the above as if fully set forth in this
4 cause of action.

5 269. EchoStar has adopted the mark "DISH Network" and used it in
6 interstate commerce for equipment, goods, and services sold or licensed by
7 EchoStar as part of its direct broadcast satellite system. On February 5, 1995, an
8 application for registration of said mark was filed in the United States Patent and
9 Trademark Office. On May 5, 1998, said mark was registered in the United States
10 Patent and Trademark Office on the Principal Register under the Act of 1946
11 covering the use of said mark on equipment, goods, and services sold or licensed by
12 EchoStar as part of its direct broadcast system. EchoStar's registration is now
13 outstanding and valid.

14 270. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
15 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
16 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce have infringed
17 EchoStar's mark in interstate and foreign commerce by various acts including, but
18 not limited to, designing, manufacturing, importing, distributing, selling, offering
19 for sale, and advertising Pirated EchoStar Access Cards and other Circumvention or
20 Signal Theft Devices under the name and mark of "DISH Network." Defendants'
21 use of EchoStar's mark is without permission or authority of EchoStar and said use
22 is likely to cause confusion, mistake, and deceit.

23 271. Plaintiffs hereby incorporate by reference as if fully set forth herein
24 each separate and distinct theory of direct and indirect liability outlined above in
25 Count I of Plaintiffs' Third Amended Complaint.

26 272. These acts complained of herein occurred in, amongst other places, the
27 State of California, Canada, and Israel.

28 273. Each of the foregoing Defendants, individually and as members of the

1 conspiracy, have engaged in conduct in violation of 15 U.S.C. § 1114 with the
2 intent to cause confusion, mistake, and deceit.

3 274. Each of the foregoing Defendants knew that their use of the “DISH
4 Network” mark (1) on Pirated EchoStar Access Cards that Defendants designed,
5 manufactured, imported (to the United States), distributed, and sold, (2) on other
6 Circumvention or Signal Theft Devices that Defendants designed, manufactured,
7 imported (to the United States), distributed, and sold, and (3) on Defendants’
8 advertisements for the sale and use of Pirated EchoStar Access Cards and other
9 Circumvention or Signal Theft Devices was and is illegal and prohibited. Such
10 violations have caused and will continue to cause Plaintiffs irreparable harm, and
11 Plaintiffs have no adequate remedy at law to redress any such continued violations.
12 Unless restrained by this Court, Defendants will continue to violate 15 U.S.C. §
13 1114.

14 **EIGHTH CAUSE OF ACTION**
15 **(Use of False Designation in Violation of the Lanham Act,**
16 **15 U.S.C. § 1125(a))**

17 275. Plaintiffs re-allege and incorporate the above as if fully set forth in this
18 cause of action.

19 276. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
20 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
21 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce have caused Pirated
22 EchoStar Access Cards and other Circumvention or Signal Theft Devices to enter
23 into interstate and foreign commerce with the designation and representation
24 “DISH Network” connected therewith. Each of the foregoing Defendants’ use of
25 “DISH Network” is a false designation of origin which is likely to cause confusion,
26 mistake, and deceit as to the affiliation, connection, or association of Defendants
27 with EchoStar and as to the origin, sponsorship, or approval of such goods and
28 services by EchoStar.

1 277. Plaintiffs hereby incorporate by reference as if fully set forth herein
2 each separate and distinct theory of direct and indirect liability outlined above in
3 Count I of Plaintiffs' Third Amended Complaint.

4 278. These acts complained of herein occurred in, amongst other places, the
5 State of California, Canada, and Israel.

6 279. Each of the foregoing Defendants' actions are in violation of 15 U.S.C.
7 § 1125(a) in that Defendants have used in connection with goods and services
8 advertised and sold by Defendants a false designation of origin, a false or
9 misleading description and representation of fact which is likely to cause confusion,
10 mistake, and deceit as to the affiliation, connection, or association of Defendants
11 with EchoStar and as to the origin, sponsorship, or approval of Defendants' goods,
12 services, and commercial activities by EchoStar.

13 280. Each of the foregoing Defendants, individually and as members of the
14 conspiracy, have engaged in conduct in violation of 15 U.S.C. § 1125(a) with the
15 intent to cause confusion, mistake, and deceit.

16 281. Each of the foregoing Defendants knew, or should have known, that
17 their false designation of origin and their false or misleading description and
18 representation of fact were and are illegal and prohibited. Such violations have
19 caused and will continue to cause Plaintiffs irreparable harm, and Plaintiffs have no
20 adequate remedy at law to redress any such continued violations. Unless restrained
21 by this Court, Defendants will continue to violate 15 U.S.C. § 1125(a).

22 **NINTH CAUSE OF ACTION**
23 **(RICO, 18 U.S.C. § 1962(c))**

24 282. Plaintiffs re-allege and incorporate the above as if fully set forth in this
25 cause of action.

26 283. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
27 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
28 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce's unlawful, tortious

1 and otherwise actionable conduct as alleged in Plaintiffs' SAC constitutes a pattern
2 of "racketeering activity" as defined by 18 U.S.C. § 1961.

3 284. Plaintiffs' hereby incorporate by reference as if fully set forth herein
4 each separate and distinct theory of direct and indirect liability outlined above in
5 Count I of Plaintiffs' Third Amended Complaint.

6 285. Each of the foregoing Defendants committed at least the following
7 predicate acts: (i) criminal copyright infringement in violation of 17 U.S.C. §
8 506(a) and 18 U.S.C. § 2319; (ii) misconduct in connection with access devices in
9 violation of 18 U.S.C. § 1029; and (iii) wire fraud in violation of 18 U.S.C. § 1343.
10 Defendants produced, trafficked in, controlled, and possessed device making
11 equipment in violation of 18 U.S.C. § 1029(a)(4).

12 286. Each of these violations by each of the foregoing Defendants of 18
13 U.S.C. §§ 1029, 1341, 1343, and 2319, constitutes an instance of "racketeering
14 activity" as defined in 18 U.S.C. § 1961(1), and was committed in furtherance of
15 the conspiracy to compromise and make available EchoStar's proprietary
16 information to the general public for an illegal use. Each of the foregoing
17 Defendants aided and abetted the commission of these violations of 18 U.S.C. §§
18 1029, 1341, 1343, and 2319.

19 287. At all times relevant, Defendants NDS, Norris, Hasak, Kommerling,
20 Luyando, Tarnovsky, Menard, and Menard's distribution network consisting of
21 Defendants Quinn, Sergei, Dawson, and Frost, among others, ("distribution
22 network") were associated-in-fact through their continuing efforts from as early as
23 1998 to present to compromise, and make available to the general public for
24 improper and illegal use, EchoStar's proprietary information including, but not
25 limited to, EchoStar's secret ROM and EEPROM Codes, Pirated EchoStar Access
26 Cards and other Circumvention or Signal Theft Devices, and software programs,
27 technical support services, and fixes designed and intended to circumvent Plaintiffs'
28 ECMs that instituted primarily to disable Defendants' illegal devices and/or support

1 services. Such association in fact constitutes and enterprise as defined in 18 U.S.C.
2 §1961(4).

3 288. Defendant NDS specifically functioned to oversee and coordinate the
4 implementation of specific acts by the various Defendants including, but not limited
5 to, Defendants Norris, Hasak, Kommerling, Luyando, Tarnovsky, Menard, and
6 Menard's distribution network, made strategic decisions concerning the extraction
7 of Plaintiffs' secret ROM and EEPROM Codes, the design and manufacture of
8 Pirated EchoStar Access Cards and other Circumvention or Signal Theft Devices,
9 and facilitated communication between the various Defendants referenced herein.
10 Specifically, Defendant NDS directed the affairs of Defendants Norris, Hasak,
11 Kommerling, Luyando, Tarnovsky, Menard, and Menard's distribution network on
12 an ongoing basis and recruited and attempted to recruit others for the enterprise
13 including, but not limited to, Norm Dick and John Greyson. Defendant NDS also
14 made decisions about the information that was to be made available to the general
15 public in addition to manner and timing of the release of Plaintiffs' secret ROM and
16 EEPROM Codes, select portions thereof, and/or specific and detailed instructions
17 on how to extract same, the design and manufacture of Pirated EchoStar Access
18 Cards and other Circumvention or Signal Theft Devices. This constitutes an
19 organization separate and apart from the activity in which NDS was engaged.

20 289. Defendant NDS has and had at all times relevant herein an
21 organizational structure or system of authority for making and implementing
22 decisions and for exercising common control over the members of the RICO
23 enterprise.

24 290. The organization and structure of Defendants' RICO enterprise existed
25 as an entity separate and apart from the pattern of conspiratorial racketeering
26 activity. Menard is or was at the top of the distribution and sale structure of the
27 enterprise and controls this enterprise through various business entities. These
28 business entities included, among others, DR7, a Canadian business entity

1 operating through the website www.DR7.com. DR7 has or had a legal existence
2 separate and apart from the enterprise and its illegal racketeering activity.
3 However, it is or was operated and utilized as part of the enterprise for the purpose
4 of furthering the racketeering activity. The enterprise also operates through, among
5 others, "Discount Satellite" owned and operated by Defendant Dave Dawson,
6 "Koinvizion" owned and operated by Defendant Andaard (Andre) Sergei, the
7 "NewFrontier Group" owned and operated by Defendant Stan Frost. Menard
8 employs or employed various associates who work directly for him, assisting in the
9 day to day operation of the DR7 website and of the enterprise.

10 291. Menard is or was the primary decisionmaker of the distribution and
11 sale structure of the enterprise, controlling and directing the affairs of the group on
12 an ongoing basis and recruiting the various individual Defendants and/or their
13 agents. Menard exerted control over the direction of the enterprise by, for example,
14 selling devices that allowed the pirates to operate as "dealers" of Pirated EchoStar
15 Access Cards and/or other Circumvention or Signal Theft Devices. Those
16 associated with Defendants constituted a distribution network for the Pirated
17 EchoStar Access Cards, other Circumvention or Signal Theft Devices, and
18 otherwise pirate technology. They imported, exported, concealed, and sold Pirated
19 EchoStar Access Cards to persons (DISH Network's subscribers and prospective
20 subscribers) throughout the United States and elsewhere. They used pirate
21 technology, including reprogrammers, to manufacture Pirated EchoStar Access
22 Cards and/or other Circumvention or Signal Theft Devices and repair disabled
23 Pirated EchoStar Access Cards and/or other Circumvention or Signal Theft Devices
24 upon Plaintiffs' ECMs. These actions were taken in furtherance of the enterprise's
25 goal of harming Plaintiffs and decreasing Plaintiffs' competitiveness in the DBS
26 and CAS marketplaces.

27 292. NDS is or was the primary decisionmaker of the technology structure
28 of the enterprise, controlling and directing the affairs of Tarnovsky on an ongoing

1 basis and recruiting or attempting to recruit others for the enterprise. NDS exerted
2 control over the direction of the enterprise by, for example, employing or
3 attempting to employ individuals to hack or break the Security System, and by
4 determining what technology and information would be made available to harm
5 Plaintiffs. The enterprise is more than the sum of its racketeering activity.

6 293. The distribution side, and the technology side, of the organization and
7 structure discussed herein functioned as a continuing unit and were controlled
8 primarily by the single-decision making apparatus within NDS, which determined
9 when and what hacked software code to release to the public.

10 294. The central decision making apparatus within NDS's was able to
11 control Menard and his distribution network by, *inter alia*, (a) NDS bestowed upon
12 Menard the ability to reprogram EchoStar Access Cards by providing Menard with
13 a sophisticated reprogrammer device (coined by Tarnovsky as "the stinger")
14 designed and built by NDS and Tarnovsky using the proprietary information NDS
15 unlawfully obtained from the microprocessor embedded in Plaintiffs' Access Cards
16 at the NDS laboratory in Haifa, Israel; (b) controlling the number of EchoStar
17 Access Cards that Menard was able to unlawfully reprogram, and ultimately
18 distribute to pirating end-users via his distribution network, by instructing and/or
19 assisting Tarnovsky in writing software codes that operated the NDS/Tarnovsky
20 reprogrammer in a controlled manner such that it would automatically become
21 disabled after reprogramming a predetermined number of EchoStar Access Cards;
22 (c) controlling Menard's ability to 'reactivate' the NDS/Tarnovsky reprogrammer
23 – to wit, Tarnovsky would not send software and/or command codes to reactivate
24 the reprogramming device until instructed to do so by NDS; (d) controlling which
25 specific portions of Plaintiffs' proprietary code that Menard could publicly post on
26 his www.dr7.com website as well as when such posts could be effectuated; (e)
27 controlling the specific type, generation, or version of EchoStar Access Cards that
28 Menard was able to reprogram and ultimately provide to the pirating end-users via

1 his distribution network; (f) controlling if, when, how and where the unlawfully
2 reprogrammed EchoStar Access Cards distributed by Menard and his distribution
3 network would be reactivated and/or repaired after Plaintiffs launched an ECM to
4 disable these cards by deciding whether to provide Menard a “fix”, “update,” or
5 “counter-ECM,” among other technical support, in which to post on his website or
6 whether to have Tarnovsky physically write a new software program to repair
7 disabled Pirated EchoStar Access Cards and/or other Circumvention or Signal Theft
8 Devices in which case Menard and his distribution network would be required to re-
9 acquire these distributed cards and load them back into the NDS/Tarnovsky
10 reprogrammer; (g) controlling the price (and conversely, the supply and demand
11 market) that Menard and his distribution network were able to distribute these
12 Pirated EchoStar Access Cards for; (h) controlling the degree of protection NDS
13 would provide and when such protection was provided to Menard and the members
14 of his distribution network by, *inter alia*, running interference with and/or
15 providing information to the Canadian RCMP; and (i) controlling when and how
16 NDS/Tarnovsky would effectuate the wide-spread compromise of Plaintiffs’ CAS –
17 which ultimately occurred via Tarnovsky’s December 23 and 24, 2000 posts on
18 Menard’s website, among others.

19 295. Defendant NDS was also able to exercise and/or retain control over the
20 distribution structure of the RICO enterprise by using various intimidation tactics,
21 threats of civil and criminal proceedings, and monetary compensation. By way of
22 example, NDS through its officer and employee Norris directed Menard to
23 terminate his website (www.dr7.com) during a meeting between Norris and Menard
24 in early 2001. Specifically, after Norris learned that representatives from Plaintiffs
25 had met with Menard in an effort to investigate the acts outlined herein, Norris
26 immediately directed Menard to terminate his website – which was done on June
27 21, 2001. Plaintiffs are informed and believe that Norris directed Menard to
28 terminate his site and discard any and all evidence connecting same to Tarnovsky

1 and/or NDS in a continued effort by NDS to conceal its involvement in same.

2 296. Each of the foregoing Defendants knowingly produced, trafficked in,
3 controlled, and possessed “device making equipment” – any equipment,
4 mechanism, or impression designed or primarily used for making an access device
5 or counterfeit access device – in violation of 18 U.S.C. § 1029, by at least the
6 following:

7 (a) On or about April 5, 1999, a post to the Internet by “DR7” [Menard]
8 states that Menard “visited Discount [Discount Satellite/Dawson] this aft, got
9 card reloaded with bootstrap and main.enc file and some other small one that
10 some program made, bat card now fully functioning.”

11 (b) On or about April 20, 1999, Dawson and Discount Satellite were
12 raided in Edmonton by the RCMP; local reports regarding Dawson’s selling
13 pirated EchoStar access cards and other illegal signal theft devices on his
14 Internet website, www.discountsatellite.com. Among the items confiscated were
15 illegal satellite access cards, computers, and other equipment used to program
16 access cards, approximately \$69,500 in U.S. and Canadian money orders and
17 cash, and drugs. Dawson continued to operate his illegal business in Canada
18 through his website, www.discountsatellite.com.

19 (c) On or about October 6, 1999, a post to the Internet by “Code”
20 [Tarnovsky], concerning a new circumvention or signal theft device called an
21 AVR, states “if the key servers are working correctly, you will know the new
22 avr key they [DISH Network] are about to switch to in advance!”

23 (d) On or about October 6, 1999, a post to the Internet by “JD” [Dawson],
24 concerning inquiry to purchase AVR devices, states “we [Defendants] have
25 available to us now an aftermarket avr device that will activate all channels on
26 the Echostar Dishnetwork system. It runs without the use of the original plastic
27 card and is totally supported via the internet. It is NOT an auto-update product
28 and will stop working in the event of a keychange. HOWEVER, key updates
are posted within minutes and available to all. . . . Total cost for board and
programmer is currently 150.00 usd. Or 110.00 usd for just the avr board.”

(e) On or about September 8, 2000, a post to the Internet by “DR7”
[Menard] stating “I have only honestly patched 3 times in 18 months...where do
they get the info they post about E3m [the EchoStar hack by NDS, its agents
Tarnovsky, Menard and others] being so bad??...I have had one [ECM] since
day one when discount [Discount Satellite/Dawson] began selling and have not

1 needed to be updated 15 times...total updates I have had are 3 and since June
2 1999 that has cost me approximately 5 minutes of my time spent loading.”

3 (f) On or about November 21, 2000, a post to the Internet by
4 “Koinvizion” [Sergei] announcing that [Defendants] can now fix the “smartcard
5 not inserted correctly Error for \$50.00USD per card + the usual shipping
6 charges for everyone.”

7 (g) On or about December 29, 2000, a post to the Internet by “hitek” [Sean
8 Quinn], entitled “e3m cards,” states “the new group wants to sell the machines
9 now...please e-mail us and we will give you info on the machines as well as
10 where you can order it from...30 machines ready to go.”

11 297. Defendants engaged in mail fraud in violation of 18 U.S.C. § 1341
12 when Defendants transmitted, by means of United States Postal Service and/or
13 commercial interstate and foreign carriers, at least the following:

14 (a) On or about April 16, 1999, NDS letter was sent from Adams to Hasak
15 concerning, among other things, a piracy investigation of www.dr7.com and
16 “DR7” [Al Menard]. Adams states, “[s]omewhere in the loop appears
17 PINKERTON investigative Service. They at one time worked for Irdeto as well
18 as other companies. There is talk that an agency is investigating
19 DR7[Menard].”

20 (b) On or about June 18, 1999, a NDS Letter to Hasak from Adams
21 concerning NDS’s hiring satellite pirates and hackers in order to “CONTROL”
22 them as well as NDS’s fear of losing its contract with DirecTV to be DirecTV’s
23 smart card provider.

24 (c) On or about August 2, 2000, “X-Factor, X-Factor Design [Menard’s
25 company], # 108-280 Nelson St., Vancouver, BC Canada, phone number 604-
26 408-7762, UPS account number 49W-W48” sent a package to “CT [Tarnovsky],
27 925 E. highway 80 PMB #245, San Marcos, Texas 78666 USA, phone number
28 716-259-1580.” The item enclosed was described as a “Sony Play Station
manufactured in Japan” with tracking number “W601 911 651 5.” Menard sent
the “expedited” with the special instructions “UPS CALL MBE 1ST ON ANY
SHIPPER ISSUE.” The “Declaration of Contents and Shipper’s Letter of
Instruction” states that “X-Factor, X-Factor Design” shipped the package and
describe the items enclosed as “one (1) Sony Psx Z, manufactured in Japan,
valuing \$900.00; one (1) Sony Controller, manufactured in Japan, valuing

1 \$30.00, and three (3) Sony CDs, manufactured in Japan, valuing \$60.00.” The
2 remarks section of the declaration reads “Birthday Gift.” Tarnovsky’s birthday
3 listed on his California driver’s license is xxxx xx, xxxx.

4 (d) On or about August 11, 2000, a “Declaration of Contents and
5 Shipper’s Letter of Instruction” states that “Hi-Fi Exchange, 1750 Davie St.
6 Suite 201, Vancouver, BC VGG-3B7, phone number 808-6026,” sent one
7 package weighing 11 pounds to “CT Electronics, 925 E Hwy 80 PMB #245, San
8 Marcos, TX 78666.” The item enclosed is described as “one (1) Technics
9 Cassette Deck, manufactured in Singapore valued at \$350.00.”

10 (e) On or about August 15, 2000, a “Declaration of Contents and
11 Shipper’s Letter of Instruction” states that “Regency Audio, 1750 Drive,
12 V663B7, Canada, phone number 604-808-6061” sent one package weighing 10
13 pounds to “CT [Chris Tarnovsky] Electronics, 925 E Hwy 80 #245, San Marcos,
14 TX 78666, phone number 512-897-1677.” The item enclosed is described as
15 “one (1) Graphic Equalizer, manufactured in the USA, valuing \$300.00.”

16 (f) On or about August 23, 2000, a “Declaration of Contents and
17 Shipper’s Letter of Instruction” states that “Regency Audio, 1750 Davie #201,
18 Van BC V663B1”, sent one package weighing 10 pounds to “Owner, CT
19 [Tarnovsky] Electronics, 925E Hwy 80 #245, San Marcos, TX 78666, phone
20 number 396-1247.” The item sent is described as “one (1) Sony Minidisk,
21 manufactured in the USA, valuing \$350.00.” The shipment was charged a
22 \$62.78 transportation charge.

23 (g) On or about August 25, 2000, “Regency, Regency Audio, 1750 Davie
24 3201, Van, BC VGB3B7, phone number 807-2262, UPS account number
25 638X87”, sent one package, with a weight of 11 pounds to “CT [Tarnovsky],
26 925 E. highway 80 Suite 245, San Marcos, Texas 78666 USA, phone number
27 512-369-29.” The item is described as a “compact disc player manufactured in
28 the USA.” The tracking number on the package was “W619 045 603 0.” The
package was sent “expedited” with the special instructions “Zone 351.”

(h) On or about August 28, 2000, “Regency, Regency Audio, 1750 Davie
3201, Van, BC VGB3B7, phone number 807-2262, UPS account number
638X87”, sent one package, with an actual weight of 9 pounds to “CT
[Tarnovsky] Electronics, 925 E. highway 80 Suite 245, San Marcos, Texas
78666 USA, phone number 512-369-4242.” The item was described as a “DVD
Player manufactured in the USA.” The tracking number on the package was
“W619 045 602 1”, and the package was sent “expedited.”

1 (i) On or about August 28, 2000, a package was sent to "Von,"
2 [Tarnovsky] from "8132 Washburn Ct, Luling, TX 78648, phone number 703-
3 850-2337", with FedEx letter to "Chris Tarnovsky, 925 E. Hwy 80 #245, San
4 Marcos, TX 78666, phone number 703-850-2337." The parcel was sent FedEx
5 Priority Overnight with the tracking number "8153 1564 6118." The sender,
"Von," has an account that will be billed to pay for the shipment. The parcel
was to be delivered by August 29, 2000.

6 (j) On or about August 29, 2000 a package was sent to "Von"
7 [Tarnovsky] from Mail & More, 925 Highway 80, San Marcos, Texas 78666,
8 phone number 703-850-2337, with a FedEx Envelope/Letter to "Chris
9 Tarnovsky, XXX XXXX XXX, XXX XXXX, CA XXXXX." The parcel was
10 sent FedEx Priority Overnight with the tracking number "8213 3536 0680."
Tarnovsky, "Von," has an account, number 1700-1825-7 that is billed for the
shipment. The FedEx tag is marked "XENIRA."

11 (k) On or about August 29, 2000, an investigation by a Detective at the
12 Hays County Narcotics Task Force was conducted in response to an anonymous
13 call from a concerned citizen stating that a suspicious parcel had been mailed
14 from Luling, Texas to XXX XXXX, Texas, and then forwarded to XXX XXXX,
15 California at Tarnovsky's expense. The caller advised "there was no reason for
16 the parcel to be mailed to San Marcos, TX before being mailed to XXX XXXX,
17 CA." The investigation revealed that the return address and phone number on
18 this parcel was invalid. The name for the return address was "Von"
19 [Tarnovsky]. The investigation further revealed that Chris Tarnovsky was living
20 at XXX XXX XXXX, XXX XXXX, California XXXXX. On July 29, 2000, he
21 rented mailbox number 245 at "Mail and More, 925 E.HWY 80, San Marcos,
22 Hays County, Texas." In doing so, Tarnovsky falsely told the store manager
23 that he was a student at Southwest Texas State University and was returning
24 home to XXX XXXX, CA. However, there was no record of Tarnovsky ever
attending Southwest Texas State University or living in the San Marcos, TX
area. Tarnovsky instructed the store manager to forward all of his mail as
arriving next day including Saturday to XXX XXX XXXX, XXX XXXX,
California XXXXX. The store manager had been forwarding parcels to
Tarnovsky approximately "every day or every other day."

25 (l) On or about August 30, 2000, the store manager notified the
26 investigating detective that he received another parcel to be forwarded to
27 Tarnovsky. The parcel was in a JVC compact disc box with a return address of
28 "Regency Audio [CONFIRM Menard's company], 1750 Davis #201, Van BC
VGG3B7" and addressed to "CT [Tarnovsky] Electronics, 925 W HWY suite

1 245, San Marcos, TX.” Canines gave a positive alert at the presence of the odor
2 of marijuana or other illegal drugs after smelling the parcel. A search warrant
3 was then executed and \$20,100.00 in US currency was discovered inside a
4 medium brown envelope taped to the circuitry inside the JVC compact disc
player.

5 (m) On or about August 31, 2000, the store manager again notified the
6 investigating detective that a parcel had arrived. The parcel was identical to the
7 one received the day before, except the box was from a “Pioneer DVD.”
8 Canines again gave a positive alert at the suspected parcel. A second search
9 warrant was executed and \$20,000.00 in US currency was found in a medium
10 sized envelope taped to the circuitry of the DVD player. ADD DETAILS
ABOUT THIS SHIPMENT AND LATER INVESTIGATION LINKING
MAIN’S FINGERPRINTS

11 (n) On or about November 21, 2000, a post to the Internet by
12 “Koinvizion” [Sergei] announcing that [Defendants] can now fix the “smartcard
13 not inserted correctly Error for \$50.00USD per card + the usual shipping
charges for everyone.”

14 (o) On or about December 1, 2000, a post to the Internet by “Kingtut”
15 stating “I just got my cards from koin [Andre Sergei].”

16 (p) On or about January 9, 2002, Norris purchased a “Karl Suss Probe”
17 manufactured by K&S, model 4524, serial number 610009, with a manual, for
18 the amount of \$18,500 for Tarnovsky. On or about January 17, 2002, the item
19 was shipped via Atlas Van Lines to “Chris Tarnovsky at XXXX XXXX XXXX,
20 XXXXX, California USA XXXXX, phone number xxx-xxx-xxxx, fax number
xxx-xxx-xxxx.” The invoice lists the “End User” to be Chris Tarnovsky at the
same address. [VERIFY EQUIPMENT’S PURPOSE AND USE]

21 (q) On or about July 26, 2002, Tarnovsky purchased a manufactured “Karl
22 Suss, model PM-8” for the amount of \$15,000. On or about August 15, 2002,
23 the item was shipped via Federal Express to Chris Tarnovsky at XXXX XXXX
24 XXXX, XXXXX, California USA XXXXX, phone number xxx-xxx-xxxx, fax
25 number xxx-xxx-xxxx. The invoice lists the “End User” to be Chris Tarnovsky.
[VERIFY EQUIPMENT’S PURPOSE AND USE]

26 (r) On or about August 30, 2002, Norris purchased a “Karl Suss Probe (2
27 units), \$1,700” and had them sent to Tarnovsky. One item, manufactured by
28 Karl Suss, was a model Probe for the amount of \$850. The other item was also
manufactured by Karl Suss and is a model Probe for the amount of \$850. On

1 August 30, 2002, the items were shipped via Federal Express to "Chris
2 Tarnovsky at XXXX XXXX XXXX, XXXXX, California USA XXXXX, phone
3 number xxx-xxx-xxxx, fax number xxx-xxx-xxxx." The invoice lists the "End
4 User" to be Chris Tarnovsky. [VERIFY EQUIPMENT'S PURPOSE AND USE]

5 298. Each of the foregoing Defendants engaged in wire fraud in violation of
6 18 U.S.C. § 1343 when Defendants repeatedly used interstate and international wire
7 facilities, including telephone and Internet communications, by at least the
8 following:

9 (a) On or about November 20, 1998, a post to the Internet by "DR7"
10 [Menard], concerning the EchoStar hack, states: "a file was sent too me recently
11 by Swiss cheese boys [Tarnovsky] and they asked me too add, lins too it are in
12 todays news 11.20.98 and it is also added to the Echostar tools section, sorry I
13 didn't have more info with this text file but I think a few of you could use this
14 info...thanks again too the Users of this forum who have contributed their time
15 to the Echostar Project as well as the SCP [Tarnovsky] for initiating this...good
16 luck guys and hope to have more info shortly."

17 (b) On or about December 4, 1998, a post to the Internet by "Nipper"
18 [Tarnovsky] providing Plaintiffs' Bat keys.

19 (c) On or about December 7-8, 1998, a post to the Internet by "Nipper"
20 [Tarnovsky] supplying illegally obtained information concerning DISH
21 Network.

22 (d) On or about March 26, 1999, a post to the Internet by "DR7" [Menard]
23 states: "the CAM dump is posted in the Tools section... Echostar Running Card
24 Dump + Public Keys by Swiss Cheese Productions [Tarnovsky]"

25 (e) In or around April 1999, Menard telephoned Scullion again to solicit
26 Scullion's participation in a distribution network to sell Pirated EchoStar Access
27 Cards. During this conversation, Menard informed Scullion that he was close to
28 receiving a full hack of the EchoStar system and that, "due to the pirate
community's interest in Swiss Cheese Production's stuff," the plan was a
guaranteed money maker. Menard also informed Scullion that the distribution
network was going to have something special attached with its operation:
protection of NDS. Menard informed Scullion that "NDS was the entity whom
had ordered the hack and the distribution of pirated cards through Menard's
distribution network." Menard also informed Scullion that "NDS had an

1 arrangement with Tarnovsky to provide the support and facilitation of the
2 hacked EchoStar code to be sent to Menard to be used in the distribution
3 network.” Menard also informed Scullion that Scullion had nothing to worry
4 about with respect to being raided by the RCMP due to the fact that “NDS was
5 connected and had a solid relationship [with the RCMP].” Menard further
6 informed Scullion that “NDS would be running interference in the distribution
7 network.”

6 (f) On or about April 10, 1999, a post to the Internet by “DR7” [Menard]
7 where he inserts a private chat he had with “CanBert” including “went to jd’s
8 [Dawson] today; if I send my batt [illegal battery card] in how much to get it
9 fixed??.; not sure...never heard the price when I was there...customers pay \$40;
10 you’ll have to call; at Discount Sat??.; yes 780-448-1787; thankx DR7; np man.”

10 (g) May 9, 1999, a post to the Internet states that the “Echostar update for
11 the commercial battery cards has been released and is confirmed working again.
12 The file can be downloaded from [Dawson’s website]
13 www.discountsatellite.com/Efile.zip.”

13 (h) On or about May 19, 1999, a post to the Internet by “DR7” [Menard]
14 states that he asked JD [Dawson] why the bat [battery card] isn’t autorolling
15 [automatically finding keys to counter ECMS]. JD [Dawson] stated the reason
16 was the requirement to hand out a bootstrap and that the potential source code
17 would have to be released.

17 (i) In April 1999, Menard telephoned Reginald Scullion with an offer to
18 participate in the “DISH Network” hack. During these conversations, Menard
19 informed Scullion that, among other things: (a) NDS was behind the EchoStar
20 hack; (b) the Tarnovsky/Menard distribution model would be protected and
21 controlled by NDS; (c) NDS had an arrangement with Tarnovsky to provide the
22 technical and software support and facilitate the hacked EchoStar ROM Code to
23 be sent to Menard and used in the distribution network; and (d) NDS would
24 protect this distribution network from potential RCMP raids.

23 (j) On or about July 6, 1999, a post to the Internet by “DR7” [Menard]
24 states that “marry3M is used for JD’s [Dawson’s] 3M customers to do the
25 following: Write IRD# Write Key# Read Key# from card with sub/previous sub
26 Set zipcode/timezone.”

26 (k) On or about August 10, 1999, a post to the Internet by “Nipper”
27 [Tarnovsky] providing EchoStar Bat keys.

1 (l) On or about August 21, 1999, a post to the Internet by "DR7" [Menard]
2 states that Menard called "JD" [Dawson] to confirm status of file and JD
3 [Dawson] stated that he would "post REV20A.E3M on his website."

4 (m) On or about September 8, 1999, a post to the Internet by
5 "xbr21" [Tarnovsky], quoting "Nipper's" [Tarnovsky's] previous post, stating
6 "here is a neat no-mod trick- send out a control work packet using a key offset
7 of 07 (eg 05/15/07). Card should skip decrpt of packet and simply encrypt with
your boxkey!! Simple and why not use this on channel 101? Another example of
stupidity."

8 (n) On or about September 29, 1999, a post to the Internet by "DR7"
9 [Menard] states that he talked to "JD" [Dawson] on the phone about 20 minutes
10 ago and JD [Dawson] said that he would also just "sell the programmed [DISH
11 Network] chip" if there was a demand for it. A later post to the Internet, on the
12 same date, by "DR7" [Menard] stating that he "confirmed with JD [Dawson]
that the keys in the latest talk.cfg file are not for AVR freeware and will only
work on JD's [Dawson's] AVR."

13 (o) On or about October 19, 1999, a post to the Internet by "DR7"
14 [Menard] announced that "'xfile 2.01' and 'Blocker version 2.3 Beta' were
15 posted to the Echo files section of the DR7 website." "DR7" [Menard] further
16 states "sorry they were not posted earlier but the creators
17 [Defendants/Tarnovsky] never bothered to send them so basically I couldn't post
what I didn't have, thanks to those that did send them."

18 (p) In November 1999, Menard again telephoned Reginald Scullion with
19 an offer to participate in the "DISH Network" hack. During these conversations,
20 Menard informed Scullion that, among other things: (a) NDS was behind the
21 EchoStar hack; (b) the Tarnovsky/Menard distribution model would be
22 protected and controlled by NDS; (c) NDS had an arrangement with Tarnovsky
23 to provide the technical and software support and facilitate the hacked EchoStar
ROM Code to be sent to Menard and used in the distribution network; and (d)
NDS would protect this distribution network from potential RCMP raids.

24 (q) On or about November 9, 1999, a post to the Internet by "DR7"
25 [Menard], regarding "JD's [Dawson's] gone???", states "since Friday I have not
26 been able at all to call your shop and get through, I tried over 20 times per day at
27 least just to test. JD [Dawson] this is getting outta hand and now its come to the
28 point where I am looking bad for advertising for you and also for being in same
city, I think you owe these people an explanation as well as an apology and
shouldn't expect me to have to deal with any of this...I an now removing

1 Discount Satellite advertising banners from this website JD [Dawson] because I
2 cannot and will not give you [Dawson] any more benefits that other advertisers
3 and make myself look bad in the process.

4 (r) On or about November 19, 1999, a post to the Internet by "DR7"
5 [Menard] provides instructions to remedy problem of member who received an
6 AVR2 [smart card replacement] and programmer [device used to program
7 Access Cards or illegal substitute cards] and was unable to load properly.
8 "DR7's" [Menard's] instructions include, "using DOS talk v1.7 and loading the
9 avr2e3m [EchoStar] file which allows AVR2 to use the 3M keys from wintalk."

10 (s) On or about December 8, 1999, a post to the Internet by "Shrimp"
11 [Tarnovsky] states "the sole purpose of the Atmel chip in the wildthing is a slave
12 who can count clock cycles and perform a high glitch on vcc/clk given a
13 command from the PC. All that is required to fix the current situation is a new
14 .exe file given different glitches to the card."

15 (t) On or about December 17, 1999, a post to the Internet by "Nipper-
16 Clauz" [Tarnovsky], entitled "Twas the Night Before Christmas," provided
17 EchoStar Bat keys.

18 (u) On or about December 20, 1999, a post to the Internet by "Nipper-
19 Clauz" [Tarnovsky] entitled "'tis the season to be jolly," provided additional
20 EchoStar Bat keys.

21 (v) On or about December 21, 1999, a post to the Internet by "Nipper-
22 Clauz" [Tarnovsky] entitled "be merry harry," provided even more EchoStar Bat
23 keys.

24 (w) On or about February 2, 2000, Dawson and Discount Satellite were
25 raided a second time by the RCMP after local reports regarding
26 Dawson's continued selling of pirated DSS and EchoStar access cards and other
27 illegal signal theft devices on the Internet through his website,
28 www.discountsatellite.com.

(x) On or about February 25, 2000, a post by "NiPpEr" [Tarnovsky] to the
internet states providing EchoStar Bat keys.

(y) On or about March 24, 2000, a post to the internet by "xbr21"
[Tarnovsky] providing EchoStar Bat keys.

(z) On or about March 29, 2000, DirecTV executed and seized Dawson's
business in satisfaction of the judgment obtained by DirecTV against Dawson.

1 Shortly thereafter, Dawson posted a public statement on his website,
2 www.discountsatellite.com, regarding the status of his business's operations.
3 Included in this statement, Dawson provided a link to www.DSScanada.com,
4 another website owned, operated, and maintained by Dawson. Through this
5 website, Dawson continued to solicit business from his large customer base in
6 addition to new customers.

7 (aa) On or about May 5, 2000, an NDS Memorandum captioned "Report
8 Week 18", concerning NDS agent Christopher Tarnovsky, states in relevant
9 part: "You will note that suspicion has fallen on MIKE [Tarnovsky]... There are
10 a series of threatening statements inasmuch that MIKE [Tarnovsky] is behind
11 DR7 [Allen Menard and the website www.dr7.com] and therefore MIKE
12 [Tarnovsky] hacked ECHOSTAR etc, etc."

13 (ab) On or about June 21, 2000, a post to the Internet by "Hitec" [Quinn],
14 concerning "Koin" [Sergei], states "[f]or the time being... I am removing all
15 dealer links from the site... Koin is closing the website but still accepting orders
16 at Koin@koinvision.com . . . now its cash (no money orders at all) and no
17 site.... Any other files that are required to help out the Koinster will be posted
18 here from now on."

19 (ac) On or about June 27, 2000, a post to the Internet by "Hitec" [Quinn],
20 concerning business operations of Koin [Sergei], stating "Koin [Sergei] is
21 closing the website but still accepting orders at Koin@Koinvision.com . . . My
22 self I personally vouch for Koin and his support. Even with his one complaint
23 the guy has to admit that Koin did send his package originally (although it was
24 seized) and he did make up for it after a couple of weeks . . . Any other files that
25 are required to help out the Koinster will be posted here [www.hitecsat.com]
26 from now on." A later post on the same date by "Hitec" [Quinn] stating "as I
27 already said . . . no money order now and only email . . . I will post any files
28 needed to help out Koin [Sergei]. His email addy again is
Koin@koinvizion.com."

(ad) On or about August 15, 2000, a post by "HeeD" states "the group that
is supporting DN E3M [the illegal DISH Network hack] has proven that they
know this system inside-and-out. They are not just taking stabs in the dark, or
speculating about things...they actually know!"

(ae) On or about September 19, 2000, it was discovered that Tarnovsky
placed approximately 80 phone calls to Israel [NDS] and 120 to Belgium.
Tarnovsky also traveled over seas twice every six months going to Brussels and

1 other European countries. Tarnovsky had received two parcels at his residence
2 from Minnesota and Virginia [Tarnovsky Sr.].

3 (af) On or about November 21, 2000, a post to the Internet by
4 "Koinvizion" [Sergei] announcing that [Defendants] can now fix the "smartcard
5 not inserted correctly Error for \$50.00USD per card + the usual shipping
6 charges for everyone."

7 (ag) On or about December 23, 2000, a post by "xbr21" [Tarnovsky],
8 responding to invitation by other members wishing "Nipper Clauze"
9 [Tarnovsky] would reappear and provide information, and states "you want
10 nipper clauze [Tarnovsky] here," and then states "there will be no boxes
11 anymore! There will be no more fights amongst us. Learn from this and prosper.
12 Works across the world! Do the following: get atr, wait 500ms to ensure card is
13 idle. Send this packet to 288-02 or equivalent ROM 3 nagra cam! Rx 4+4096
14 bytes and you have entire eeprom. Send this, then rx 4 bytes + 4096 bytes of
15 eeprom." The post was signed by "nipper clause 00" [Tarnovsky]. This
16 December 23, 2000 post by Tarnovsky provided hackers around the world the
17 'road map' and instructional code to effectuate a complete dump of Plaintiffs'
18 entire EEPROM Code.

19 (ah) On December 24, 2000, a post to the Internet by "Nipper 2000"
20 [Tarnovsky] at 3:26 a.m. publishing the FULL Echo ROM Code on
21 www.piratesden.com, Discussion Forum. "Nipper 2000's" [Tarnovsky's] post,
22 entitled "tHe ReAl V3 DuMp!," stating "tHeRe WiLl bE nO bOxEs aNyMoRe!
23 tHeRe WiLl bE nO mOrE fIgHtInG aMoNgSt uS. LeArN fRoM ThIs aNd
24 pRosPer. tHiS WiLl Be PoStEd To ALL NeWsGrOuPs ArOuNd ThE WoRiD!
25 ThIs Is Dr7'S cOdE (WeSt 3M v3) tHe rEaL sTuFf!!" Tarnovsky then goes on
26 to state: "I wILL dUmP ALL vErSiOnS oF tHe WeSt CoDe LoOk FoR iT hErE!
27 nIpPeR cLaUz 00" [Tarnovsky].

28 (ai) On or about May 18, 2001, a post to the Internet by "Kelly" [Menard]
stating "we all do know "Hitec" [Quinn] and "Koin" [Sergei] were partners
selling echostar stuff...I bought my avr and echostar 3m from you [Quinn] and
that bitch koin [Sergei].

(aj) On or about May 18, 2001, a post to the Internet by "Hitec" [Quinn],
responding to "Kelly's" [Menard's] allegations, stating "if I was involved in the
Echostar hack I would have forced the price down to an affordable rate instead
of lying to dealers and constantly gouging them. If memory serves me correctly
I even advertised for the competition that did force the price down
considerably."

1
2 (ak) On or about December 16, 2001, Tarnovsky admits to Giles Kaehlin,
3 Head of Security for Canal+, at a meeting in London that NDS was responsible
4 for the hack and publication of the DISH Network ROM Code on the internet.
5 Tarnovsky admits that the DISH Network code was sent to him by Reuven
6 Hasak, head of security for NDS in Israel, from John Norris, head of security for
7 NDS Americas. Tarnovsky later sent an email stating that he [Tarnovsky]
8 wanted no further communications to occur between Tarnovsky and Kaehlin.

9 299. Each of the foregoing Defendants willfully infringed on EchoStar's
10 copyrighted information for purposes of commercial advantage, in violation of 17
11 U.S.C. § 506 and 18 U.S.C. § 2319.

12 300. Alternatively, Defendants Norris, Hasak, Tarnovsky, Kommerling,
13 Luyando, among others, specifically used their positions at NDS, to conduct or
14 participate, directly or indirectly, in the conduct of NDS's affairs, in violation of 18
15 U.S.C. §§ 1029, 1341, 1343, and 2319 by, among other unlawful acts, engaging in
16 the conduct specifically set forth above.

17 301. The multiple acts of racketeering activity as set forth above by
18 Defendants NDS, NDS Americas, Norris, Hasak, Kommerling, Luyando, Donev,
19 Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn, Sergei, Dale,
20 Frost, Tarnovsky Sr., Sommerfield, and Bruce were interrelated, part of a common
21 and continuous pattern of fraudulent schemes, and perpetrated for the same or
22 similar purposes, thus constituting a "pattern of racketeering activity," as defined in
23 18 U.S.C. § 1961(5).

24 302. By reason of these circumstances and events, each of the foregoing
25 Defendants agreed to and/or did conduct and participate, directly and indirectly, in
26 the conduct of the affairs of the enterprise through a pattern of racketeering activity,
27 in violation of 18 U.S.C. § 1962(c).

28 303. Each of the foregoing Defendants' violations have injured and will
continue to injure EchoStar by depriving them of subscription and pay-per-view
revenues and other valuable consideration, compromising EchoStar's security and

1 accounting systems, infringing on EchoStar's trade secrets and proprietary
2 information, interfering with EchoStar's contractual and prospective business
3 relations, and damaging Plaintiffs' reputation in the DBS and CAS marketplaces
4 resulting in, among other injuries, irreparable harm to the commercial goodwill that
5 Plaintiffs have established in the relevant industries.

6 **TENTH CAUSE OF ACTION**

7 **(RICO, 18 U.S.C. § 1962(d))**

8 304. Plaintiffs re-allege and incorporate the above as if fully set forth in this
9 cause of action.

10 305. By reason of the circumstances and events outlined in Count 9 above,
11 Defendants NDS, NDS Americas, Norris, Hasak, Kommerling, Luyando, Donev,
12 Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn, Sergei, Dale,
13 Frost, Tarnovsky Sr., Sommerfield, and Bruce, as persons within the meaning of 18
14 U.S.C. § 1962(3), along with other presently unknown individuals and/or entities,
15 unlawfully, willfully, and knowingly conspired and agreed to conduct and
16 participate , directly and indirectly, in the conduct of the affairs of the enterprise
17 through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

18 306. Plaintiffs hereby incorporate by reference as if fully set forth herein
19 each of the separate and independent theories of direct and indirect liability outlined
20 above in Count I of Plaintiffs' Third Amended Complaint.

21 307. Each of the foregoing Defendants' violations have injured and will
22 continue to injure EchoStar by depriving them of subscription and pay-per-view
23 revenues and other valuable consideration, compromising EchoStar's security and
24 accounting systems, infringing on EchoStar's trade secrets and proprietary
25 information, interfering with EchoStar's contractual and prospective business
26 relations, and damaging Plaintiffs' reputation in the DBS and CAS marketplaces
27 resulting in, among other injuries, irreparable harm to the commercial goodwill of
28 Plaintiffs that has been established in the relevant industries.

1 **ELEVENTH CAUSE OF ACTION**
2 **(Unauthorized Interception, Receipt, and Use of a Multichannel Video or**
3 **Information Provider's Programs or Services in Violation of California Penal**
4 **Code § 593d(a))**

5 308. Plaintiffs re-allege and incorporate the above as if fully set forth in this
6 cause of action.

7 309. Defendants, individually and as members of the conspiracy, were and
8 are actively engaged in the business of knowingly and willfully making and
9 maintaining unauthorized connections EchoStar's system, in violation of California
10 Penal Code § 593d(a)(1).

11 310. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
12 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
13 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce, individually and as
14 members of the conspiracy, were and are actively engaged in the business of
15 knowingly and willfully purchasing, possessing, attaching, causing to be attached,
16 assisting others in attaching, and maintaining the attachment of unauthorized
17 devices to EchoStar's satellite system including, but not limited to, Pirated
18 EchoStar Access Cards and other Circumvention or Signal Theft Devices, in
19 violation of California Penal Code § 593d(a)(2).

20 311. Plaintiffs hereby incorporate by reference as if fully set forth herein
21 each separate and distinct theory of direct and indirect liability outlined above in
22 Count I of Plaintiffs' Third Amended Complaint.

23 312. Each of the foregoing Defendants, individually and as members of the
24 conspiracy, were and are actively engaged in the business of knowingly and
25 willfully making and maintaining the modification and alteration to EchoStar's
26 Security System, in violation of California Penal Code § 593d(a)(3).

27 313. Each of the foregoing Defendants, individually and as members of the
28 conspiracy, were and are actively engaged in the business of knowingly and

1 willfully making and maintaining modifications and alterations to EchoStar's
2 Access Cards and obtaining Pirated EchoStar Access Cards and other
3 Circumvention or Signal Theft Devices knowing that Pirated EchoStar Access
4 Cards and other Circumvention or Signal Theft Devices would be used, and were
5 used, to obtain EchoStar's satellite television programming service without
6 authorization by or payment to EchoStar, in violation of California Penal Code §
7 593d(a)(4).

8 314. EchoStar is a "multichannel video or information provider" within the
9 meaning of California Penal Code § 593d(i).

10 315. Each of the foregoing Defendants' acts constituting violations of
11 California Penal Code §§ 593d(a)(1)-(4) have been and continue to be performed
12 without the permission, authorization, or consent of Plaintiffs.

13 316. Each of the foregoing Defendants' violations have injured, and will
14 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
15 view revenues and other valuable consideration, compromising Plaintiffs' security
16 and accounting systems, infringing Plaintiffs' trade secrets and proprietary
17 information, and interfering with Plaintiffs' contractual and prospective business
18 relations.

19 317. Each of the foregoing Defendants' violations of California Penal Code
20 §§ 593d(a)(1)-(4) were done knowingly and willfully, and for the purpose of
21 commercial advantage or private financial gain. EchoStar is entitled to recover,
22 under California Penal Code § 593d(f), the greater of three times its actual
23 damages, or statutory damages of \$5,000 for each violation of California Penal
24 Code §§ 593d(a)(1)-(4). Plaintiffs are also entitled to recover reasonable attorneys'
25 fees. California Penal Code § 593d(f)(2).

26
27 **TWELFTH CAUSE OF ACTION**
28

1 336. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
2 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
3 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce, individually and as
4 members of the conspiracy, made and maintained unauthorized connections for the
5 purpose of intercepting, receiving, and using programs or other services carried by
6 EchoStar on the DISH Network.

7 337. Plaintiffs hereby incorporate by reference as if fully set forth herein
8 each separate and distinct theory of direct and indirect liability outlined above in
9 Count I of Plaintiffs' Third Amended Complaint.

10 338. Each of the foregoing Defendants, individually and as members of the
11 conspiracy, purchased, possessed, attached, caused to be attached, and/or assisted
12 others in maintaining the attachment of unauthorized Pirated EchoStar Access
13 Cards and other Circumvention or Signal Theft Devices to receive EchoStar's
14 satellite television programming broadcasts and transmissions, for the purpose of
15 intercepting, receiving, and using EchoStar's satellite television programs and
16 services carried on the DISH Network, in violation of California Penal Code §
17 593e(b).

18 339. Each of the foregoing Defendants, individually and as members of the
19 conspiracy, made and maintained modifications and alterations to Pirated EchoStar
20 Access Cards and other Circumvention or Signal Theft Devices for the purpose of
21 intercepting, receiving, and using EchoStar's satellite television programs and
22 services carried on the DISH Network, in violation of California Penal Code §
23 593e(b).

24 340. EchoStar is a "subscription television system" within the meaning of
25 California Penal Code § 593e(f).

26 341. Each of the foregoing Defendants' acts constituting violations of
27 California Penal Code § 593e(a) have been, and continue to be, performed without
28 the permission, authorization, or consent of Plaintiffs.

1 346. EchoStar is a “subscription television system” within the meaning of
2 California Penal Code § 593h(1).

3 347. EchoStar’s satellite transmission of television programming is an
4 “encoded, scrambled, or other nonstandard signal” within the meaning of California
5 Penal Code § 593e(g).

6 348. Each of the foregoing Defendants’ acts constituting violations of
7 California Penal Code § 593e(b) have been, and continue to be, performed without
8 the permission, authorization, or consent of Plaintiffs.

9 349. Each of the foregoing Defendants’ violations have injured, and will
10 continue to injure, Plaintiffs by depriving Plaintiffs of subscription and pay-per-
11 view revenues and other valuable consideration, compromising Plaintiffs’ security
12 and accounting systems, infringing Plaintiffs’ trade secrets and proprietary
13 information, and interfering with Plaintiffs’ contractual and prospective business
14 relations.

15 350. Each of the foregoing Defendants’ violations of California Penal Code
16 § 593e(b) were committed knowingly and willfully, and for the purpose of
17 commercial advantage or private financial gain.

18 351. Due to each of the foregoing Defendants’ wrongful conduct, Plaintiffs
19 are entitled, under California Penal Code § 593e(c), to either: statutory damages in
20 an aggregate amount of not less than \$500 or more than \$10,000 for each device,
21 plan, or kit for a device, or for a printed circuit manufactured, imported, assembled,
22 sold, offered for sale, possessed, advertised for sale, or otherwise provided in
23 violation of California Penal Code § 593e(b) (California Penal Code § 593e(c)(1));
24 or three times the amount of actual damages sustained by Plaintiffs as a result of
25 Defendants’ violations of California Penal Code § 593e(b) and any revenues which
26 have been obtained by Defendants as a result of Defendants’ violations of
27 California Penal Code § 593e(b), or an amount equal to three times the value of the
28 services unlawfully obtained by Defendants, or the sum of \$500 for each

1 unauthorized signal theft device manufactured, sold, used, or distributed.
2 (California Penal Code § 593e(c)(2)).

3 352. Because of each of the foregoing Defendants' violations of California
4 Penal Code § 593e(c) were committed knowingly and willfully and for purposes of
5 commercial advantage or private financial gain, the Court may increase the award
6 of damages, whether actual or statutory, by an amount of not more than \$50,000.
7 Because of Defendants' violations of California Penal Code § 593e(c) were
8 committed knowingly, willfully, and wantonly, punitive damages are appropriate
9 under California Penal Code § 593e(c)(2). Plaintiffs are also entitled, under
10 California Penal Code § 593e(d), to its full costs plus an award of reasonable
11 attorney's fees.

12 **SIXTEENTH CAUSE OF ACTION**

13 **(Unfair Competition, Cal. Bus. & Prof. Code § 17200)**

14 353. Plaintiffs re-allege and incorporate the above as if fully set forth in this
15 cause of action.

16 354. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
17 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
18 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce and/or their agents
19 have engaged in unfair competition in violation of California Business and
20 Professions Code Sections 17200 et seq. Such violations caused injury to Plaintiffs
21 in the district, elsewhere through the State of California, the United States, and
22 elsewhere. Defendants willfully, unlawfully, and according to a plan, with the
23 intention of harming Plaintiffs, acquired EchoStar Access Cards. Defendants
24 violated EchoStar Access Cards by using expensive equipment to disassemble,
25 extract, and copy Plaintiffs' proprietary software and codes contained therein.
26 After transferring Plaintiffs' proprietary Codes to NDS Americas, Inc. in California,
27 Defendants caused it to be disseminated over the Internet to facilitate further
28 copying. This lead to the production of altered Access Cards on a large scale to the

1 detriment of Plaintiffs' business and its reputation among its customers and in the
2 industry. Defendants' engaged in further unlawful conduct through utilizing the
3 supposed security flaws in Plaintiffs technology to compete with Plaintiffs. This
4 conduct constitutes an unlawful, unfair, and fraudulent business act or practice
5 within the meaning of Section 17200.

6 355. Plaintiffs hereby incorporate by reference as if fully set forth herein
7 each separate and distinct theory of direct and indirect liability outlined above in
8 Count I of Plaintiffs' Third Amended Complaint.

9 356. Each of the foregoing Defendants' invasive attack of EchoStar's
10 Access Cards, dissemination of the information about the Security System and
11 assistance to Menard and his network of distributors was intentional and done for
12 the wrongful purpose of inhibiting competition in the industry and unfairly
13 benefiting Defendants. As a direct and proximate result of Defendants' violations
14 of Section 17200, Defendants have been unjustly enriched at Plaintiffs' expense.
15 Defendants' and/or their agents have taken money from Plaintiffs in the form of lost
16 business opportunity from subscription sales to persons that, instead, used pirated
17 Access Cards to receive DISH Network programming without paying the
18 subscription price. Plaintiffs therefore have an ownership in the unjust profits
19 received by Defendants and/or their agents. Plaintiffs are entitled to recover
20 restitution of any and all of Plaintiffs' property including, but not limited to,
21 EchoStar Access Cards, Pirated EchoStar Access Cards and/or other Circumvention
22 or Signal Theft Devices, unlawfully obtained or possessed by Defendants and/or
23 their agents. Plaintiffs are also entitled to restitution on behalf of their customers
24 who were misled and defrauded by Defendants' actions. Plaintiffs are also
25 allowed to recover monetary damages to be paid from Defendant to Plaintiff to the
26 extent that Defendants have directly taken money or property from Plaintiffs.

27 357. Based upon information and belief, each of the foregoing Defendants
28 and/or their agents committed the acts described in this Amended Complaint,

1 including misappropriating Plaintiffs' trade secrets, injuring Plaintiffs, violating the
2 Digital Millennium Copyright Act, and illegally cracking Plaintiffs' Security
3 System in, amongst other place, the State of California and in Israel.

4 358. The acts alleged herein constitute unlawful, unfair, and fraudulent
5 business acts or practices within the meaning of Section 17200.

6 359. As a direct and proximate result of each of the foregoing Defendants'
7 violations of Section 17200, Plaintiffs have suffered and will continue to suffer
8 irreparable harm, including but not limited to harm to their business reputations,
9 and goodwill. Therefore, Plaintiffs' remedy at law is inadequate and Plaintiffs are
10 entitled to an injunction prohibiting Defendants from taking any steps to contribute
11 to the copying of any of Plaintiffs' software code or any steps to reverse engineer or
12 otherwise violate a technological measure on any EchoStar Access Card, as well as
13 other remedies to which Plaintiffs may prove themselves entitled.

14 SEVENTEENTH CAUSE OF ACTION

15 (Tortious Interference with Contractual Relations)

16 360. Plaintiffs re-allege and incorporate the above as if fully set forth in this
17 cause of action.

18 361. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
19 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
20 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce have intentionally and
21 knowingly interfered with the contractual relations between EchoStar and its DISH
22 Network subscribers by inducing, procuring, conspiring, and aiding and abetting an
23 as yet undetermined number of DISH Network subscribers not to perform their
24 respective contracts with EchoStar by designing, developing, manufacturing,
25 assembling, modifying, importing (to the United States), exporting, trafficking,
26 selling, and otherwise distributing Pirated EchoStar Access Cards and other
27 Circumvention or Signal Theft Devices to DISH Network subscribers, and
28 advertising and providing software, information, and technical support services

1 relating to Pirated EchoStar Access Cards and other Circumvention or Signal Theft
2 Devices to DISH Network subscribers thereby causing the breach or termination of
3 DISH Network subscribers' accounts resulting in damage to EchoStar.

4 362. Plaintiffs hereby incorporate by reference as if fully set forth herein
5 each separate and distinct theory of direct and indirect liability outlined above in
6 Count I of Plaintiffs' Third Amended Complaint.

7 363. Each of the foregoing Defendants have interfered with the contractual
8 relations between EchoStar and its DISH Network subscribers without justification
9 or legal excuse. Defendants' interference was willful, wanton, and malicious.

10 364. Each of the foregoing Defendants' conduct has injured and will
11 continue to injure Plaintiffs by depriving Plaintiffs of subscription and pay-per-
12 view revenues and other valuable consideration.

13 365. Due to each of the foregoing Defendants' wrongful conduct,
14 Defendants are liable for all pecuniary losses suffered by Plaintiffs as a result of
15 Defendants' interference, and for punitive damages.

16 **EIGHTEENTH CAUSE OF ACTION**

17 **(Tortious Interference with Prospective Contractual Relations)**

18 366. Plaintiffs re-allege and incorporate the above as if fully set forth in this
19 cause of action.

20 367. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
21 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
22 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce have intentionally and
23 knowingly interfered with EchoStar's business of selling its satellite television
24 programming services to prospective DISH Network subscribers, and selling
25 additional programming services to existing DISH Network subscribers, by
26 providing Pirated EchoStar Access Cards and other Circumvention or Signal Theft
27 Devices, and advertising and providing software, information, and technical support
28 services relating to Pirated EchoStar Access Cards and other Circumvention or

1 Signal Theft Devices to an as yet undetermined number of DISH Network
2 subscribers and prospective subscribers, thereby hindering EchoStar from acquiring
3 such prospective relations.

4 368. Plaintiffs hereby incorporate by reference as if fully set forth herein
5 each separate and distinct theory of direct and indirect liability outlined above in
6 Count I of Plaintiffs' Third Amended Complaint.

7 369. Each of the foregoing Defendants' intentional acts was designed to
8 disrupt the relationships EchoStar has with current and prospective DISH Network
9 subscribers. Defendants' motive and purpose was to effectuate and/or assist others
10 in effectuating a wide-spread compromise of Plaintiffs' conditional access system
11 for commercial advantage in the satellite encryption industry.

12 370. Such intentional acts proximately caused economic harm to Plaintiffs
13 by depriving Plaintiffs of subscription and pay-per-view revenues and other
14 valuable consideration of current and prospective DISH Network subscribers.

15 371. Each of the foregoing Defendants engaged in conduct that was
16 unlawful, tortious and otherwise wrongful under Plaintiffs' other causes of action as
17 alleged herein.

18 372. Due to each of the foregoing Defendants' wrongful conduct,
19 Defendants are liable for all pecuniary losses suffered by Plaintiffs as a result of
20 Defendants' interference, and for punitive damages.

21 **NINETEENTH CAUSE OF ACTION**

22 **(Unjust Enrichment)**

23 373. Plaintiffs re-allege and incorporate the above as if fully set forth in this
24 cause of action.

25 374. Defendants NDS, NDS Americas, Norris, Hasak, Kommerling,
26 Luyando, Donev, Nedeltchev, Tarnovsky, Menard, Wilson, Main, Dawson, Quinn,
27 Sergei, Dale, Frost, Tarnovsky Sr., Sommerfield, and Bruce have usurped for
28 themselves, as well as assisting others in usurping trade secrets, proprietary

1 information, revenues, programming. and other property rights belonging to
2 Plaintiffs for the purpose of, among others, enhancing the commercial value of
3 Defendants' goods and services by effectuating and assisting others in effectuating
4 a wide-spread compromise of Plaintiffs' conditional access system.

5 375. Plaintiffs hereby incorporate by reference as if fully set forth herein
6 each separate and distinct theory of direct and indirect liability outlined above in
7 Count I of Plaintiffs' Third Amended Complaint.

8 376. Plaintiffs are informed and believe that each of the foregoing
9 Defendants is still currently in possession of: (a) Plaintiffs' proprietary information
10 including but not limited to proprietary sections of Plaintiffs' ROM code, Plaintiffs'
11 EEPROM code, and/or other proprietary information unlawfully extracted from the
12 microprocessor embedded in Plaintiffs' Access 'Smart' Cards; (b) software,
13 hardware, Pirated EchoStar Access Cards and/or other Circumvention or Signal
14 Theft Devices; and/or (c) monies or other proceeds unlawfully obtained through
15 the sale/distribution of, or assistance or support provided in connection with, among
16 others, Pirated EchoStar Access Cards and/or other Circumvention or Signal Theft
17 Devices.

18 377. As a direct and proximate result of their unlawful and wrongful acts,
19 each of the foregoing Defendants have been unjustly enriched and Plaintiffs have
20 suffered, and will continue to suffer, loss of profits, among others, by virtue of
21 Defendants' conduct. The exact amount of unjust profits realized by Defendants,
22 and profits lost by Plaintiffs, are presently unknown to Plaintiffs and cannot be
23 readily ascertained without an accounting.

24 378. Each of the foregoing Defendants' direct and/or indirect unlawful sale
25 of Pirated EchoStar Access Cards and other Circumvention or Signal Theft
26 Devices, and Defendants' usurpation of Plaintiffs' trade secrets, proprietary
27 information, revenues, programming and other property rights belonging to
28 Plaintiffs, is causing, and will continue to cause, irreparable injury to Plaintiffs

1 unless Defendants are preliminarily and permanently restrained and enjoined from
2 this activity.

3 379. Plaintiffs are, therefore, entitled to a preliminary and permanent
4 injunction restraining and enjoining each of the foregoing Defendants and their
5 employees, agents, and representatives, and all persons acting thereunder, in
6 concert with, or on their behalf, from selling pirated, modified, and/or counterfeit
7 EchoStar Access Cards and/or other Circumvention or Signal Theft Devices.
8 Plaintiffs are further entitled to economic damages in the forms of disgorgement
9 and/or restitution for all benefits unjustly received, retained and/or appropriated by
10 Defendants, as well as exemplary damages for Defendants' intentional, willful and
11 malicious conduct.

12 TWENTIETH CAUSE OF ACTION

13 (Conversion)

14 380. Plaintiffs re-allege and incorporate the above as if fully set forth in this
15 cause of action.

16 381. By virtue of the conduct set forth herein, Defendants NDS, NDS
17 Americas, Norris, Hasak, Kommerling, Luyando, Donev, Nedeltchev, Tarnovsky,
18 Menard, Wilson, Main, Dawson, Quinn, Sergei, Dale, Frost, Tarnovsky Sr.,
19 Sommerfield, and Bruce have unlawfully converted, and are continuing to convert
20 and assist others in converting Plaintiffs' property, namely EchoStar Access Cards,
21 the proprietary information contained therein, and the DISH Network programming
22 that Plaintiffs' conditional access system is employed to protect, for their own
23 personal and commercial use, benefit and gain.

24 382. Plaintiffs hereby incorporate by reference as if fully set forth herein
25 each separate and distinct theory of direct and indirect liability outlined above in
26 Count I of Plaintiffs' Third Amended Complaint.

27 383. Such conversion was and is substantial and unwarranted and done
28 intentionally and wrongfully by each of the foregoing Defendants to deprive