

MEMORANDUM

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To: Dave Baylor
Abe Peled

cc: Chris Murphy
John Norris
Larry Rissler

From: Genie Gavenchak
Reuben Hasak
Megan McNulty

Date: August 28, 2001

Subject: Anti-piracy Strategies; Operational Security

Last week we met in the News Corp. offices in New York to discuss DIRECTV's and NDS' operational security strategies with a goal towards developing a more cooperative and integrated approach to our anti-piracy efforts. Prior to the meeting, we exchanged information about our respective initiatives and targets, which were discussed in more detail during the meeting. Summarized below are the salient points from our discussion together with the action items that came out of the meeting.

Genie Gavenchak opened the meeting by acknowledging that piracy was a problem for DIRECTV that needed to be addressed and the role of this group was to find a way forward without focusing unduly on the issues of how or why piracy has become such a problem for DIRECTV. Megan McNulty explained that DIRECTV had determined at the beginning of 2001 to engage in an anti-piracy campaign that attempted to attack each link in the chain of creation, distribution and use of pirate devices with a view toward creating the maximum disruption and deterrent prior to introduction of the P4 card in 2002. DIRECTV believed that the infrastructure that had grown up through the P2 and P3 hacks was so large and prosperous that the demand for the P4 hack would be enormous unless the pirate infrastructure was dismantled and the certainty of punishment at each level of the hacking chain was increased.

As part of this strategy, DIRECTV was significantly increasing its civil litigation aimed at end users, Internet pirates, and Canadian pirates, in addition to increasing education and support for law enforcement and government agencies. DIRECTV's management believed that NDS and DIRECTV could inflict the most damage on the pirate infrastructure by allocating our limited resources to pursue the maximum number of individual targets possible. DIRECTV recommended that we divide the pirate landscape and each pursue certain areas, while sharing information and leads with the other party,

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DTVQ

CASE NO.
SA CV 03-950 DOC (JTLx)
ECHOSTAR SATELLITE CORP., et al.,

vs.

NDS GROUP PLC, et al

PLAINTIFF'S EXHIBIT 610A

DATE _____ IDEN.

DATE _____ EVID.

BY _____
Deputy Clerk

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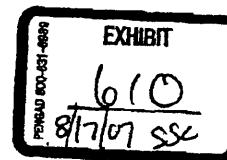
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but not doubling up resources by chasing the same pirates or duplicating efforts by focusing in the same areas.

With respect to DIRECTV's specific tactics, NDS expressed some reticence about suing end users, noting the difficulties in proving those cases and the possibility for a public relations backlash. It was also suggested that resources could be better spent investigating hackers and major distributors. However, there was acknowledgment that this was a tactic used by cable systems against pirates. DIRECTV admitted that while early results were cautiously optimistic, it was probably too soon to tell how successful a long-term end user program would be. Nevertheless, DIRECTV management felt strongly that it needed to support its retail partners who were being asked to undertake changes in how they market and sell DIRECTV products, and DIRECTV needed to get the message out to otherwise law-abiding people that signing up is a crime and they will be pursued if DIRECTV has evidence of the crime. Given the proliferation of websites offering DIRECTV pirate devices, it had simply become too easy for the average consumer to steal from DIRECTV. We had to introduce legal action to create a deterrent. It is not anticipated that NDS will have any significant role in this endeavor, other than to share end-user records with DIRECTV to the extent NDS acquires them.

With respect to Internet pirates, DIRECTV explained the outside expertise (Internet Crimes Group and Kirkland & Ellis' cyberlaw group) retained by DIRECTV to identify individuals behind Internet pirate sites and prepare civil actions. The cases filed earlier this year and the seizures undertaken as part of those cases were discussed. It was explained that a second round of cases is being prepared for filing shortly, and DIRECTV was supporting several law enforcement offices in undercover operations of Internet pirates. DIRECTV noted that the Internet was one area that DIRECTV had taken great pains to research, create a database, investigate, infiltrate, generate law enforcement interest, and prepare a legal strategy that we believed would substantially disrupt Internet pirates for the next 12 months. Accordingly, DIRECTV suggested that it take the lead on pursuing Internet pirates. NDS noted that it also monitored the Internet and would resume forwarding its intelligence to DIRECTV. Both sides agreed to consult with each other prior to taking any legal action, however, DIRECTV informed NDS that law enforcement also has several Internet projects underway and it is unlikely that information about those investigations will be shared with DIRECTV or NDS. Reuven Hasak also noted that there are several pirate websites that have been in operation for some time and we should consider making these sites the focus on our near-term efforts. Further discussion on this point was deferred until the meeting between Larry Rissler and John Norris.

With respect to Canadian pirates, both companies acknowledged that we needed a more vigorous anti-piracy campaign in Canada, however, early court decisions unfavorable to DIRECTV had hampered our efforts causing a reexamination of potential causes of action and access to Canadian law enforcement resources. The Dean Love investigation and NDS' Anton Pillar seizures were discussed, as was the need to re-examine Love's

current activities relative to P3 piracy. DIRECTV suggested that NDS take the lead on that investigation since they have the information about Love and it is NDS' secret agreement that Love is violating. NDS agreed to have John Norris brief Larry Rissler on the new information incriminating Love. DIRECTV noted that non-litigation initiatives we have commenced in Canada, including discussions with Bell ExpressVu, filing a brief in the Bell ExpressVu Supreme Court case, seeking to compel ISPs to take down offending Internet sites hosted in Canada, and supplying comments to the Canadian government on DMCA-like legislation. NDS agreed that it was better positioned, as the copyright owner of the software on the card to bring actions in Canada and DIRECTV provided NDS with a copy of the Canadian websites that DIRECTV had identified which were dealing in DIRECTV pirate devices for NDS investigation and pursuit. DIRECTV also agreed to provide Genie Gavenchak with copies of the memo from DIRECTV's outside counsel providing advice about possible causes of action in Canada against pirates. It was agreed that we would explore viable Canadian targets for copyright infringement litigation, and DIRECTV expressed that suits might be filed soon if we are to have any impact on the Canadian pirates prior to P4 introduction.

On the topic of supporting law enforcement, NDS recommended that joint educational briefings take place, where both DIRECTV and NDS meet with various law enforcement agencies. DIRECTV suggested that this was an activity that DIRECTV's three investigators (all former career-FBI agents) were heavily involved in and adding NDS resources would only be duplicative with limited value. DIRECTV strongly supported NDS taking the lead with non-U.S. law enforcement agencies since DIRECTV has no resources outside the U.S. and NDS has considerable resources and contacts around the world. There was a brief discussion about the companies' respective roles in analyzing pirate devices for law enforcement and the fact that DIRECTV had created a forensic lab in El Segundo for that purpose. DIRECTV explained that it needed this lab in order to analyze pirate devices in a timely manner (since NDS sends the devices from Newport Beach to Jerusalem for analysis), and DIRECTV had been asked to analyze pirate devices on a recurring basis by law enforcement agencies who did not want to use the NDS facility as a result of the San Diego investigation.

This concluded the discussion about the DIRECTV materials.

Discussion of the NDS topics in their materials focused principally on two tactics - infiltration of pirates and spreading of misinformation. Reuven Hasak explained that NDS has practiced these tactics in Europe with success. Infiltration was advocated as a means to engage the pirate, collect incriminating evidence and then make a decision as to whether the suspect will be sued or "recruited" to work for NDS, similar to the way in which Chris Ivanovsky was recruited. NDS pointed out that money was not an enticement to pirates to aid NDS but finding a pirate who may want to leave a life of crime and live "a decent life", someone with a family who doesn't want to be chased any longer, may make a viable recruit. DIRECTV expressed to NDS that there was still a high degree of sensitivity within DIRECTV about the San Diego investigation and we did

not believe that the benefits of recruiting pirates and providing them access to sensitive information outweighed the obvious risks. Reuven Hasak stated that, in deference to DIRECTV, NDS was not using Tarnovsky in the P4 development, that normally Tarnovsky would be engaged to perform a threat analysis of the card during development and give NDS engineers the "pirate's view" of where the card may be vulnerable. DIRECTV stated that we believe there are many reputable engineering firms that can provide a significantly higher level of threat analysis because they are highly skilled engineers and have access to sophisticated equipment, which we should expect the pirates will very soon start to use.

NDS' misinformation strategy was explained as one in which the pirates are fed a certain amount of legitimate information mixed with some wrong information in an effort to get them to focus their time and money on pursuing the wrong lead.

Megan McNulty relayed to NDS that these two tactics (infiltration and misinformation) were not readily embraced by DIRECTV because they were very risky - both from a substantive business risk and a PR perspective, and we believed they were inconsistent with the deterrent strategy we were trying to create of a stern punishment if caught. NDS acknowledged that specific use of these tactics would have to be discussed and approved by DIRECTV and it was agreed that NDS would make recommendations about potential opportunities for these tactics but any implementation would be subject to DIRECTV's prior approval.

The last topics discussed were DIRECTV's ECM strategy and the wording for the facia of the P4 card to be introduced next year. With respect to the former, both parties agreed that our respective engineering groups needed to discuss and agree a strategy. There was some discussion about whether DIRECTV had the ability to launch ECMs without NDS, and after the meeting it was confirmed that DIRECTV does not have signature authority to launch ECMs. That all ECMs are launched by NDS. DIRECTV also noted that in any ECM strategy the effects on DIRECTV's business have to be considered. In particular, driving calls to the DIRECTV customer call centers and driving purchases of IRDs in order to get new cards, has to be managed because these byproducts cost DIRECTV millions of dollars.

Genie Gavanchak recommended that the parties adopt P4 card wording similar to that used by NDS and GLA - that is, that the card is jointly owned by both companies. She said that DIRECTV would be receiving comments back from NDS shortly on DIRECTV's proposed wording. Megan McNulty shared with NDS the license structure that DIRECTV was creating using the DIRECTV Customer Agreement, Activation Agreement, and the card, including distributing the card in a separate container with a shrink-wrap license. Identifying NDS as the owner of the card may not fit within that legal license relationship created between DIRECTV and its customers, however, DIRECTV was certainly not adverse to noting on the P4 that it contained NDS

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technology so that NDS' rights to pursue hackers for copyright infringement or to sue for damages would not be impeded.

After discussion of both companies' materials, NDS advocated that the next step to formulating an integrated anti-piracy plan is to have Larry Rissler and John Noffs meet and discuss targets and tactics and make a recommendation to both companies about who should pursue what. DIRECTV agreed to this as a first step, but shared with NDS that there is an anti-piracy "team" at DIRECTV that includes representatives from engineering, signal integrity, and legal, directed by senior management. Thus, the proposed meeting between John and Larry will include others at DIRECTV who are members of the team that determine DIRECTV's anti-piracy strategy and prioritize the tactics and allocation of resources to implement that strategy. It was agreed that DIRECTV would contact John and schedule that meeting as a first step.

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