

1 Plaintiffs of their proprietary interests, economic interests, and commercial
2 goodwill for Defendants' direct benefit and advantage.

3 384. Due to each of the foregoing Defendants' wrongful conversion and
4 disposition of EchoStar's satellite television programming services, Plaintiffs have
5 suffered, and continue to suffer, substantial damages.

6 TWENTY-FIRST CAUSE OF ACTION

7 (Breach of Contract)

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

10 386. On or about November 6, 1998, Defendant George Tarnovsky
11 activated services with Plaintiffs on a 3500 model JVC DISH Network receiver,
12 which he purchased from Sears and Roebuck. As part of this transaction, Defendant
13 George Tarnovsky agreed to be bound by Plaintiffs' Residential Subscriber
14 Agreement ("Agreement").

15 387. On or about August 3, 1999, Defendant Christopher Tarnovsky
16 activated EchoStar Programming services with Plaintiffs on a 7120 model Webstar
17 DISH Network receiver, which he purchased from Fry's Electronics. Additionally,
18 as part of this transaction, Defendant Christopher Tarnovsky also agreed to be
19 bound by Plaintiffs' Agreement.

20 388. Pursuant to the Agreement, Plaintiffs granted Defendants George
21 Tarnovsky and Christopher Tarnovsky a license to use EchoStar Access Cards, in
22 which legal title was retained by Plaintiffs. In relevant part, the Agreement states
23 that "DISH DBS Smart Cards are [EchoStar's] property and **any tampering or**
24 **other unauthorized modification** to the Smart Card may result in, and subject you
25 to, legal action." Further the Agreement states "[s]mart cards are not transferable.
26 Your Smart Card will only work in the DISH Network receiver to which it was
27 assigned by DISH Network."
28

1 389. Concerning George Tarnovsky's and Christopher Tarnovsky's efforts
2 to tamper with or otherwise modify Plaintiffs' Access Cards and/or EchoStar
3 Receivers, as alleged in Plaintiffs' TAC and incorporated by reference as if stated
4 fully herein, the Agreement specifically provided that George Tarnovsky and
5 Christopher Tarnovsky would not reverse engineer, decompile, or disassemble any
6 software or hardware contained within EchoStar Access Cards or Receivers:

7
8 Your DISH Network receiver contains certain
9 components and software which are proprietary to DISH
10 Network. You agree that you will not try to reverse
11 engineer, decompile, or disassemble any software or
hardware contained within your receiver or our Smart
Card. Such actions are strictly prohibited and may result
in the termination of your Services and/or legal action.

12 390. Plaintiffs are informed and believe that Defendants George and Chris
13 Tarnovsky have illegally, and in breach of the parties' Agreement, reverse
14 engineered and/or hacked Plaintiffs' Access Cards. Concerning piracy of Plaintiffs'
15 Access Cards, the Agreement further provides:

16
17 **WARNING AGAINST PIRACY: *It is a violation of***
18 ***several federal and state laws to receive any Services, or***
19 ***any portion of such Services, without paying for them.***
The penalty for violating such laws can range from
imprisonment to civil damages awards of up to \$110,000
per violation.

20 391. All conditions precedent have been performed by or have occurred as
21 required by Plaintiffs' Agreement and by applicable law. Plaintiffs have performed
22 their obligations under the Agreement and have provided Defendants George and
23 Chris Tarnovsky the Services they contracted for.

24 392. Defendants George and Chris Tarnovsky, however, Plaintiffs are
25 informed and believe as pleaded herein, have not performed their contractual
26 obligations per the Agreement.
27
28

1 conspired and agreed to restrain competition in the market for conditional access
2 systems related to transmission of satellite signals, by unlawfully (a) effectuating
3 and facilitating others in effectuating a wide-spread compromise EchoStar's
4 conditional access system, (b) altering, pirating, modifying, compromising, and/or
5 counterfeiting EchoStar Access Cards, (c) distributing Pirated EchoStar Access
6 Cards and other Circumvention or Signal Theft Devices, and (d) advertising and
7 providing software, information, and technical support services relating to Pirated
8 EchoStar Access Cards and other Circumvention or Signal Theft Devices into the
9 stream of interstate and foreign commerce.

10 399. Plaintiffs hereby incorporate by reference as if fully set forth herein
11 each separate and distinct theory of direct and indirect liability outlined above in
12 Count I of Plaintiffs' Third Amended Complaint.

13 400. The objective of each of the foregoing Defendants and/or their agents'
14 conspiracy was unlawfully attempting to hinder and damage a major competitor in
15 the marketplace (of which Defendants were a participant) because, among other
16 things, NDS was on the verge of losing a valuable contact to supply encryption
17 technology to DirecTV, its major client, who was in the process of
18 negotiating/investigating the conditional access system licensed by NagraStar to
19 EchoStar.

20 401. Each of the foregoing Defendants knew that designing, manufacturing,
21 assembling, modifying, importing (to the United States), exporting, selling, and
22 otherwise distributing Pirated EchoStar Access Cards and other Circumvention or
23 Signal Theft Devices was and is illegal and prohibited.

24 402. The wrongs and tortious conduct flowing from each of the foregoing
25 Defendants' conspiracy include, *inter alia*, misappropriating Plaintiffs' trade
26 secrets, injuring Plaintiffs, violating the Digital Millennium Copyright Act, and
27 illegally hacking Plaintiffs' Security System, in addition to committing the other
28

1 torts and violations set forth in each separate cause of action in Plaintiffs' Second
2 Amended Complaint.

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

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiffs seek a judgment against Defendants as follows:

11 A. Find that all Defendants' conduct in designing, developing, manufacturing,
12 assembling, modifying, importing (to the United States), exporting, distributing,
13 selling, advertising for sale, trafficking in, and providing software, information, and
14 technical support services related to Pirated EchoStar Access Cards and other
15 Circumvention or Signal Theft Devices intended to facilitate the illegal and
16 unauthorized reception and use of EchoStar's satellite television programming
17 services by persons not authorized to receive such programming violates 47 U.S.C.
18 §§ 605(a) and 605(e)(4), 18 U.S.C. §§ 2511(1)(a) and (c), 18 U.S.C. § 1962(c) and
19 1962(d), 15 U.S.C. §§ 1114 and 1125(a), California Penal Code §§ 593d(a)(1)-(4),
20 593e(b), and 593e(c), California Business and Professions Code § 17200, and
21 California state law;

22 B. Find further that Defendants' violations were willful, for a tortious or illegal
23 purpose, or for purposes of direct or indirect commercial advantage or private
24 financial gain;

25 C. In accordance with 47 U.S.C. § 605(e)(3)(B)(i), 17 U.S.C. § 1203(b)(1), 18
26 U.S.C. § 2520(b)(1), 18 U.S.C. § 1964(a), 15 U.S.C. § 1116, California Penal Code
27 §§ 593d(g) and 593e(e), California Business and Professions Code § 17206, and
28 California state law, enjoin and restrain Defendants and persons or entities

1 controlled directly or indirectly by Defendants from: (a) designing, manufacturing,
2 assembling, modifying, importing (to the United States), trafficking, possessing,
3 distributing, or selling Pirated EchoStar Access Cards and other Circumvention or
4 Signal Theft Devices; (b) assisting, procuring, or aiding and abetting any persons in
5 the unauthorized reception and use of EchoStar's satellite television Programming;
6 (c) advertising for sale Pirated EchoStar Access Cards and other Circumvention or
7 Signal Theft Devices; or (d) providing software, information, or technical support
8 services relating to (1) Pirated EchoStar Access Cards, (2) other Circumvention or
9 Signal Theft Devices, or (3) the illegal and unauthorized reception and use of
10 EchoStar's satellite television Programming by persons not authorized to receive
11 such programming;

12 D. In accordance with 47 U.S.C. § 605(e)(3)(B)(i), 18 U.S.C. § 2520(b)(1),
13 California Penal Code §§ 593d(g) and 593e(e), and California Business &
14 Professions Code § 17206, grant an Order directing Defendants to return to
15 Plaintiffs all trade secrets, proprietary information, Pirated EchoStar Access Cards,
16 other Circumvention or Signal Theft Devices, and any other hardware or software
17 derived from EchoStar Access Cards, Plaintiffs' Security System, and EchoStar's
18 satellite television Programming service;

19 E. In accordance with 47 U.S.C. § 605(e)(3)(B)(i), 18 U.S.C. § 2520(b)(1),
20 California Penal Code §§ 593d(g) and 593e(e), and California Business &
21 Professions Code § 17206, grant an Order impounding all Pirated EchoStar Access
22 Cards and other Circumvention or Signal Theft Devices in the possession, custody,
23 or control of Defendants, or related entities of Defendants, that the Court has
24 reasonable cause to believe were involved in a violation of any causes of action
25 alleged herein;

26 F. Grant an Order requiring Defendants to post a prominent public notice on
27 any Internet website owned, operated, or maintained by Defendants notifying all
28 persons in possession of Pirated EchoStar Access Cards or other Circumvention or

1 Signal Theft Devices that said Access Cards and devices have been recalled and
2 must be returned to Plaintiffs;

3 G. Grant an Order requiring Defendants to identify all John Does working in
4 concert with Defendants in performing the unlawful acts described herein, and to
5 use all contact information in Defendants' possession, custody, or control to notify
6 anyone who has obtained a Pirated EchoStar Access Cards or other Circumvention
7 or Signal Theft Devices from Defendants that said Access Cards and devices have
8 been recalled and must be returned to Plaintiffs;

9 H. Grant an Order directing Defendants to preserve and maintain all records, in
10 any form (including electronic form), that evidences, refers to, or relates to: (a)
11 EchoStar Access Cards; (b) Plaintiffs' encryption technology; (c) Pirated EchoStar
12 Access Cards; (d) other Circumvention or Signal Theft Devices; (e)
13 communications or correspondence with manufacturers, suppliers, distributors, or
14 customers of Pirated EchoStar Access Cards or other Circumvention or Signal
15 Theft Devices, or access card programming services; (f) the identity of any
16 manufacturers, suppliers, distributors, or customers of Pirated EchoStar Access
17 Cards or other Circumvention or Signal Theft Devices; and (g) the quantity of
18 Pirated EchoStar Access Cards, including EchoStar Access Cards that have not yet
19 been altered, pirated, modified, compromised, and/or counterfeited, and other
20 Circumvention or Signal Theft Devices in inventory and sold by Defendants;

21 I. Grant an Order permitting Plaintiffs, through its counsel, to inspect and make
22 mirror image copies of any computer or electronic storage drives or back-up tapes
23 in the possession, custody, or control of Defendants or related entities that contain
24 information that evidences, refers to, or relates to Defendants' conduct of
25 designing, developing, manufacturing, assembling, modifying, importing (to the
26 United States), exporting, trafficking, distributing, and selling Pirated EchoStar
27 Access Cards or other Circumvention or Signal Theft Devices, or providing
28 software, information, or technical support services relating to Pirated EchoStar

1 Access Cards or other Circumvention or Signal Theft Devices designed to facilitate
2 the illegal and unauthorized reception and use of EchoStar's satellite television
3 Programming services by persons not authorized to receive such programming;

4 J. Grant an Order requiring Defendants to file with the Court and to serve on
5 counsel for Plaintiffs, within 30 days from entry of the injunction, a report in
6 writing under oath setting forth in specific detail the manner and form in which
7 each respective Defendant has complied with the injunctions and orders described
8 in paragraphs A through I above;

9 K. In accordance with 47 U.S.C. §§ 605(e)(3)(C)(i) and (ii), award Plaintiffs the
10 greater of (a) its actual damages together with any profits made by Defendants that
11 are attributable to the violation alleged herein, or (b) statutory damages in the
12 amount of up to \$110,000 for each violation of 47 U.S.C. § 605(a);

13 L. In accordance with 47 U.S.C. §§ 605(e)(3)(C)(i), award Plaintiffs the greater
14 of (a) its actual damages together with any profits made by Defendants that are
15 attributable to the violation alleged herein, or (b) statutory damages in the amount
16 of up to \$100,000 for each violation of 47 U.S.C. § 605(e)(4);

17 M. In accordance with 18 U.S.C. § 2520(c)(2), award Plaintiffs the greater of (a)
18 its actual damages together with any profits made by Defendants as a result of the
19 violations alleged herein, or (b) statutory damages of which is the greater of \$100
20 per day for each day of violation of 18 U.S.C. §§ 2511(1) or \$10,000;

21 N. In accordance with California Penal Code § 593d(f), award Plaintiffs the
22 greater of (a) three times its actual damages, or (b) statutory damages or \$5,000 for
23 each violation of California Penal Code §§ 593d(a)(1)-(4) and 593d;

24 O. In accordance with California Penal Code § 593e(c)(1), award Plaintiffs the
25 greater of (a) three times its actual damages and any revenues obtained by
26 Defendants as a result of Defendants' violations, (b) three times the value of the
27 services unlawfully obtained, or (c) the sum of \$500 for each Pirated EchoStar
28

1 Access Cards or other Circumvention or Signal Theft Devices that was
2 manufactured, sold, used, or distributed by Defendants;

3 P. In accordance with California Penal Code § 593e(c)(1), award Plaintiffs
4 statutory damages in the amount of up to \$10,000 for each violation of California
5 Penal Code § 593e(b);

6 Q. In accordance with 18 U.S.C. § 1964(c), award Plaintiffs treble the amount of
7 actual damages suffered by Plaintiffs in their business or property by reason of
8 Defendants' violations of 18 U.S.C. §§ 1964(c) and 1962(d);

9 R. In accordance with 15 U.S.C. § 1117, award Plaintiffs treble the amount of
10 actual damages suffered by Plaintiffs;

11 S. In accordance with 18 U.S.C. § 2520(b)(2) and California Penal Code §
12 593e(c)(1), award Plaintiffs punitive damages for each violation of 18 U.S.C. §§
13 2511(1) and California Penal Code § 593e(b), respectively;

14 T. In accordance with California state law, award Plaintiffs compensatory
15 damages, in an amount to be proved at trial, and punitive damages for each of the
16 claims arising under California state law;

17 U. In accordance with California state law, Order an accounting, establish a
18 constructive trust in favor of Plaintiffs, and direct Defendants to make restitution as
19 a result of: (a) designing, manufacturing, assembling, modifying, importing (to the
20 United States), trafficking, possessing, distributing, or selling Pirated EchoStar
21 Access Cards or other Circumvention or Signal Theft Devices; (b) providing
22 software, information, or technical support services relating to: (1) altering,
23 pirating, modifying, compromising, and/or counterfeiting EchoStar Access Cards;
24 (2) Pirated EchoStar Access Cards; (3) other Circumvention or Signal Theft
25 Devices; or (4) the illegal and unauthorized reception and use of EchoStar's
26 satellite television Programming services by persons not authorized to receive such
27 programming; (c) assisting, procuring, or aiding and abetting third persons in the
28 unauthorized reception and use of EchoStar's satellite television Programming

1 services; or (d) advertising the sale of Pirated EchoStar Access Cards or other
2 Circumvention or Signal Theft Devices;

3 V. In accordance with 47 U.S.C. § 605(e)(3)(B)(iii), 18 U.S.C. § 2520(b)(3), 18
4 U.S.C. § 1964(c), and California Penal Code §§ 593d(f)(2) and 593e(d), direct
5 Defendants to pay Plaintiffs all of Plaintiffs' costs, reasonable attorneys' fees, and
6 investigative fees;


7 W. For pre-judgment interest on all damages, where allowable by law;

8 X. For post-judgment interest on all damages, where allowable by law; and

9 Y. For such additional relief as the Court deems to be just and equitable.

10 Dated: August 4, 2004

11
12 SQUIRE, SANDERS & DEMPSEY L.L.P.

13
14 By: 
15 Cynthia A. Ricketts
16 Michael T. Purleski
17 Attorneys for Plaintiffs
18 ECHOSTAR SATELLITE CORPORATION,
19 ECHOSTAR COMMUNICATIONS
20 CORPORATION,
21 ECHOSTAR TECHNOLOGIES CORPORATION,
22 AND NAGRASTAR L.L.C.

23 Of Counsel

24 T. WADE WELCH & ASSOCIATES

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DEMAND FOR JURY TRIAL

Plaintiffs EchoStar Communications Corporation, EchoStar Satellite, L.L.C.
f/k/a EchoStar Satellite Corporation, EchoStar Technologies Corporation, and
NagraStar L.L.C. hereby demand trial by jury in this action.

DATED: August 4, 2004

Respectfully Submitted,
SQUIRE, SANDERS & DEMPSEY L.L.P.

By: Cynthia A. Ricketts / mtp
Cynthia A. Ricketts (*pro hac vice*)
Michael T. Purleski (State Bar No. 216307)
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FRC

FAX NO. :

09 Apr. 2002 18:43 P2

1 JAMES A. DiBOISE, State Bar No. 083296
 2 ELIZABETH M. SAUNDERS, State Bar No. 138249
 3 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 4 650 Page Mill Road
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 Telephone: (650) 493-9300
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5 Attorneys for Plaintiffs
 6 GROUPE CANAL+ S.A.,
 7 CANAL+ TECHNOLOGIES, S.A. and
 CANAL+ TECHNOLOGIES, INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

12 GROUPE CANAL+ S.A., CANAL+	)	CASE NO.: C02-01178 VRW
13 TECHNOLOGIES, S.A., CANAL+)	
14 TECHNOLOGIES, INC.,	)	DECLARATION OF OLIVER
Plaintiffs,	)	KÖMMERLING IN SUPPORT OF
v.	)	PLAINTIFFS' MOTION FOR
16 NDS GROUP PLC, NDS AMERICAS, INC.,	)	EXPEDITED DISCOVERY AND TO
Defendants.	)	PRESERVE DOCUMENTS AND
	)	THINGS
	)	Date: April 18, 2002
	)	Time: 2:00 p.m.
	)	Place: Courtroom 6, 17 th Floor
)	
)	
)	
)	

21

22 I, Oliver Kömmerling, declare as follows:

23 1. I am the same Oliver Kömmerling that Mr. Peled identifies in his declaration

24 submitted in this action. I am the principal shareholder of ADSR, a company that provides

25 security services to many different businesses. I have provided and continue to provide security

26 services to both Canal+ and to NDS Group

27 2. I have read Mr. Peled's declaration and disagree with several of the

28 statements he makes in it and disagree with some of those statements that he attributes to me.

KÖMMERLING DECLARATION
 No. C02-01178 VRW

Exhibit
1

FROM :

FAX NO. :

09 Apr. 2002 16:44 P3

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

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

17 5. I am also fearful that this action will be damaging to the reputation of my company
18 ADSR, of which I hold 60% of the shares and NDS holds 40%. I have provided services to both
19 NDS and Canal+, as well as other third parties, for the past two years. This action has, however,
20 led to some of ADSR's other customers expressing concern at the ability of ADSR to maintain
21 confidentiality given that NDS is a shareholder. In addition, Mr. Peled, through an NDS employee,
22 has informed me that I must not continue providing services to Canal+ if this action proceeds. As
23 a result, I am seeking to terminate the joint venture with NDS and have offered to acquire their
24 40% shareholding. They have refused to sell their shares while this action proceeds. The fact that I
25 have knowledge of NDS' activities concerning the publication of the Canal+ smartcard software
26 means that this action also involves me. I want to testify to tell the truth regarding my knowledge
27 of this matter in a fair proceeding with both sides present in order that I may be done with this
28

KONWERLING DECLARATION
No. C02-01178 VRW

-2-

FROM : FAX NO. : 09 Apr. 2002 18:44 P4

1 matter so I may take such steps as are necessary to preserve the reputation of ADSR or, if
2 appropriate, to set up a new business independent of NDS.

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

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

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

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

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

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

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

28

KÖMMERLING DECLARATION
NO C02-01178 VRW

-3-

180.

0 143

FACH

FAX NO. :

09 Apr. 2002 18:45 P5

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

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

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

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

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

27
28

FROM:

FAX NO. :

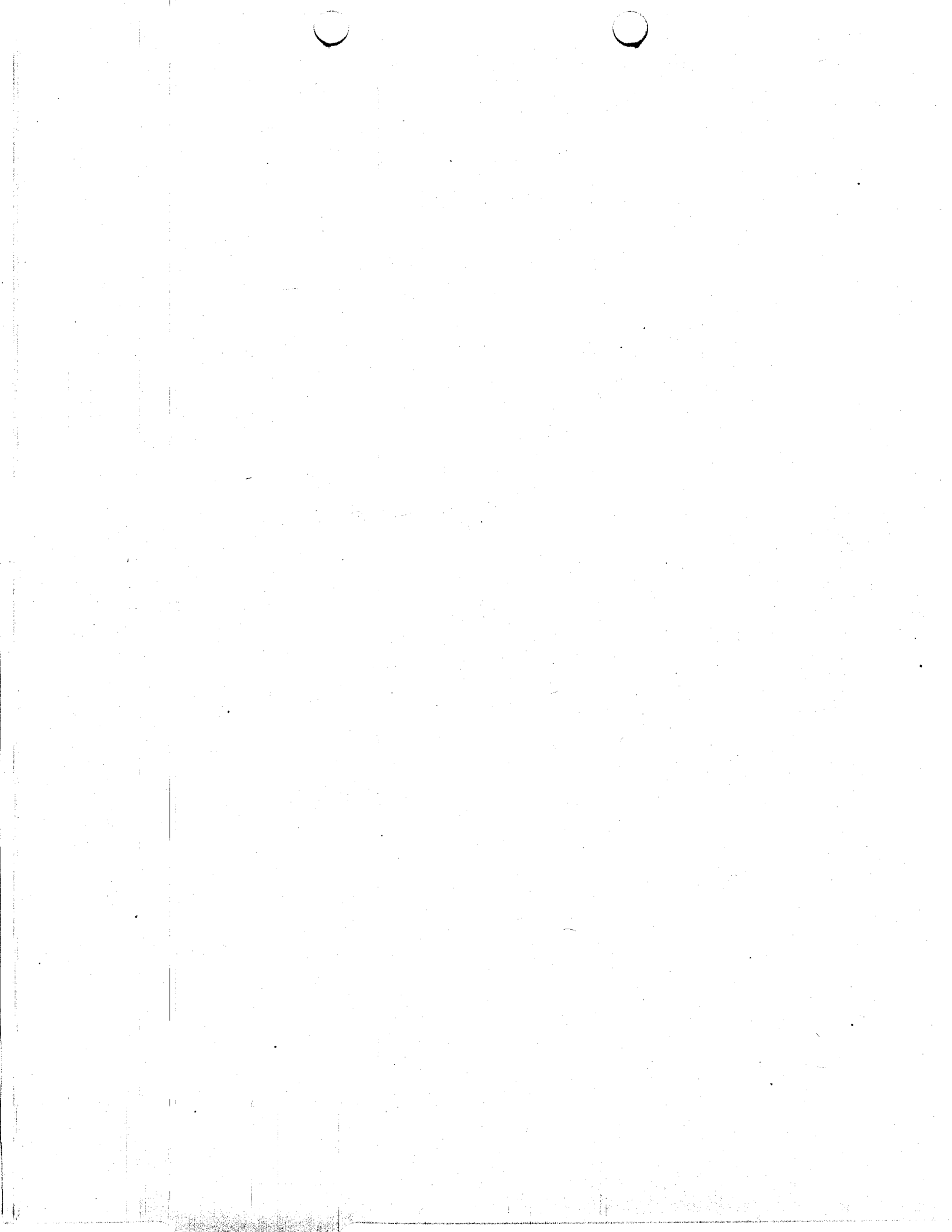
09 Apr. 2002 18:45 P6

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



Oliver Kömmerling



1 JAMES A. DiBOISE, State Bar No. 083296
ELIZABETH M. SAUNDERS, State Bar No. 138249
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5 Attorneys for Plaintiffs
6 GROUPE CANAL+ S.A.,
CANAL+ TECHNOLOGIES, S.A. and
7 CANAL+ TECHNOLOGIES, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

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

14 Plaintiffs,

15 v.

16 NDS GROUP PLC, NDS AMERICAS, INC.,

17 Defendants.

) CASE NO.: C02-01178 VRW

) DECLARATION OF JAN
) SAGGIORI IN SUPPORT OF
) PLAINTIFFS' MOTION FOR
) EXPEDITED DISCOVERY AND TO
) PRESERVE DOCUMENTS AND
) THINGS

) Date: April 18, 2002

) Time: 2:00 p.m.

) Place: Courtroom 6, 17th Floor

21
22 I, Jan Saggiore, declare as follows:

23 1. I am employed by SSS LLC, based in Geneva, Switzerland. SSS Llc is
24 engaged in providing consulting services to Canal+ in the area of conditional access systems for
25 digital TV.

26 2. I have known Chris Tarnovsky since the mid-1990s and have had various
27 email exchanges with him concerning digital television and security measures used to protect
28 those signals. I met Chris via the internet and a user group called TV-Crypt Group. TV-Crypt

SAGGIORI DECLARATION
NO. C02-01178 VRW

Exhibit

2

1 Group was managed by Markus Kuhn when Markus was a student at the University of Erlangen
2 in Germany. While Chris was living in Germany , he and I exchanged email messages and
3 exchanged software concerning D2MAC-Eurocrypt (Canal+/TV1000) and Videocrypt
4 (Sky/Filmnet) systems. Chris went back to the United States but we continued our email
5 correspondence. Chris began to study the Videoguard system (version P1) utilized by DirecTV
6 in the United States to protect its satellite TV signals. Chris asked me for some source code I
7 had written concerning the DES encryption algorithm and associated tables.

8 3. In 1997 Chris contacted me and requested that I put him in contact with
9 people who were able to analyze smart cards. I introduced Chris to Vesselin Ivanov Nedeltchev
10 ("Vesco") and gave Vesco's phone number to Chris. Vesco is an engineer I had met in Geneva
11 who had studied smart cards and their associated security systems. I also met Vesco in mid-2001
12 in Geneva when he came to see me specifically to discuss questions related to the security
13 encryption of access control systems and at that time I understood Vesco was working directly
14 for Reuven Hasak of NDS.

15 4. Very shortly after its publication on the DR7 website, I became aware that
16 the Canal+ smart card code was available for downloading from the DR7 website. I downloaded
17 that smart card code from the DR7 website and examined that binary code and the text files
18 included with it. The text document indicated that the code associated with the EEPROM had
19 been lost during the extraction process but indicated that the rest of the data from the user-ROM
20 was included in the file. I examined that binary code and determined that the code present at the
21 2000 address was missing.

22 5. Knowing that Chris Tarnovsky knew Al Menart because I had introduced
23 the two of them in 1996 and knowing that Al Menart was the Webmaster of DR7, I asked Chris
24 Tarnovsky if he could obtain the [missing] code present at the 2000 address from Al Menart. By
25 an email exchange from Chris Tarnovsky, Chris sent me an 8kb binary file that he claimed
26 contained the requested code extracted from the Canal+ smart card. Attached as Exhibit A to
27 this declaration is a copy of the email I received from Chris Tarnovsky (using the alias of Arthur
28

1 von Neumann or "Von") and attached as Exhibit B is the binary code that Chris sent me with the
2 email.

3 6. Later in 1999, after Chris had visited me in Geneva, we discussed the
4 possibility of obtaining additional information regarding the Thomson chip used by Canal- in its
5 smart cards. Chris sent me a PDF by email that contained the user manual for the Thomson chip.
6 The first page of the document I received from Chris is attached as Exhibit C to this declaration.
7 The received document is a copy of the Thomson confidential user manual which is only
8 possible to obtain from Thomson under a strict nondisclosure agreement.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct.

11 Executed on April 8, 2002 at Paris, France.

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/s/Jan Saggiori
Jan Saggiori

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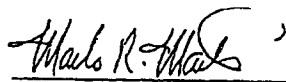
Date: April 10, 2002

Re: 25012.500

CERTIFICATION OF EDITING

This certifies that the editing and verification of the translation from French to English of the two French legal documents entitled: "DECLARATION OF JAN SAGGIORI IN SUPPORT OF PLAINTIFFS' MOTION FOR EXPEDITED DISCOVERY AND TO PRESERVE DOCUMENTS AND THINGS" and: "DECLARATION OF VINCENT LABIE IN SUPPORT OF PLAINTIFFS' MOTION FOR EXPEDITED DISCOVERY AND TO PRESERVE DOCUMENTS AND THINGS" have been performed by a qualified professional translator competent in both languages, and is an accurate and complete rendering of the content of the original document to the best of our ability.

Signed:



Marlo R. Martin, Ph.D.
Director

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0 149

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7 CANAL+ TECHNOLOGIES, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

12 GROUPE CANAL+ S.A., CANAL+
13 TECHNOLOGIES, S.A., CANAL+
14 TECHNOLOGIES, INC.,

14 Plaintiffs,

15 v.

16 NDS GROUP PLC, NDS AMERICAS, INC.,

18 Defendants.

CASE NO.: C02-01178 VRW

DECLARATION OF JAN
SAGGIORI IN SUPPORT OF
PLAINTIFFS' MOTION FOR
EXPEDITED DISCOVERY AND TO
PRESERVE DOCUMENTS AND
THINGS

Date: April 18, 2002
Time: 2:00 p.m.
Place: Courtroom 6, 17th Floor

23 Je soussigné Jan Saggiori, déclare ce qui suit :

24
25 1. Je suis employé par la société SSS Llc, basée à Genève, en Suisse. SSS Llc fournit des
26 services de consulting à Canal+ dans le domaine d'accès conditionnel pour la télévision
27 numérique.
28

SAGGIORI DECLARATION
No C02-01178 VRW

1
2 2. Je connais Chris Tarnovsky depuis le milieu des années 90 et nous avons échangé différents
3 email ayant trait à la télévision numérique et aux mesures de sécurité mises en œuvre pour
4 protéger les signaux. J'ai connu Chris à travers internet, et un groupe appelé « TV-Crypt ». Le
5 groupe « TV-Crypt » était géré par Markus Kuhn quand il était étudiant à l'université d'Erlangen
6 en Allemagne. Lorsqu'il vivait en Allemagne, Chris et moi avons échangé des E-mail et des
7 logiciels concernant les systèmes D2MAC-Eurocrypt (Canal+/TV1000) et Videocrypt
8 (Sky/Filmnet). Chris est rentré aux Etats-Unis et nous avons continué à correspondre par E-mail.
9 Chris commença à étudier le système Videoguard (version P1) utilisé par DirecTV aux Etats-
10 Unis pour protéger l'accès à ses signaux satellites. Chris me demanda du code source que j'avais
11 écrit et qui concernait l'algorithme de cryptage « DES » et les tables associées.
12
13
14

15 3. En 1997, Chris me contacta et me demanda de le mettre en contact avec des personnes
16 susceptibles d'analyser des cartes à puce. J'ai présenté à Chris Vesselin Ivanov Nedeltchev
17 (« Vesco ») et ai donné à Chris le numéro de téléphone de Vesco. Vesco est un ingénieur que j'ai
18 rencontré à Genève et qui avait étudié les cartes à puce et leur systèmes de sécurité. J'ai
19 également rencontré Vesco en mi 2001 à Genève quand il m'a contacté pour aborder en
20 particulier des questions relatives à la sécurité du cryptage de systèmes de contrôle d'accès ; à
21 cette époque, je compris que Vesco travaillait directement pour Reuven Hasak de NDS.
22

23 4. Très rapidement après sa publication sur le site web DR7, je fus informé qu'il était possible
24 de télécharger à partir du site DR7 le code de la carte à puce de Canal+. Je téléchargeai ce code
25 de la carte à puce à partir du site DR7 et examinai le code binaire ainsi que les fichiers textes
26 inclus. Le document texte indiquait que le code de l'EEPROM avait été perdu lors du processus
27 d'extraction mais précisait que le reste des données de la ROM utilisateur était présent dans le
28

FROM: Arthur Von Neumann, INTERNET:von@metro2000.net
TO: SAGGIORI Jan, jan_saggiori
DATE: 28.03.99 13,36

Re: Re: Hi

Contents:

1 Internet Message Header
2 <no topic>

===== Begin Part 1 =====

Topic: Internet Message Header

Sender: von@metro2000.net
Received: from relay1.smtp.psi.net (relay1.smtp.psi.net [38.8.14.2])
by hpdmgaaa.compuserve.com (8.8.8/8.8/HP-1.1) with ESMTMP id NAA22853
for <jan_saggiori@compuserve.com>; Sun, 28 Mar 1999 13:36:11 -0500 (EST)
Received: from [38.223.67.2] (helo=ad2.com)
by relay1.smtp.psi.net with esmtp (Exim 1.90 #1)
for jan_saggiori@compuserve.com
id 10RKPx-00070z-00: Sun, 28 Mar 1999 13:36:17 -0500
Received: from hers (38.12.3.110) by ad2.com
with ESMTMP (Apple Internet Mail Server 1.1.1); Sun, 28 Mar 1999 10:41:36 -0700
Message-Id: <4.2.0.25.19990328183134.00a377d0@metro2000.net>
X-Sender: von@metro2000.net
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.25 (Beta)
Date: Sun, 28 Mar 1999 18:32:42 +0000
To: SAGGIORI Jan <jan_saggiori@compuserve.com>
From: Arthur Von Neumann <von@metro2000.net>
Subject: Re: Hi
In-Reply-To: <199903281247_MC2-6FBD-5DC0@compuserve.com>
Mime-Version: 1.0
Content-Type: multipart/mixed;
boundary="===== _6511890== _"

Good news from up north here.. Enjoy, keep for you please.. extremely top secret!

===== End Part 1 / Begin Part 2 =====

Name: 16cf54.asc

-----BEGIN PGP MESSAGE-----

Version: 2.6.3ia

hlwDwxweIrTEUx0BA/46bMVhZ6aivHISA7cIOXn97JGt6hdy9xvUuiQX5EZVRtFy
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2DyMrRwY5s0Z+iLv1XFtPjQcd5WeKcl/nl a0U8kkbqfZIxhgoitUqbnWwqqYA
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ds1EuV0FDSEXG2R8gFOsMRnJnj19Pn+GaG2ItMP2R6NGf5uxw2YPqvFHcy/GXgdC
hpJ0SSSf7adrVEFJkHije3EXaSrOfXy2/QSgTM7/97DGCgeslZL7iCvL7K5Mfs
NyvY559t7dqZghlpdGUqtByg8i00M2Nr3sJ05T/T2HQiuqaSSK2F5J2jow3hWmL3
BgSUcDUDuIiteoXMNqF0Ucd8KBaCM2hXVElEsRm+RA4fovB3Ch3G/3YiRQhNzeLa
NPRclM0aNAU06QM9XKRfbaAQOpGoU2UR96+vL97snj4tem0/56bs2Ds7Y5vNWw+(
ZN3nTzkDTPV4+i+gDWbywN6xcVdfJBSN6WKONUu-JM8iEkqBu1+kVBfeqmYVRvcuH
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lWnJqAwyP3W6ZEJSzajlmdpV+OHDKjnGdmsjedqvZhkbsqUGOm270LGNASGHdMcF
SzxdfSjZgrvLIHRh9J27K8I2+K44BE8O/PLkrXkQDK/ERgYUF/ThKiuLaNjV6BU
Qx011Y2iywUUJ+tdgfdVW7ps2KMfdcwLnt56WSKR9KiZSIropXgpDwnISodCsEAa
s6Yul'iq7z8yJw4MHUitHZ8/dHi8uUqRGLexl/QTVWXXN94F2Wb7ajBfXmZk+D7jQmb

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2qdtMqj2XODvHR5IZYsilHifQSTu8xV9hmwfdYJV36sc93DPoLA TbSzYebwplpDY
OKuBcxhFFmzL2Q7+DbV027IHMJ/SgcUlbeHfQcHh0fw9NK0GqcRM5x6i48SEPdD
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+YTYfwutAMXNmYrkQC15iBFjAsD1X36B30ycXBf1GRAhPS/x3c6TEacsGNpitZxv
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IFP1LnLZ8E4tRQPEuAbQ9OvQiRln/ODG9BcC4K87uK8UmulYEP/tiEmwJE74eOK
KISMcvWvy8myEuQgg5q6vYu5RXcqTjFc+V7laWpRHKPFfJYcw/15EjTINt+6WIXQc
jIWDxthL7f1Lv0+2yh+GTlyDEZ1x5M4q/ixEzN1AsaQc53f9t1e6sRrjIQ/Dwq
sKaIcha19fju8OFkROaM95BfLfgqZFLiDuqACIpIH2vQ0gtCKM5xpV+7+q4+5RjA
6MS41zuOLhdqgFPX6TThpYnnzZfnd75B2IVynY4cJSLfAUouEQORA65B5076qx
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EUera/bXhtAvWnvvqzdxMfnmi4smRA0KJpl39S0glukHipyRml1Bh6byDn10lq/D4
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1RsVDXEOlcaOzgX5M6j5Z+w+mnFvdDQ37YFoWUbp02d/CwpUwbTLVSQXhTE9LGIH
RfArtoSyO/ouwt6S2ag+XH2yprFRoumbQ8IAgomD5m1XF1ek9FLWE2s2oYN34goX
iGwaYeu9vyUBUixrakVRfMiLkpnome7aeA0eBy2TAECD4rdzxYhmLTGfndizE274
Asav2SgZSG2FkKaH4Q5Phm6mEGGGV7NDpB6CGYx8pHWJdBKTKeweZuHO1zyck7w
/IPrdNP/frfESGiTKM/dzBHJXmoV7zrbXanFMmR+NYIhjjGveGmp4DTP5Pp1C9
dKbdKysBv/CvFi2JxL880zWNCBm9cUNbTpYyAW/5Ht4dFzuO/R3a8yfD33uvqyd1
5Z4g1O0tUf8Ohvhp9baLAgfI2gRiHb7F37M5DR2rL0E1NbUw7uXZ0VIGxT/NiW75
5S3KH8tDCGQIEXjd01j7hE1SqGdP2DRYXXU75YEOhur3Pu+6BUS0pFxDP90OdWjKe
Lti488J4yIVFxbllOx4/O/O/mFKKdL8DraRIsKOaAeAAGL2UYmflslj/WbWQHnv
bnO35Zb+RKEY1kASbiABrGZcOoIIYr2I8AIDwtNvQ6WH95zrsQzDy2M2ZBnjDD92
AtyvRf3A4LfdiqXuiBlqgrhdFUHuZfQFHDhNpWzYvfk8L6h9c1B5rmuyL27IV
mp3aqOIHr5s0xaaxTzYr5s018dhOon5YNUGHjNNBmNSEFFgkCqM2mRqhlQ4UQ
ESV93QXhbH9aaEgqs+VvnmNQEKSU1v3x6N7c+Sf3+yclhLXFgmiUiZisuQavssNn
ljpL
=2Nfe
-----END PGP MESSAGE-----

=====
===== End Part 2 =====

DUMP ROM 2000 ST16

2000 0d 04 2a 3f 00 8e 20 fb 9d 33 25 80 80 00 d6 e0
2010 00 81 0f 00 01 0f c8 cc ae 0a d6 20 0d e7 29 5a
2020 2a f8 81 ad f3 cd 21 41 cd 20 e8 20 fe 06 02 09
2030 02 00 f0 0e 04 ed cc 1e af 1e 04 cc 22 1a 0c 04
2040 03 07 01 03 cc 40 1e ad cf 0f 04 03 cc 22 37 06
2050 02 e7 cc 1f 28 3f 27 3f 28 3f 29 ad 75 be 2f b6
2060 2e bb 2b b7 2b 5a bd 2a bb 27 b7 27 24 06 3c 28
2070 26 02 3c 29 5d 26 ee 3a 2b 3a 2e 2a e8 ae 02 e6
2080 27 cd 22 b3 5a 2a f8 4f 81 12 04 b6 01 13 04 3f
2090 01 ad 49 a6 40 ad 45 16 02 14 04 20 fe b6 2e a1
20a0 10 26 37 4f 04 21 07 cd 22 f6 bd 2a ba 25 e7 36
20b0 5c b3 2e 26 ee ad 51 ad 17 bd 2a e1 36 26 1b 5c
20c0 b3 2e 26 f5 4f 20 15 cd 1f 55 ad 1c ad 6e 20 85
20d0 ad 45 3f 03 01 21 02 16 03 81 a6 fa 0e 04 04 cd
20e0 1f 77 4f b7 20 81 a6 ff 10 2b ad 0f 1a 03 ad 27
20f0 11 2b b6 30 27 02 ad 35 3f 03 81 5f 4d 26 02 14
2100 21 e7 36 5c a3 20 26 f9 ad 4d 5a 3c 2a e6 36 bd
2110 2a 5a 2a f9 3a 2a 81 17 03 18 03 04 21 04 10 03
2120 20 02 14 03 07 01 04 3f 03 20 fe b6 31 ae 63 5a
2130 26 fd 4a 26 f8 11 03 15 03 15 21 81 ae 06 cc 20
2140 1a 18 01 ad 12 10 03 14 03 1c 03 4f c7 e1 00 11
2150 03 18 03 a6 1e 20 9f 12 03 13 03 81 99 39 88 ad
2160 f6 ae 1f e6 80 d7 e0 00 5a 2a f8 cd 20 d0 ae 1f
2170 d6 e0 00 e1 80 27 02 10 20 6f 80 5a 2a f2 81 ad
2180 bb a6 20 b7 2c a6 e0 b7 2f 81 ae 1f d6 e0 00 e7
2190 80 5a 2a f8 81 12 04 20 10 5f ad bb a6 ff d7 e0
21a0 08 5c a3 08 26 f8 cd 21 17 4f c7 df fe b7 27 18
21b0 03 10 03 ad 14 10 04 ad 12 11 04 4c ad 0d 4c 3a
21c0 27 26 f2 3f 03 3f 04 3f 01 a6 0a ae 63 5a 26 fd
21d0 4a 26 f8 81 10 02 cc 22 b9 ad f9 ad bc 3f 20 20
21e0 69 cd 26 18 20 fb 20 55 23 88 1f c7 1f a7 1e 4f
21f0 20 c7 1f b3 1f b1 1e 08 1e 4a 1f ce 24 4a 24 6a
2200 21 41 21 95 24 1c 1e 8a 21 d4 24 1b 24 28 20 89
2210 1f 9b 25 13 21 d9 21 e1 23 96 c6 e0 08 27 fe 43
2220 27 fe cd 22 ea c6 e0 09 27 fe 43 27 fe a6 3b cd
2230 22 b9 3f 01 cc 24 6e a6 1e b7 31 a6 0b ad 7a 5f
2240 d6 e0 00 ad 74 5c a3 09 26 f6 a6 90 ad 6b b6 20
2250 ad 67 4d 26 fe 5f cd 22 fc e7 56 5c a3 05 26 f6
2260 b7 2e b6 56 a1 88 27 0c a6 6e 20 02 a6 6d 20 dc
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2280 a1 79 27 04 a3 03 26 e4 b6 2e a1 11 24 e2 4d 27
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22d0 04 10 00 33 23 3a 22 26 ef ad 0f 00 23 04 11 00
22e0 20 02 10 00 ad 04 10 00 b6 25 ae 43 5a 26 fd be
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23b0 ad 4e ca e0 07 b1 f5 26 fe cd 21 57 c7 e0 07 b6
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2590 f7 81 a6 01 b7 ff ad 00 b6 fb b7 fe 4f ae 43 ad
25a0 11 ae 41 ad 0d ad 6c ae 45 ad 07 ae 46 ad 03 38
25b0 ff 81 02 ff 16 04 ff 24 06 ff 34 bf 0c b7 0b b1
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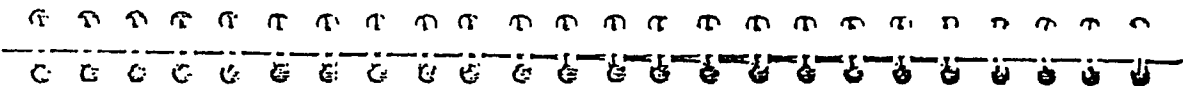
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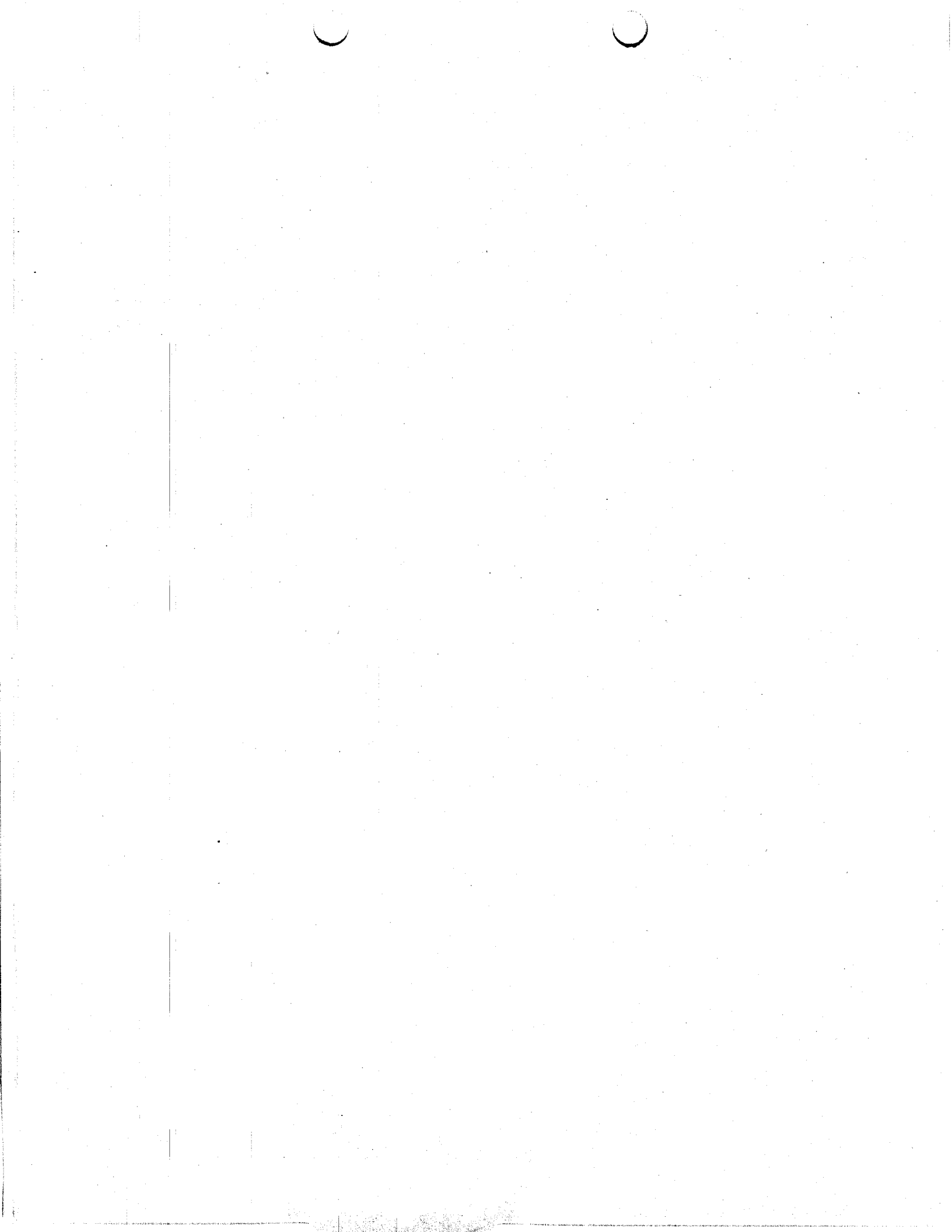


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11 ECHOSTAR COMMUNICATIONS
CORPORATION, ECHOSTAR
12 TECHNOLOGIES
CORPORATION, AND NAGRASTAR,
13 L.L.C.

14 UNITED STATES DISTRICT COURT
15
16 CENTRAL DISTRICT OF CALIFORNIA
17
18 SOUTHERN DIVISION

19 ECHOSTAR SATELLITE
CORPORATION, ECHOSTAR
20 COMMUNICATIONS
CORPORATION, ECHOSTAR
21 TECHNOLOGIES
CORPORATION, AND
22 NAGRASTAR L.L.C.

23 Plaintiffs,

24 v.

25 NDS GROUP PLC, NDS
26 AMERICAS, INC.,

27 Defendants.
28

No.

AFFIDAVIT TESTIMONY
OF MARTIN PAUL STEWART

Exhibit
3

1 **BEFORE ME**, the undersigned notary public, on this day personally
2 appeared **Martin Paul Stewart**, a person whose identity is known to me. After I
3 administered the oath to him, and being duly sworn, he stated as follows:

4 1. My name is Martin Paul Stewart. I was formerly known as, and am still
5 referred to at times as Martin "Marty" Mullen. I am over 18 years of age and
6 am duly competent in all respects to make this affidavit. The facts stated
7 herein are based upon my own personal knowledge, unless otherwise stated,
8 and are true, accurate to the best of my current knowledge, and correct. If
9 called to testify in the above styled and numbered cause, I would provide
10 sworn testimony in accordance with the facts stated herein.

11 2. I am the owner/operator of a business entity known as Multi-Media Images
12 ("MMI"). I started this business as a sole proprietorship in 1997. MMI was
13 formerly engaged in a wide variety of enterprises including: internet & new
14 media design; video productions; CD ROM presentations; audio production;
15 networking; network security analysis; and retail sales/installations of home
16 entertainment consumer electronics and Star Choice satellite systems. MMI
17 is currently engaged in security consulting providing these services to clients
18 including major Canadian banks, the medical industry and the Canadian
19 Department of Defense.

20 3. During the early years of operation MMI engaged in the sale and installation
21 of other satellite systems. Specifically, during that time MMI's satellite
22 business consisted of approximately 85% DirectTV systems, 10% DISH
23 Network systems and 5% C-Band systems. Of these satellite system sales,
24 approximately 20% were based upon what was commonly referred to as
25 'grey market' sales with the remaining approximately 80% consisting of
26 what was commonly referred to as 'black market' sales.

27 4. 'Grey market' sales consist of situations where satellite systems are sold to
28 consumers in an area, such as Canada, where a particular satellite system's

1 provider is not authorized to procure subscribers. 'Grey market' sales are set
2 up by the subscriber providing a valid credit card number and designating a
3 United States address for the purposes of billing such that the satellite system
4 provider is unaware of the subscriber's residence in an area not authorized to
5 pay the subscription fee for receiving that provider's signal.

6 5. 'Black market' sales consist of situations where the consumer purchases the
7 equipment necessary for the reception and decryption of a satellite system
8 provider's signal without paying the provider the requisite subscription fees.
9 'Black market' sales are set up by a consumer purchasing satellite
10 reception/decryption equipment (including what is known as an Access Card
11 or 'Smart Card') which has been altered, modified or 'pirated' such that the
12 consumer could receive, decrypt and view the provider's satellite signal
13 without paying the monthly fees.

14 6. Importantly, at the time MMI was established in or around February 1997,
15 the only method available for distributing satellite receivers for the DISH
16 Network signal was via the 'grey market' as, to my knowledge, no one had
17 been able to successfully procure the dump of the EchoStar/NagraStar ROM
18 Code yet.

19 7. After initially starting MMI in or around February 1997, MMI was
20 purchasing satellite receivers (or 'set-top boxes') from local area distributors
21 in Toronto, Canada. Two of the primary distributors were Tech Electronics
22 and Incredible Electronics.

23 8. With regard to the satellite systems set up under the 'black market' model,
24 Access Cards (or 'smart cards') which had been altered, modified or 'pirated'
25 were needed for these receivers to decrypt the particular provider's satellite
26 signal. Specifically, the Access Cards (or 'smart cards') needed to have
27 certain software loaded onto their microprocessors in order for them to allow
28 the receiver (or 'set-top box') to decrypt the encrypted satellite signal.

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9. Initially, prior to May of 1996 while I was working/residing in the Cayman Islands, I was receiving some of these software-loaded pirated devices, as well as subsequent support for same to combat or overcome electronic counter measures ("ecm") directed at disabling these cards, from an individual named Gary Toscholke.

10. During this same period, I was placed in contact with an individual referenced as "the visitor" or "the European". I was placed in contact with this individual by a former business associate named Chuck 'Hauser'. This European, who spoke with a distinct German accent, was in the business of, among other things, providing software-loaded access cards that would facilitate the unauthorized decryption of a satellite provider's satellite signal. I was initially instructed by Chuck 'Hauser' to refer to this 'European' by the fictitious name of Martin. I later came to refer to this 'European' by another possibly fictitious name "Palma" or "Lorenzo Palma".

11. After initially being introduced to 'Palma', he advised that he was able to write software to satellite access cards which would allow the end-user/consumer to decrypt a satellite provider's encrypted satellite signal. 'Palma' requested that money be sent to the following address in order to receive these software loaded access cards: Lorenzo Palma, Pielle Electronica, Vicolo Vigneto o/c, 24030 Caprino Bergamasco BG, Italy.

12. In order for 'Palma' to communicate with me, he instructed me to set up several email accounts. Subsequently, he provided me with a DES encryption engine known as FSCRAM and instructed me to use this program to encrypt all communications with him. He further instructed me to begin each such encrypted communication with seemingly innocuous phrases such as: "Hi, how are you? Here is the recipe for the turkey dinner."

- 1 13. After 'Palma' provided me with the FSCRAM encryption software for
2 electronic communications, he advised that for \$45,000 he would guarantee
3 MMI future purchases of software-loaded DirecTV H-Cards that would
4 allow the end-user to obtain unauthorized access to the encrypted satellite
5 signal. 'Palma' was provided with this requested amount via Paul Cater,
6 Mike McAllister and Peter Beacock. Cater, McAllister and Beacock were
7 distributors of 'Palma's' software-loaded access cards.
- 8 14. After MMI was originally formed, 'Palma' continued to provide
9 software-loaded access cards for the DirecTV satellite system that were,
10 eventually, distributed to end-users who could then obtain access to the
11 encrypted satellite signal. Importantly, the software utilities provided by
12 'Palma' were somehow 'pre-loaded', 'prepped' or otherwise pre-equipped to
13 handle future ecm updates launched by NDS. Specifically, these utilities
14 were pre-equipped to handle ecm's when NDS updated the access cards to,
15 among others, 18-updates, 23-updates, 26-updates and 28-updates. As
16 explained more fully below, 'Palma' was able to pre-equip his utilities to
17 maintain the access cards he provided because he was an NDS
18 agent/employee and, as he candidly acknowledge to me, had full access to
19 both the inner workings of the card's microprocessor and prior knowledge of
20 upcoming ecm's. In addition, each time a new generation card was about to
21 be released, 'Palma' informed me that not to worry because he already had
22 the 'fix' for the new card prior to that new generation card to be released.
- 23 15. In or about December 1997 or January 1998 I became aware that
24 'Palma' was actually working for, and under the direct control of NDS.
25 Specifically, the day after 'Palma' had provided me with a supply of his
26 software-loaded access cards for distribution, he called me and inquired into
27 whether or not those access cards had already been released for distribution.
28 When I inquired into why he was asking, he told me that the following day

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an ecm was going to be released that would disable these cards. After informing 'Palma' that most of his cards had already been released to Paul Cater, 'Palma' told us to get these cards back immediately and that he could send a program that would correct the cards and defeat the upcoming ecm. During this conversation, which was also heard by another individual present with me at the time, I was able to clearly hear an intercom announcement in 'Palma's' background which stated words to the affect of would all "NDS employees" please report immediately to the boardroom. 'Palma' unsuccessfully attempted to cover the receiver on his phone to muffle the announcement and then abruptly ended the conversation. Importantly, just as 'Palma' told me on the phone at that time, within the next few days an ecm was released that effectively disabled 'Palma's' cards that we were unable to recall.

16. In August 1997 I was contacted via telephone by an individual named Oliver Kommerling. During this conversation, Kommerling introduced himself to me and informed me that he would soon be in possession of the first hack of the EchoStar/NagraStar ROM Code. Kommerling stated to me that this ROM Code was currently being extracted in a highly sophisticated labatory in Europe. Kommerling then informed me that he was able to offer me the hack on the EchoStar/NagraStar microprocessor and that he wanted to come to Canada and arrange a meeting to discuss the details. Kommerling said that he was informed that I was in possession of pirating software for the DirecTV H-Card and that if I delayed in releasing that software he was authorized to provide me with the DISH Network ROM Code. It is my understanding, after speaking with numerous individuals, including without limitation, Kommerling's agent John Luyando (or "Yanni"), as well as reading Kommerling's sworn declaration filed in support of the Canal+ litigation against NDS, that at the time Kommerling contacted me and stated

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that he would provide me with the soon-to-be-completed EchoStar/NagraStar ROM Code extraction, Kommerling was an NDS employee and was acting on behalf of, and under the direct control of NDS.

17. After Kommerling's initial phone call to me, he sent me an email with the following contact information: "O. Kommerling, 66484 Riedelberg, Mhlstr. 7, Germany, Tel: +49 6339 9219 11, or +49 6339 9219 44, Fax: +49 6339 9219 46, Cell: +49 1712 6446 80."

18. On Saturday August 23, 1997 at 11:03 a.m. I called Kommerling to further discuss his offer. Using the information he provided me via email, I contacted him through his cell number at + 49 1712 6446 80. (Attached to this Affidavit as Exhibit A is a true and correct copy of a Bell Canada phone record evidencing this call.)

19. My August 23, 1997 phone call to Kommerling lasted approximately one (1) hour. During this conversation, Kommerling informed me that the DISH Network hack was almost completed and that he would arrange a trip to Canada in the immediate future to discuss details of his authority to sell me the EchoStar/NagraStar ROM Code.

20. In October 1997 I was informed by Paul Cater that Kommerling and an individual identified as Yanni (whose real name I know to be John Luyando) traveled to Canada to meet with Cater, Mike McAllister and Peter Beacock and discuss Kommerling's ability to provide the DirecTV hack and for Kommerling to set up a meeting with me to discuss his offer to sell the DISH Network hack. When I asked Yanni why they did not come and discuss Kommerling's offer with me directly, he informed me that they were 'instructed' to go through Cater, McAllister and Beacock in order to get to me. After speaking with Yanni on or about September 20, 2002, it is my understanding that this 'instruction' came directly from NDS.

- 1 21. In February 1998 Kommerling contacted me again via telephone and
2 advised me that the DISH Network hack had been completed and that the
3 ROM Code had been fully extracted from the access card's microprocessor.
4 He further told me that Yanni would be contacting me within the next couple
5 of weeks to set up a meeting in Canada to discuss Kommerling's authority to
6 offer me this ROM Code. During this conversation Kommerling stated that
7 he was also able to provide me with support for the DirecTV H-card hack in
8 addition to providing us the DISH Network ROM Code, as long as I delayed
9 in releasing any software for the H-Card.
- 10 22. In accordance with Kommerling's statements to me, Yanni called me
11 in early March of 1998 and arranged a meeting to discuss Kommerling's
12 offer of the DISH Network ROM Code. This meeting took place on Friday
13 March 13, 1998 at the Hilton hotel in Windsor, Ontario. Myself, Archie
14 Timuik and Joseph Lucker were in attendance at this meeting with Yanni
15 (John Luyando). Yanni informed us that Kommerling could not be in
16 attendance at the meeting because of work conflicts, but that Kommerling
17 had bestowed full authority on Yanni to negotiate Kommerling's offer of the
18 DISH Network hack.
- 19 23. During this meeting Yanni informed us that Kommerling was
20 authorized to offer us the DISH Network ROM Code for \$1,000,000. During
21 this March 13, 1998 meeting, Yanni informed us that Kommerling was
22 willing to either set up a demonstration of the DISH Network hack, or
23 provide us with a portion of the EchoStar/NagraStar ROM Code so that we
24 could verify that Kommerling was in fact in possession of the hack.
- 25 24. After lengthy negotiations took place at this March 13, 1998 meeting,
26 we were ultimately unable to come to any mutually agreeable terms
27 regarding Kommerling's offer to sell us the DISH Network hack. However,
28 Yanni informed us that he would pass our counter-offer on to Kommerling

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and get back with us. It is my understanding, after speaking with numerous individuals, including without limitation, Kommerling's agent John Luyando (or "Yanni"), as well as reading Kommerling's sworn declaration filed in support of the Canal+ litigation against NDS, that at this time Kommerling was an NDS employee and was acting on behalf of, and under the direct control of NDS.

25. During the period from the March 13 ,1998 meeting until the end of April 1998 I received several phone calls from Yanni. Yanni advised me that Kommerling was unable to sell us the DISH Network hack for anything less than his stated price of \$1,000,000. It is my understanding, after speaking with numerous individuals, including without limitation, Kommerling's agent John Luyando (or "Yanni"), as well as reading Kommerling's sworn declaration filed in support of the Canal+ litigation against NDS, that at this time Kommerling was an NDS employee and was acting on behalf of, and under the direct control of NDS.

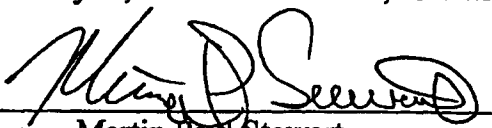
26. Because we were unwilling to provide Kommerling with the entire \$1,000,000 upfront, negotiations came to an end. Shortly thereafter, I learned through common knowledge in the satellite pirating community, as well as through Al Menard's www.dr7.com website and Chris Tarnovsky's postings on same, that this DISH Network ROM dump had been provided to another group known as the 'Swiss Cheese' Group.

27. I swear under the penalties of perjury pursuant to the laws of the United States of America that the foregoing is true and correct and is based upon my own personal knowledge.

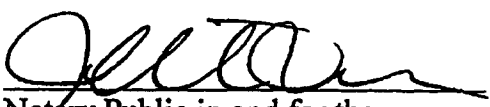
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Further Affiant sayeth not.

Sworn, subscribed to and executed on February 7, 2004 in London, Ontario
Canada.


Martin Paul Stewart

SWORN TO and SUBSCRIBED before me by
Martin Paul Stewart on February 10, 2004.


Notary Public in and for the
Town of London, Province of Ontario,
Country of Canada

My commission expires: n.a.

211

Account number 519 472 8697 (677)
 Bill date September 10, 1997

Chargeable messages (cont'd)

Date	Location called	Number	Start	Duration (min)	Code*	Charges	Discount time & day	Plan Type**	Amount
472 6089									
<i>Pay per use calls</i>									
<i>SmartTouch™ services:</i>									
1	Aug 27	BusyCall Return	(*66)	12:08	8				.50
<i>Directory Assistance:</i>									
2	Aug 27	Dir asst	800 387 7011	09:56	8				75
3	Sep 04	Dir asst	519 686 7266	12:26	8				75
Sub-total carried to the summary - chargeable messages									2.00

472 6550									
<i>Long distance calls (Your plan savings appear in the summary - chargeable messages, if applicable.)</i>									
4	Aug 18	Mexico	5253933182	15:31	4 8	7 20			7.20
5	Aug 20	Hespeler	ON 519 658 0870	09:52	1 8	.35			.35
6	Aug 20	Hespeler	ON 519 241 6934	09:53	1 8	.35			.35
7	Aug 22	Cayman Is	345 947 5360	10:47	4 8	6 62			6.62
8	Aug 22	Cayman Is	345 945 3599	11:17	16 8	24 26			24.26
9	Aug 23	Germany	491712644680	11:03	50 8	56 56	5.55		51.01
Sub-total carried to the summary - chargeable messages									89.79

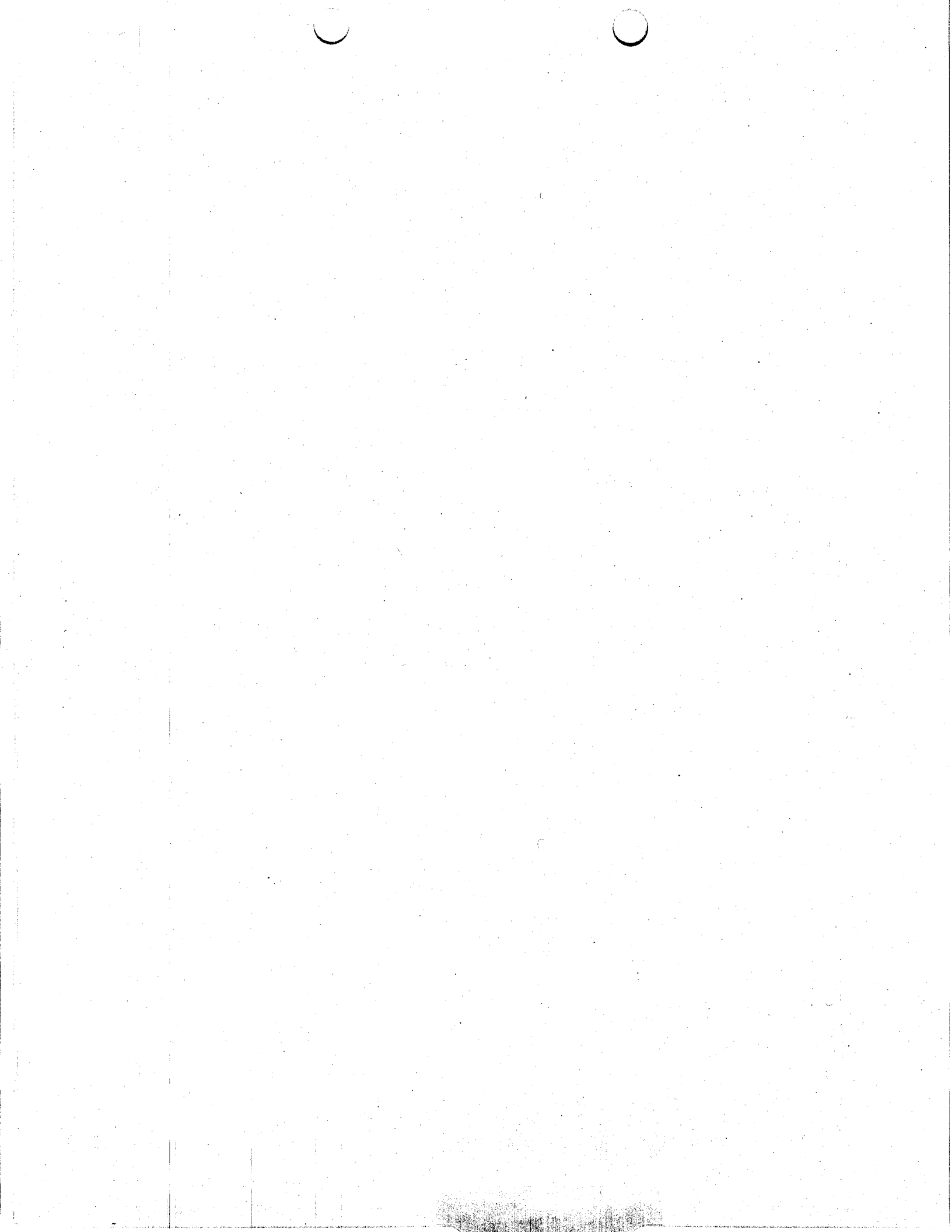
Summary - Chargeable messages		
Long distance calls before savings and discounts		95.34
Pay per use calls		2.00
<i>Long distance savings and discounts this month with Bell</i>		
Time and day discounts on calls		5.55
<i>Total savings and discounts</i>		5.55
Total chargeable messages		91.79

*Codes 8 Customer dialed

EXHIBIT A

211.

0 174



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18 CORPORATION, AND NAGRASTAR,
19 L.L.C.

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 SOUTHERN DIVISION

23 EHOSTAR SATELLITE
24 CORPORATION, EHOSTAR
25 COMMUNICATIONS
26 CORPORATION, EHOSTAR
27 TECHNOLOGIES
28 CORPORATION, AND
NAGRASTAR L.L.C.

Plaintiffs,

v.

29 NDS GROUP PLC, NDS
30 AMERICAS, INC.,
31 Defendants.

No. SA CV 03-950 DOC(ANx)

DECLARATION OF
REGINALD SCULLION

Date:
Time:
Dept: Judge David O. Carter
Courtroom 9-D

SQUIRE, SANDERS & DEMPSEY L.L.P.
1100 California Street
10th Floor

1 BEFORE ME, the undersigned notary public, on this day, personally
2 appeared Reginald "Reg" Scullion, a person whose identity is known to me. After I
3 administered the oath to him, and being duly sworn, he stated as follows:
4 1. My name is Reginald Scullion. I am over 18 years of age and am duly
5 competent in all respects to make this affidavit. The facts stated herein are
6 based upon my own personal knowledge, unless otherwise stated, and are
7 true, accurate, to the best of my current knowledge, and correct. If called to
8 testify in the above styled and numbered cause, I would provide sworn
9 testimony in accordance with the facts stated herein.
10 2. I have been involved in the satellite television business generally since
11 approximately 1980 owning a satellite installation and receiver repair
12 business. I temporarily retired from the satellite business in 1994 due my
13 pursuit of other business opportunities, in addition to personal health issues,
14 among other reasons. I returned to the satellite business in approximately
15 July 1996 whereupon I went back into the satellite sales and service industry.
16 3. Upon my return to the satellite sales and service industry in approximately
17 the middle of 1996, I began selling DBS systems for the DirecTV satellite
18 system. I purchased my products from distributors such as DSI, New
19 Advanced Technologies, and Zed Marketing, among others. I sold DirecTV
20 products locally and over the Internet. I also installed the DBS systems for
21 my customers and assisted in the activation of the customers' DirecTV
22 subscription accounts. For activation assistance, I dealt with grey marketers,
23 specifically New Advanced Technologies in Quebec and Zed Marketing in
24 Ontario. I was involved in selling systems with both altered and unaltered
25 Access Cards which were both believed to be legal in Canada due both to the
26 reading of the law and to Canadian court rulings which constantly said that it
27 was legal to decode systems that were not those of authorized distributors in
28

MR. J. SANDERSON, L.L.P.
4 North Lincoln Street
11111111

DECLARATION OF REGINALD SCULLION

- 1 -

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1 Canada. I would obtain the hacked cards from my DirecTV distributors
2 and from grey marketers in Canada. Hacked DirecTV Access Cards were
3 sold very openly at that time since they were considered to be totally legal.
4 Since I was quite knowledgeable with computers, I was also writing some of
5 my own code for the DirecTV Access Cards and was programming my own
6 DirecTV Access Cards which were purchased directly from DirecTV on my
7 behalf and for this purpose. I also had manufactured my own "green cards"
8 and programmers/unloopers, bootstrap writers, and other signal reception
9 devices, deemed legal in Canada. I had purchased a large quantity of
10 DirecTV Access Cards through various authorized DirecTV dealers who
11 were actually Canadians known to DTV such as Z-Marketing and others and
12 those cards came directly from DirecTV.

13 4. On or about November 4, 1998, my business (Avantec, Inc.) was raided by
14 the Royal Canadian Mounted Police ("RCMP"). As a result of the raid, the
15 RCMP seized (1) satellite and non-satellite equipment, (2) approximately
16 \$5.5 million dollars in my bank accounts and safety deposit boxes belonging
17 to me and several other members of my family, and (3) approximately 12,000
18 new DirecTV Access Cards purchased from DTV. The Canadian
19 government is still in possession of these seized items.

20 5. I am currently the owner and operator of a website named www.legal-
21 rights.org, which focuses primarily on the anti-piracy of satellite television
22 systems in Canada and the United States in addition to general news,
23 publications, commentaries, and updates on the battle against satellite piracy.

24 6. I am also currently an Administrator on several other websites including
25 www.piratesden.com, www.outermatrix.com, www.dsschat.com,
26 www.freedomfight.ca, and www.digital-law.org, among others. My
27 responsibilities as an Administrator include reviewing, controlling, deleting,
28

DRY, SANDERSON, L.L.P.
11 South Legumina Street
11711

DECLARATION OF REGINALD SCULLION

1 and banning certain persons and/or posts on the websites which may contain
2 offensive, illegal, and/or inappropriate material.

3 7. Due to my status as an Administrator on these websites, among others, I have
4 and/or had complete access to the control panels on all of these websites,
5 among others, which enables me to view all of the information that members
6 and other Administrators post in their registration sheets, as well as, all
7 related information obtained on these people which is stored in the websites'
8 databases. A member's personal information provided in their registration
9 sheet is also often useful in obtaining additional information related to that
10 person from other websites since people are often members of several
11 different website forums at the same time and members often use the same
12 password from website to website. Accordingly, members' IP addresses, real
13 names, and much other information can be obtained by cross-referencing the
14 members' information in different forums. In this way I can be sure that a
15 person on one web site is the same person as uses a different Nick on a
16 different website.

17 8. Through my work as an Administrator on pirate websites and forums, I
18 initially became familiar with Christopher Tarnovsky ("Tarnovsky") in
19 approximately middle of 1996 and engaged in numerous telephone and email
20 correspondence exchanges regarding satellite piracy.

21 9. In or about late 1996, Tarnovsky was working with Ron Ereiser ("Ereiser")
22 in Kerrobert Manitoba developing and distributing "battery cards." Shortly
23 after the "battery card" release, Tarnovsky and Ereiser abandoned their
24 customers and refused to provide support for the "battery cards" for a few
25 months. At some time thereafter, "L-cards" and "T-cards" were released to
26 compensate for this lack of support in the battery cards. I decided to provide
27 support for the "L-cards" and "T-cards" in terms of coding and programming,
28

WE. SANDERSON, L.L.P.
ATTORNEYS AT LAW

DECLARATION OF REGINALD SCULLION

1 in part, because Tarnovsky and Ereiser had abandoned people and were not
2 providing technical support for these cards. In fact, Tarnovsky accused me of
3 stealing his code from the "battery card" because Tarnovsky knew that the
4 DS5000 DALLAS chip on the "L-Card" could be pulled, and thus a good
5 programmer could reprogram the file to support "battery cards" he had
6 designed by Norman Dick; however, this was not the case and I did not steal
7 Tarnovsky's code. As a result of Tarnovsky and Ereiser abandoning people
8 and not providing technical support for the "L-cards" and "T-cards," and my
9 subsequent decision to support these persons and devices, Tarnovsky and I
10 became arch enemies starting in approximately October 1996. Accordingly,
11 Tarnovsky spent a lot of time on the Internet chat rooms and forums
12 criticizing me and calling me names thinking I was dumping his cards.

13 10. As a result of my providing support and my disagreements with Tarnovsky,
14 on or about January 29, 1997, Tarnovsky, using the nickname "biggun," sent
15 me an email from "bg@wbm.ca" wherein he threatened me and established
16 his relationship with NDS, formerly NDC. (Attached hereto as Exhibit A.)
17 Tarnovsky's email stated, among other things, "[i]f I am against you, you
18 will not have happy customers under your side. I give you the tv and I can
19 remove the tv." Concerning my failure to respond to his offer, Tarnovsky
20 stated that if he did not hear back from me, he would "consider you
21 [Scullion] a threat to me [Tarnovsky] and commence something very drastic
22 soon after. I may just give the source to NDC. I am sure they will purchase
23 it from me and if I agree to stop, then your world stops also . . . You could
24 have been a distro. point for us . . Instead you are a thefe." Tarnovsky then
25 signs off, "bye! biggun." At this time, I came to believe that Tarnovsky had a
26 relationship with NDC and/or NDS.

27 11. In or about fall 1998, Al Menard ("Menard"), owner and operator of
28

1 www.dr7.com, first approached me wherein he informed me that he was
2 involved in a plan to be the Canadian leader in distributing Pirated EchoStar
3 Access Cards. Menard inquired as to whether I was interested in participating
4 in his distribution network. I declined his offer.

5
6 12. Shortly thereafter, Tarnovsky disappeared entirely from the IRC forums. In
7 approximately September 1998, I noticed that Tarnovsky had reemerged and
8 began posting and chatting on www.dr7.com website under the nickname
9 "Swiss Cheese Productions" ("SCP"). The "SCP" consisted of Tarnovsky
10 and Menard who had sub-distributors acting at the direction and supervision
11 of Menard. The "SCP" initially posted certain EchoStar "freeware" (which is
12 software that people do not need to pay for as it is offered "free" on the
13 Internet on the website www.dr7.com. I did not pay much attention to
14 "SCP's" operations and the freeware posts because they were directed at the
15 EchoStar system, a system that I was not interested in and/or involved with,
16 and a system that no known hack was available for at that time, even though
17 Tarnovsky and Menard were promising a release of the hack shortly.

18 13. On or about early 1999, Menard personally contacted me by telephone
19 wherein he invited me to become a moderator on his website, www.dr7.com.
20 Shortly thereafter, I was made an Administrator. Consistent with my current
21 responsibilities as an administrator on the current websites that I am an
22 Administrator on, my responsibilities as both a Moderator and an Administer
23 on Menard's website, www.dr7.com, included reviewing, controlling,
24 deleting, and banning certain persons and/or posts on the website. At or
25 about the same time, I was also an Administrator on both a DSS chat
26 (www.risestar.com) and Sean Quinn's website (www.hitecsat.com). As a
27 result of my Administrator position, I had possession of certain users'
28

1 passwords and could access their accounts. For example, I had passwords
2 that belonged to Tarnovsky, Sean Quinn, and Dave Dawson.

3 14. Shortly thereafter, on or about early 1999, I verified that Tarnovsky was part
4 of the "SCP." I initially discussed particular chat posts made by "SCP" with
5 other administrators on a private forum chat on the DR7 website wherein I
6 commented about the similarities between "SCP" and Tarnovsky's previous
7 posts he made as using other nicknames including, but not limited to,
8 "Scatman Cran," "Von," "Vonrola," "Big Gun," "Shrimp," and "Nipper."
9 Shortly thereafter, I also reviewed the information on "SCP's" profile and
10 compared the passwords and IP addresses of "SCP" with that of Tarnovsky's
11 other nicknames including, but not limited to, "Scatman Cran," "Von,"
12 "Vonrola," "Big Gun," "Shrimp," and "Nipper." The results of such a search
13 revealed that "SCP's" and Tarnovsky's other nicknames' and IP addresses
14 were identical and that the same anonymizer was used for both when they
15 differed.

16 15. Tarnovsky also registered the nicknames Von, Vonrola, and Nipper on the
17 DR7 website on the same day. I have personal knowledge of this fact
18 because, due to my status as administrator which allowed me to access
19 particular files and databases on the DR7 website, I had full access to the
20 Control Panel which showed all registrations, IP addresses, and complete
21 information on all of the members of the DR7 website. Although these files
22 do not contain specific "CHRISTIAN " names, one can confirm the identity
23 of certain users by cross-referencing email addresses and passwords
24 contained in users' registration profiles. Moreover when people post, the IP
25 address they use can be determined and traced back to the actual person.
26 Examples of registration profiles of Tarnovsky's aliases include, but are not
27 limited to, the following information: (a) Von | phoenix
28

1 | von@fumanche.nethttp:// Write| |3| Junior Member||no; (b) VONrola
2 | |hello| vonrola@fumanche.net| http://www.vegetablesRus.com| W rite
3 | |Lowlife dweeb on drugs| |1|Junior Member |Fucking with Vegetable
4 | |Scallion||yes; and (c) nipper |nipper |charlie@dicknetwork.sux|
5 | http://|Write|||16|Junior Member||yes|. As a result of my investigation, it was
6 | revealed that Tarnovsky was using the nickname Nipper.
7 |

8 | 16. My investigation as to the identity of Tarnovsky being the same person who
9 | was using the nicknames "SCP," "Scatman Cran," "Von," "Vonrola," "Big
10 | Gun," "Shrimp," and "Nipper," among others, was further strengthened once
11 | Menard instructed me to no longer perform my administration duties,
12 | including monitoring, with respect to any posts made by Tarnovsky, "SCP,"
13 | "Scatman Cran," "Von," "Big Gun," "Shrimp," or "Nipper," among other
14 | known nicknames used by Tarnovsky.

15 | 17. On or about April 1999, Menard approached me a second time to solicit my
16 | participation in his distribution network to sell Pirated EchoStar Access
17 | Cards. During this conversation, Menard informed me that he was "close to
18 | receiving a full hack of the EchoStar system" and, because of the pirate
19 | community's past interest in Swiss Cheese Production's products, Menard's
20 | distribution plan was a guaranteed money maker. Menard also informed me
21 | that the distribution network was going to have something special attached
22 | with its operation: the protection and control of NDS. Menard informed me
23 | that NDS was the entity whom had ordered the hack and the distribution of
24 | Pirated EchoStar Access Cards through Menard's distribution network via
25 | Tarnovsky. Menard informed me that NDS had an arrangement with
26 | Tarnovsky to provide the support and facilitation of the hacked EchoStar
27 | ROM Code to be sent to Menard to be used in the distribution network.
28 |

ERIC SANDERS L.L.P.
11 South Figueroa Street
16710

DECLARATION OF REGINALD SCULLION

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Menard also informed me that I had nothing to worry about with respect to being raided by the RCMP due to the fact that NDS would be running interference in the distribution network and that NDS was connected and had a solid relationship with the RCMP. Menard then instructed me to get over my prior disagreements with Tarnovsky because this was such a good deal that I should not pass up.

18. On or about November 1999, I spoke with Menard wherein he informed me that the Pirated EchoStar Access Cards were "ready to be distributed to the public," he had certain vendors in place, and that he wanted me to be one of those vendors. Menard informed me that the vendors who had agreed to participate in the distribution network included Sean Quinn (a/k/a "Hitec" d/b/a www.hitecsat.com), Andre Sergei (a/k/a "Koin" d/b/a www.koinvizion.com), Dave Dawson (a/k/a "JD," "Jack Daniels," "John Gotti," and "Teflon Don" d/b/a www.discountsatellite.com and www.dsscanada.com), and Stan Frost (a/k/a "Frosty" and "Wheels" d/b/a www.thenewfrontiergroup.com).

19. During this November 1999 discussion, Menard informed me that his role in the distribution network was that of the reprogrammer and that he had four vendors (Quinn, Sergei, Dawson, and Frost, among others) who agreed to be the persons responsible for delivering EchoStar Access Cards to Menard. Once received, Menard would use the equipment he was provided with and received from NDS via Tarnovsky to reprogram, update, and otherwise load EchoStar's Code onto the Access Cards (which resulted in the Access Card becoming "hacked" or "pirated" thus enabling the user to receive unauthorized DISH Network television programming). I specifically recall other Administrators on Menard's DR7 website requesting from Menard that

1 he reprogram EchoStar Access Cards for them. Menard would respond by
2 requesting that the Administrators send the cards to him and, once the Access
3 Cards had been reprogrammed, Menard would return the Pirated EchoStar
4 Access Cards to the vendor who, in turn, would return the card to the
5 customer to complete the transaction. These transactions occurred between
6 Canada and the United States, among other places. Customers were charged
7 approximately \$300-400 USD which payment was sent from the United
8 States to Canada, among other places.

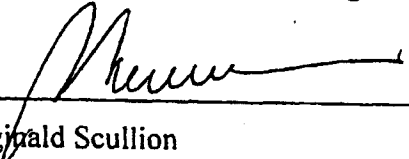
9 20. In fact, Quinn ("Hitec") told me on numerous occasions that he was traveling
10 to Menard's place of business in order to deliver EchoStar Access Cards for
11 reprogramming in furtherance of their distribution network.

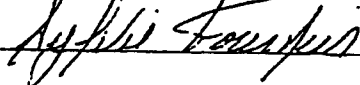
12 21. Although I did not want to tell Menard ("DR7") much about my personal
13 affairs, I was not interested in working in his distribution network because I
14 had sold my business and was no longer interested in selling any products in
15 the satellite piracy business. As a result, I respectfully declined his offer.

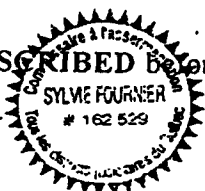
16 22. I have received approximately 20 emails from Tarnovsky and approximately
17 50-100 emails from Menard that support the facts as stated herein.

18
19 Further Affiant sayeth not.

20 Sworn, subscribed to, and executed on February 16, 2004 in Rigaud, Quebec
21 Canada.

22 
23 _____
24 Reginald Scullion

25 SWORN TO and SUBSCRIBED before me by 
26 on February 17, 2004.



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Notary Public in and for the
Town of Rigaud, Province of Quebec,
Country of Canada

My commission expires: *December 8, 2006*

MR. SANDER L.L.P.
11000 Highway 100
14700

DECLARATION OF REGINALD SCULLION

- 10 -

222.

Message-ID: <32EF6D4E.403B@wbm.ca>
Date: Wed, 29 Jan 1997 10:31:26 -0500
From: bg <bg@wbm.ca>
X-Mailer: Mozilla 3.01Gold (WinNT; I)
MIME-Version: 1.0
To: Reg Scullion <regs@total.net>
Subject: No response. Time finished..
References: <v03007800af0dd2ed8fcd@205.236.86.22>
Content-Transfer-Encoding: 7bit
Content-Type: text/plain; charset=us-ascii
X-UIDL: 2481db0946cb23d4aca057df26818398
Reg,

You have chosen to ignore me and no reply since your last message. I begin to think you accept my proposition to you and make things nice for both of us. If I am against you, you will not have happy customers under your side. I give you the tv and I can remove the tv. I have been very patient with you and my patient is now expireing. You have until 1800hrs my time! (This is 1200 for you.) If I do not hear from you before I go to my school, I will consider you a threat to me and commence something very drastic soon after. I may just give the source to NDC. I am sure they will purchase it from me and if I agree to stop, then your world stops also. You leave me no other choice. I also know one of people with the .hex file has given this to you. Perhaps for some money. I am not sure. This is not fair to me. You could have been a distro. point for us.. Instead you are thefe.

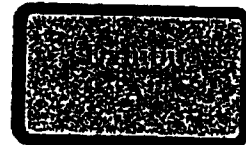
je attendre sur toi alors!
bye!

biggun

p.s.- I have my Sky TV to enjoy! So, DSS is a simple part time work!

--

EXHIBIT A



223.

0 186

1 **PROOF OF SERVICE**

2 I, Juanita Vasquez, declare:

3 I am a resident of the State of California and over the age of eighteen years,
4 and not a party to the within action; my business address is 801 South Figueroa
Street, 14th Floor, Los Angeles, CA 90017-5554.

5 On August 4, 2004, I served the foregoing documents described as:
6 **Plaintiffs' Third Amended Complaint**

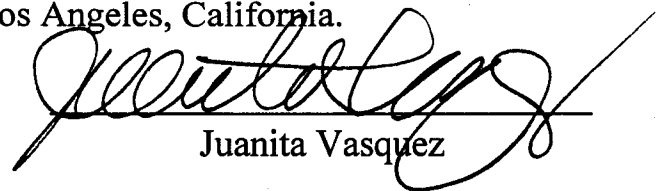
- 7 by transmitting via facsimile the document(s) listed above to the fax
number(s) set forth below on this date.
- 8 by placing the document(s) listed above in a sealed envelope with
9 postage thereon fully prepaid, in the United States mail at Los Angeles,
California addressed as set forth below.
- 10 by causing personal delivery by **Federal Express** of the document(s)
11 listed above to the person(s) at the address(es) set forth below.
- 12 by causing personal delivery via **MESSENGER** of the document(s)
13 listed above to the person(s) at the address(es) set forth below.

14 **PLEASE SEE ATTACHED SERVICE LIST**

15 I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid in the ordinary
course of business. I am aware that on motion of the arty served, service is
presumed invalid if postal cancellation date or postage meter date is more than one
day after date of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California
19 that the above is true and correct.

20 Executed on August 4, 2004, at Los Angeles, California.

21 
22 Juanita Vasquez

SERVICE LIST

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