

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

ECHOSTAR SATELLITE CORP., et	)	
al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. SACV 03-950 DOC
	)	Day 6, Volume I
NDS GROUP PLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Thursday, April 17, 2008

Debbie Gale, CSR 9472, RPR  
Federal Official Court Reporter  
United States District Court  
411 West 4th Street, Room 1-053  
Santa Ana, California 92701  
(714) 558-8141

EchoStar 2008-04-17 D6V1

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## I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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NORRIS, John				
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By Mr. Noll	6			
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RUBIN, Dov				
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By Mr. Welch	60			
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## EXHIBITS

EXHIBIT NO.	IDENTIFICATION	IN EVIDENCE
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41	E-mail	28
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51	Series of e-mails	12
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77	E-mail	33
----	--------	----

113	E-mail	23
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115	Consulting agreement	47
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650	List of revenues	84
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	received by NDS for	
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	DirectTV	
--	----------	--

771	E-mails	36
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1568	E-mail	12
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2010	NDS Form 10-K	64
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1 SANTA ANA, CALIFORNIA, THURSDAY, APRIL 17, 2008

2 Day 6, Volume I

3 (8:04 a.m.)

4 (Outside the presence of the jury.)

5 THE COURT: Okay. We're on record outside the  
6 presence of the jury.

7 Counsel for NDS, Mr. Snyder.

8 MR. SNYDER: Yes. Thank you, Your Honor. Two  
9 issues.

10 First, I'd like to renew our request that  
11 Mr. Rubin either be allowed to testify first thing this  
12 morning or that his testimony be deferred until next week.  
13 Dr. Rubin has been the company's corporate representative,  
14 and I alerted the Court before the trial started that he has  
15 plans to return to Israel for the holiday Passover, and to  
16 see grandchildren he has not yet had a chance to meet.

17 There is a 1:15 flight from LAX. It is the last  
18 flight to Israel.

19 THE COURT: He's going to Israel. That's granted.  
20 We can do that.

21 MR. SNYDER: Thank you, Your Honor.

22 Second, I need to put on the record our objection  
23 to the e-mails between Mr. Menard and Mr. Dawson. Now, as  
24 we indicated in our Motion in Limine No. 6 those documents  
25 have not been properly authenticated. They purport to be

1 e-mails between Mr Menard and Mr. Dawson. The only  
2 testimony regarding the authenticity of those e-mails from  
3 any of the participants is that they are forgeries. And we  
4 believe that they lack adequate foundation and that it is  
5 unduly prejudicial to play testimony regarding those e-mails  
6 and put them before the jury before any foundation has been  
7 laid.

8 THE COURT: Now, eventually, you're representing  
9 that the foundation will be laid by --

10 MR. HAGAN: Mr. Ereiser, Your Honor.

11 THE COURT: -- by Mr. Ereiser.

12 Second, a witness is allowed to even consider  
13 hearsay in their opinion. The difficulty becomes what the  
14 Court instructs concerning that: That it's not for the  
15 truth; that it goes towards the formation of the opinion of  
16 the expert and that person's testimony, et cetera.

17 I could take that approach and caution the jury  
18 that it is not to be taken for the truth of the matter, but  
19 with the representation that Mr. Ereiser's going to lay that  
20 foundation and validate those. Then, we would be coming  
21 back and undoing an instruction. So I think I'm simply  
22 going to take them subject to a motion to strike.

23 All right. Would you please get the jury.

24 (In the presence of the jury.)

25 THE COURT: Good morning.

1           Counsel, if you would please have a seat for just  
2 a moment. We're going to finish the testimony of the  
3 gentleman, Mr. Norris -- Mr. Norris should be on the witness  
4 stand. Thank you.

5           And after Mr. Norris, we're going to take a  
6 gentleman out of order who was scheduled for later today,  
7 Dr. Rubin. He's going to take the stand, and then we'll  
8 come back to cross-examination of Mr. Norris. Mr. Rubin's a  
9 relatively short witness, 20 minutes for each side.

10           Thank you very much. If you would please retake  
11 the stand, sir.

12           JOHN NORRIS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

13   RESUMED THE STAND

14           THE COURT: The gentleman introduced himself  
15 yesterday to the jury as Mr. John Norris, and we are  
16 continuing with the direct examination by Mr. Noll.

17   DIRECT EXAMINATION

18 BY MR. NOLL:

19 Q.    Good morning, Mr. Norris.

20 A.    Good morning.

21 Q.    I'm going to ask you to focus your attention on  
22 Exhibit 103. We were about to look at that last night  
23 before we broke. So I'll ask Steve to hand you Exhibit 103  
24 and ask you to take a look at it and let me know if you can  
25 identify it.

1 I think you've seen Exhibit 103 before, Mr. Norris?

2 A. I believe I may have.

3 Q. Okay. If you look at the bottom right-hand corner of  
4 Exhibit 103?

5 THE COURT: Just a moment. "I believe," "I may  
6 have" -- hear me out -- "could have been," "possibly,"  
7 "might have," "to the best of my recollection," no.

8 THE WITNESS: Okay.

9 THE COURT: You either did or you didn't or you  
10 don't know.

11 THE WITNESS: I don't know, sir.

12 THE COURT: That way we have an accurate record.

13 BY MR. NOLL:

14 Q. Your testimony is, you've never seen Exhibit 103?

15 MR. KLEIN: Objection, Your Honor. Misstates the  
16 testimony.

17 THE WITNESS: I don't know that I've seen it  
18 before.

19 BY MR. NOLL:

20 Q. Do you know whether Exhibit 103 is an NDS document or  
21 not?

22 A. I don't know.

23 Q. Okay. We'll move on, then.

24 Yesterday you testified that Mr. Tarnovsky had  
25 reverse-engineered certain EchoStar conditional access

1 devices. Do you recall that?

2 A. Okay. Yes.

3 Q. All right. And you don't know how many receivers or  
4 devices EchoStar -- Mr. Tarnovsky reverse-engineered that  
5 related to EchoStar in any way; is that correct?

6 A. I'm sorry. Could you ask it again, sir?

7 Q. Sure. We know that Mr. Tarnovsky reverse-engineered  
8 certain EchoStar devices, right?

9 A. Right.

10 Q. You just don't know how many EchoStar devices  
11 Mr. Tarnovsky reverse-engineered, correct?

12 A. That's correct.

13 Q. And in order to train Mr. Tarnovsky -- we talked a  
14 little bit about it yesterday -- you gave him an employee  
15 handbook and that's it, correct?

16 A. I gave him an employee handbook; that's correct.

17 Q. You can't recall if you placed any restrictions on  
18 Mr. Tarnovsky's assignments that he was performing in the  
19 hacker community, correct?

20 A. Yeah. I would have given him -- I did give him  
21 restrictions on his assignments in the hacker community.

22 Q. You recall giving a deposition in this case, sir?

23 A. Yes, I do.

24 Q. And you told the truth at the time of your deposition?

25 A. Yes, I did.



1 Q. And are you saying something different here today, sir?

2 A. No, I recall giving Mr. Tarnovsky instructions when he  
3 went on an assignment in the field.

4 MR. NOLL: Okay. May I ask Steve to hand  
5 Judge Carter Page 28 (sic), lines 8 through 13 for review.

6 MR. FERGUSON: (Complies.)

7 THE COURT: Thank you.

8 Lines, Counsel?

9 MR. NOLL: Page 28 -- page 128, Lines 8 through  
10 13.

11 THE COURT: This is not the correct document.

12 MR. FERGUSON: (Provides another document to the  
13 court and witness.)

14 THE COURT: Okay. Thank you.

15 You may read that.

16 MR. NOLL: Can we play the video, Your Honor?

17 THE COURT: You may.

18 MR. NOLL: Play clip 42, please -- no, 62.

19 (Videotape played as follows:)

20 "QUESTION: Did you place any restrictions on  
21 Mr. Tarnovsky's assignments that he was performing in the  
22 hacker community?

23 "ANSWER: I don't recall."

24 BY MR. NOLL:

25 Q. Mr. Norris, you were aware it was a possibility that

1 Mr. Tarnovsky would continue to pirate satellite systems,  
2 correct?

3 A. It's a possibility.

4 Q. You weren't concerned about that; right, sir?

5 A. I would say I wasn't worried about it. I think concern  
6 and worry -- I probably said I wasn't concerned.

7 Q. You make a distinction between concern or worry?

8 A. I think if I had a -- yes, I do.

9 Q. What is that distinction?

10 A. I think if there was some response or something that I  
11 didn't understand, I would be worried. I think concern is  
12 something that is not really based on his action, an action  
13 he might have taken. I would have been worried about an  
14 action he may have taken if I didn't understand or know  
15 about it in advance.

16 Q. Let's move to Exhibit 51, please.

17 Steve's going to hand you 51.

18 A. Sure.

19 Q. Can you identify 51?

20 A. It's a series of e-mails.

21 Q. Okay.

22 A. Can I look at it?

23 Q. Yeah. You know it's a series of e-mails that involve  
24 you; is that correct?

25 A. Can I look at it?

1 Q. Sure.

2 A. Okay.

3 Q. Okay. Before we talk specifically about Exhibit 51,  
4 you can't recall, sir, if anyone at NDS Israel asked you to  
5 retain EchoStar access cards; is that correct?

6 A. To retain? I don't recall.

7 Q. And you can't recall sending any EchoStar access cards  
8 or Smart Cards to Israel; is that correct?

9 A. That's correct.

10 Q. And you don't specifically recall asking Mr. Tarnovsky  
11 to retain any EchoStar Smart Cards; is that correct?

12 A. Not specifically, no.

13 Q. Okay. Going back to Exhibit 51, is my understanding  
14 correct that you can identify that document as a series of  
15 e-mails that you were involved with?

16 A. Yes, I was.

17 Q. You don't have any reason to believe that document,  
18 Exhibit 51, is somehow incorrect?

19 A. I have no reason to believe that.

20 MR. NOLL: Okay. Plaintiffs offer Exhibit -- I  
21 tell you, let's go back to -- hand him another exhibit,  
22 Steve. Exhibit 1568. My apologies.

23 MR. FERGUSON: (Complies.)

24 THE WITNESS: Thank you.

25

1 BY MR. NOLL:

2 Q. Can you identify Exhibit 1568, Mr. Norris?

3 A. Yes.

4 Q. What is 1568?

5 A. It's a summary or it's an e-mail or an attachment to an  
6 e-mail that I had on my computer, an encrypted document or  
7 e-mail.

8 Q. Okay.

9 MR. NOLL: Plaintiffs offer Exhibit 1568,  
10 Your Honor.

11 THE COURT: Any objection?

12 MR. KLEIN: No, objection.

13 THE COURT: 1568 is received.

14 (Exhibit No. 1568 received in evidence.)

15 What about 51?

16 MR. NOLL: Let's focus --

17 THE COURT: What about 51?

18 MR. NOLL: We'll offer 51 if there's no objection.

19 MR. KLEIN: No objection.

20 THE COURT: Received.

21 (Exhibit No. 51 received in evidence.)

22 BY MR. NOLL:

23 Q. Focusing on Exhibit 1568, let's look at the top part,  
24 the top first paragraph.

25 There's reference to -- it says, "The hard copy I

1 received from Mr. Strong was missing." Do you see that,  
2 sir?

3 A. I do.

4 Q. Who is Mr. Strong?

5 A. I have no idea.

6 Q. You don't know who Mr. Strong is?

7 A. No, I don't.

8 Q. Is this an e-mail between yourself and  
9 Mr. Chaim Shen-Orr, the head of engineering at NDS Israel?

10 A. I don't know.

11 Q. You found this document -- this document was stored on  
12 your computer, but you don't know what it is, sir?

13 A. Correct.

14 Q. Who at NDS would know who Mr. Strong is?

15 A. Whoever wrote this e-mail.

16 Q. Let's be clear, sir. This document was found on your  
17 computer, correct?

18 A. Correct.

19 Q. And you don't know who Mr. Strong is?

20 A. I don't know Mr. Strong.

21 Q. Who at NDS would know --

22 THE COURT: That wasn't the question. The  
23 question is, if you know who he is.

24 THE WITNESS: No, I don't, sir.

25 THE COURT: Thank you.

1 THE WITNESS: No, I don't.

2 BY MR. NOLL:

3 Q. Do you have any idea of anyone at NDS who would know  
4 who Mr. Strong is?

5 A. No, I don't.

6 Q. Okay. Let's focus down a little bit further.

7 It says, "Your request is, Chaim, the field told our  
8 contact of their requirement for a second image of the  
9 code."

10 Do you see that?

11 A. Yes.

12 Q. Now, who's "the field"?

13 A. I don't know who they're talking about. I don't know  
14 who the field is. I don't know who wrote that.

15 Q. Who at NDS would know who "the field" is, Mr. Norris?

16 A. Whoever wrote this e-mail. And I don't know who wrote  
17 this e-mail.

18 Q. You have no idea who the field is, sir?

19 I mean, I'm trying to get understanding of what your  
20 testimony is here today. And that's my understanding:  
21 You're head of security for NDS in the United States. This  
22 e-mail was found on your computer. You don't know who  
23 Mr. Strong is, and you don't know who "the field" is. Is  
24 that a correct understanding?

25 MR. KLEIN: Your Honor, I object. It's argument,

1 and he's asking for speculation.

2 THE COURT: Overruled. You may answer the  
3 question, sir.

4 THE WITNESS: I don't know who Mr. Strong is, and  
5 I don't know who wrote this e-mail.

6 BY MR. NOLL:

7 Q. Okay. Let's keep going through it.

8 "Number 1, I need another image of a second CAM." Do  
9 you see that, sir?

10 A. Yes.

11 Q. What is a CAM?

12 A. That's a DirecTV NDS conditional access module.

13 Q. "Number 2, I need to know what IRD number goes with  
14 each of the images. Remember, I cut off the info from the  
15 cartoon -- the cartons and sent to you with the cards."

16 Do you know what that means?

17 A. The person is asking what integrated receiver  
18 descrambler number goes with, I believe, images of a CAM or  
19 DirecTV card.

20 Q. Now, let's focus on the next paragraph, which is  
21 important.

22 It says, "they need to be absolutely certain there is  
23 not the hidden possibility of identifying the ID of the  
24 EchoStar card that the code comes from. Some kind of a  
25 fingerprint or receiver's serial number, if a card has been

1 paired, in the code that is developed. They can do this if  
2 they have code from a second card."

3 Do you see that, sir?

4 A. I do.

5 Q. Do you know what that's referring to?

6 A. It's technical information about the identity of an  
7 EchoStar card and where that EchoStar card code comes from.

8 Q. Isn't this language talking about masking the identity  
9 of information from the inside of an EchoStar card that  
10 would allow that card to be identified to someone?

11 A. I don't know.

12 Q. Okay. Let's flip to the third page of Exhibit 1658,  
13 Mr. Norris.

14 Do you see at the top it says, "Norris\_..properties"?

15 A. Yes.

16 Q. And this is why you believe this document was found on  
17 your computer, 'cause this is the metadata that shows that  
18 it was on your computer, correct?

19 A. Correct.

20 THE COURT: Just a moment, Counsel.

21 Would you put that up, please, on the screen.

22 Would you show us what you're referring to.

23 (Document displayed.)

24 MR. NOLL: It's the third page of Exhibit 1568.

25 There it is. He's got it now.



1 THE COURT: It's the fourth page, isn't it?

2 MR. NOLL: Well, my copy it's the third page.

3 THE COURT: Thank you.

4 BY MR. NOLL:

5 Q. Okay. If we focus down, Mr. Norris, it says: "Created  
6 date Sunday, August 23rd, 1998." Do you see that, sir?

7 A. Yes, I do.

8 Q. You have no reason to dispute that that was when this  
9 Exhibit 1568 was created, correct?

10 A. Correct.

11 Q. You are aware of EchoStar's claims in this case that  
12 NDS hacked and posted EchoStar's codes on the Internet,  
13 correct?

14 A. Correct.

15 Q. Have you ever seen a document called the Headend  
16 Project Report, sir?

17 A. I don't recall.

18 Q. Do you have any knowledge as to whether or not NDS  
19 reverse-engineered or hacked Echostar's --

20 THE COURT: Just a moment. Just a moment.

21 I want you to think very carefully about the  
22 answers for a moment.

23 I've reminded other witnesses consistently, so I'm  
24 not bearing down on you: Words such as "to the best of my  
25 recollection," "could have been," "might have been,"

1 et cetera -- make absolutely certain as you think through  
2 that that you can't recall.

3 If that's your answer, so be it.

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay.

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you very much.

8 Counsel, your next question or the same question.

9 MR. NOLL: Thank you, Your Honor.

10 BY MR. NOLL:

11 Q. Have you ever seen the Headend Project Report done by  
12 NDS, sir?

13 A. I don't recall.

14 Q. Do you have any knowledge as to whether or not NDS  
15 reversed-engineered EchoStar's security system in 1998?

16 A. Yes.

17 Q. And what is that knowledge, sir?

18 A. It's my understanding that it was reverse-engineered.

19 Q. And that -- do you have any knowledge that that  
20 reverse-engineering started in or about the middle-1998 time  
21 frame?

22 A. I don't have that knowledge.

23 Q. Do you know when that reverse engineering project was  
24 concluded by NDS?

25 A. No, I don't.

1 Q. Focusing back on what my copy shows as the second page  
2 of Exhibit 1568, at the top --

3 A. Okay.

4 Q. -- do you see, sir, it says: "Chip ID"? It says,  
5 "ver.2chip Chip ID." Do you see that line at the top?

6 A. Yes, yes, I do.

7 Q. And at the end of that line it says: "ID R0017942225."  
8 Do you see that, sir?

9 A. Yes, I do.

10 Q. Do you know what that ID R0017942225 is?

11 A. No, I don't know.

12 Q. Do you have any understanding as to whether or not  
13 that's the way that EchoStar puts serial numbers on its  
14 Smart Card's receivers?

15 A. No, I don't.

16 Q. Do you know whether or not this R00 number relates to a  
17 particular EchoStar Smart Card or satellite receiver?

18 A. No, I don't.

19 Q. Do you have any knowledge to whether or not this  
20 R00 number relates to Mr. Tarnovsky's satellite Smart Card  
21 or receiver that he had subscribed to from the DISH Network?

22 A. No, I don't.

23 Q. Did you get Mr. Tarnovsky's Smart Card from him and  
24 send it to NDS Israel to be reverse-engineered for the  
25 Headend Project, sir?

1 A. No, sir.

2 Q. Okay. Just so I'm clear, Mr. Norris. You don't  
3 understand who "the field" is, Mr. Strong is, or our contact  
4 as it is referred to in Exhibit 1568?

5 MR. KLEIN: Objection, Your Honor. It's argument.

6 THE COURT: Overruled.

7 THE WITNESS: I don't.

8 BY MR. NOLL:

9 Q. And you don't know who at NDS would know that  
10 information?

11 A. No, I don't.

12 MR. NOLL: Now, lets put up Exhibit 51, please.  
13 We've already offered that, and it's been admitted into  
14 evidence.

15 (Document displayed.)

16 BY MR. NOLL:

17 Q. Exhibit 51 -- I'm going to focus your attention,  
18 Mr. Norris, on the center of Exhibit 51. It's a series of  
19 e-mails. Do you agree with that, sir?

20 A. Yes.

21 Q. Okay. And in the center, it's from John Norris, sent  
22 Monday, November 13th, 2000. Do you see that, sir?

23 A. Yes, I do.

24 Q. And it's sent to Andy Schwartz, Yoni Shiloh,  
25 Dani Ratner, and there are some other names there. Do you

1 see that?

2 A. Yes.

3 Q. Now, the people you sent this e-mail to are NDS  
4 employees; is that correct?

5 A. Yes, they are.

6 Q. And I'm going to read for you from the body of that  
7 e-mail.

8 It says, "Perhaps a little off topic, but when I was at  
9 Mike's yesterday, he took an EchoStar hack file from the  
10 Internet, put it in a P1, put the P1 into an EchoStar  
11 receiver, and got all the programming."

12 It says, "The same thing can be done with the P2.  
13 We're seeing a lot of requests for P1s on the Internet now.  
14 JN."

15 Do you see that, sir?

16 A. Yes, I do.

17 Q. Now, when you say "Mike," "Mike" is Christopher  
18 Tarnovsky, correct?

19 A. Yes.

20 Q. Mike George was Mr. Tarnovsky's nickname at NDS,  
21 correct?

22 A. That's correct.

23 Q. And when you say you were at Mike's, you're saying you  
24 were at Mike's California residence or his home office,  
25 correct?

1 A. Correct.

2 Q. And what Mr. Tarnovsky did was, he took an EchoStar  
3 hack off the Internet and demonstrated for you that it  
4 worked, right?

5 A. Correct.

6 Q. And Mr. Tarnovsky was able to receive all of EchoStar's  
7 programming for free, correct?

8 A. Correct.

9 Q. Let's go to Exhibit 113, please.

10 Do you see Exhibit 113, sir?

11 A. I do.

12 Q. Now, you're aware that EchoStar claims in this lawsuit  
13 that Mr. Tarnovsky posted EchoStar's codes on the Internet  
14 on December 21st, 2000, correct?

15 A. Correct.

16 Q. And you've seen Exhibit 113 before, right?

17 A. Yes, I have.

18 Q. It's an internal e-mail between yourself and  
19 Mr. Tarnovsky, correct?

20 A. Correct.

21 Q. And it's dated December 22nd, 2000, correct?

22 A. Correct.

23 Q. One day after EchoStar claims that Mr. Tarnovsky posted  
24 its instructions and codes on the Internet, correct?

25 A. Correct.

1 MR. NOLL: Your Honor, I offer Exhibit 113.

2 THE COURT: Any objection?

3 MR. KLEIN: No, objection.

4 THE COURT: Received.

5 (Exhibit No. 113 received in evidence.)

6 BY MR. NOLL:

7 Q. Let's focus on the signature line for a second,  
8 Mr. Norris.

9 The e-mail was sent to you from Mike George on  
10 December 22nd, 2000. Subject of the e-mail: "Cat's out of  
11 the bag." Do you see that, sir?

12 A. I do.

13 Q. Then he says, "There is a public file on the Internet I  
14 saw via [www.interestingdevices.com](http://www.interestingdevices.com), as well as dr7, and it's  
15 the syntax to dump any ROM 3 NagraVision card. Mike."

16 Do you see that, sir?

17 A. I do.

18 Q. One day after EchoStar claims Mr. Tarnovsky posted  
19 codes on the Internet, you receive this e-mail, correct?

20 A. Correct.

21 Q. Do you know what Mr. Tarnovsky meant when he said,  
22 "Cat's out of the bag"?

23 A. He said that the EchoStar card is hacked. It's public.  
24 The cat's out of the bag. It's visible. Somebody has  
25 posted it on these two sites.

1 Q. Did you go to the sites yourself to look at the  
2 information that was posted?

3 A. Probably not -- uh, no, I didn't.

4 Q. Did you have any discussions with Mr. Tarnovsky about  
5 this e-mail, "cat's out of the bag"?

6 A. No.

7 Q. Did Mr. Tarnovsky's job duties and responsibilities in  
8 any way relate to EchoStar's security system?

9 A. In some ways, yes, it did.

10 Q. How is that?

11 A. Such as the earlier e-mail where there was code posted  
12 on the Internet, and part of his job was monitoring the  
13 Internet, and people were citing in the Internet that you  
14 could take EchoStar code that was pirated code and put it in  
15 an NDS or DirecTV conditional access card, and then that  
16 card being placed in an EchoStar receiver would then allow  
17 the EchoStar services to come in the clear, things like  
18 that. He would monitor that. He would report it, he would  
19 test it, and we would report it back to our labs -- or to  
20 our staff.

21 Q. Did your job duties and responsibilities as head  
22 security officer for NDS Americas relate in any way to  
23 EchoStar's conditional access system?

24 A. We monitored all piracy, so I would say, yes.

25 Q. You monitored all piracy. You had your finger on the



1 pulse of the pirate industry; is that correct?

2 A. We tried.

3 Q. You've prosecuted a lot of pirates in your time at NDS;  
4 correct, sir?

5 A. Correct.

6 Q. You've had some thrown in jail, correct?

7 A. These are people convicted and went to jail.

8 Q. You've had pirate websites taken down, correct?

9 A. Correct.

10 Q. Okay. And the e-mail references "www.dr7.com." You  
11 agree with me, sir, that's a pirate website?

12 A. Correct.

13 Q. And you saw the EchoStar code there, correct? You just  
14 don't recall when?

15 A. I don't recall seeing the EchoStar code. I wouldn't  
16 recognize EchoStar code. I'm not really technical.

17 Q. And as it relates to Mr. Tarnovsky, you understand,  
18 Mr. Norris, that at least one point Mr. Tarnovsky was asked  
19 by NDS to set up an account on a pirate website, correct?

20 A. I believe so, yes. Yes, I did.

21 Q. Mr. Norris, you understand through your investigations  
22 in the piracy world that individuals who post on these  
23 websites most oftentimes use aliases or nicknames, correct?

24 A. Correct.

25 Q. And you understood that Mr. Tarnovsky used certain

1 aliases and nicknames when he posted information to piracy  
2 websites, correct?

3 A. Correct.

4 Q. You were Christopher Tarnovsky's supervisor from the  
5 operational security standpoint throughout the course of the  
6 time Mr. Tarnovsky worked for NDS, correct?

7 A. Correct.

8 Q. You never asked Mr. Tarnovsky to provide you a list of  
9 the Internet aliases that he used, correct?

10 A. Correct.

11 Q. In fact, you don't recall Mr. Tarnovsky ever providing  
12 such a list to NDS, correct?

13 A. Correct.

14 Q. You don't recall having any concerns that Mr. Tarnovsky  
15 may post information on piracy-related websites while he was  
16 an employee of NDS, correct?

17 A. I'm not sure I understand that question. Could you  
18 repeat that?

19 Q. You were Mr. Tarnovsky's supervisor, right, sir?

20 A. Yes.

21 Q. And you didn't have any concerns with Mr. Tarnovsky  
22 posting information on piracy-related websites, correct?

23 A. I would say that's correct.

24 Q. You never asked Mr. Tarnovsky to provide you with copy  
25 of the registration pages or the profiles that he used to

1 set up Internet aliases, correct?

2 A. Correct.

3 Q. And Mr. Tarnovsky was issued computers from NDS that he  
4 used at his house in California, correct?

5 A. Correct.

6 Q. And you personally never took any steps to monitor  
7 Mr -- or supervise Mr. Tarnovsky's use of any NDS computers  
8 outside of NDS's facilities, correct?

9 A. Mr. Tarnovsky was supervised on the Internet by our  
10 Internet Group out of Jerusalem. I did not take personal  
11 steps to monitor posting.

12 Q. Let's turn to Exhibit 41, please.

13 A. Okay.

14 Q. Can you identify Exhibit 41, Mr. Norris?

15 A. Yes.

16 Q. Is this a document that's an e-mail that involves  
17 exchanges with you?

18 A. Yes.

19 Q. You have no reason to believe that this is somehow an  
20 incorrect e-mail?

21 A. No reason to believe that.

22 MR. NOLL: Offer Exhibit 41, Your Honor.

23 THE COURT: Any objection?

24 MR. KLEIN: No, objection.

25 THE COURT: Received.

1 (Exhibit No. 41 received in evidence.)

2 BY MR. NOLL:

3 Q. Focus your attention to the second page. It's a series  
4 of e-mails, a thread. We'll start with the first one. It's  
5 the original thread.

6 It's from Beth Erez, sent February 6th, 2001, to John  
7 Norris and others and cc Reuven Hasak. Do you see that?

8 A. Yes.

9 Q. It says, "Hi, John and Avigail. We are working with  
10 others to produce a document for a Korean DTH system. They  
11 were really excited about the DirecTV Black Sunday event.  
12 We would like to take advantage of it by pointing out how  
13 EchoStar is so terribly hacked. It would help us to know  
14 whether EchoStar was also carrying the Super Bowl and, if  
15 yes, if we could guess at how many illegal viewers of  
16 EchoStar were able to view the event. Any ideas?"

17 Do you see that, sir?

18 A. Yes.

19 Q. Who was Beth Erez?

20 A. She was a PhD and ran the marketing department for  
21 Israel.

22 Q. What is Black Sunday, Mr. Norris?

23 A. That was an electronic countermeasure that NDS  
24 developed for DirecTV, our customer, to turn off or disable  
25 pirated DirecTV cards, and it was a successful

1 countermeasure.

2 THE COURT: Just a moment, Counsel.

3 I'm familiar with the document. Could you show me  
4 where that's located on this document?

5 MR. FERGUSON: What?

6 THE COURT: Show me, please, where that is located  
7 on this document you handed me.

8 No. The original document you handed me. Stay  
9 with that document, please.

10 MR. FERGUSON: (Complies.)

11 THE COURT: Okay. Thank you.

12 Now, is the difficulty that I've got three pages  
13 and you have two? Do you have a hard copy that you're  
14 referring to?

15 MR. NOLL: Yes, Your Honor.

16 THE COURT: Turn to the page from now on. Because  
17 what's happening to me is we have a hard copy out there that  
18 has a front and back. You've been kind enough to xerox  
19 three pages. That's the confusion.

20 MR. NOLL: Well, you --

21 THE COURT: I keep looking at Page 3, and you're  
22 on Page 4, so you've got the hard copy. I have a xerox  
23 copy.

24 All right. Thank you very much.

25 Now, please continue.

1 MR. NOLL: Okay.

2 BY MR. NOLL:

3 Q. So, Mr. Norris, you say that Black Sunday was a major  
4 electronic countermeasure sent by NDS and DirectTV to kill  
5 pirate devices of DirectTV, correct?

6 A. That's correct.

7 Q. And this countermeasure was effective in -- it was  
8 implemented in January 2001, correct?

9 A. Yes, it was.

10 Q. And it was implemented right before the Super Bowl. Do  
11 you recall that?

12 A. Correct.

13 Q. Part of the goal was so that the pirates of DirectTV  
14 would have their TV turned off before the Super Bowl,  
15 correct?

16 A. Correct.

17 Q. Was it January 21st, 2001? Can you recall?

18 A. I don't recall.

19 Q. Okay. Now, focusing back to the front page of  
20 Exhibit 41 -- and I'm going to focus on the e-mail thread  
21 that's from Michael George sent Wednesday, February 7, 2001.  
22 Do you see that, sir?

23 A. Yes.

24 Q. To John Norris, cc Avigail Gutman. Subject is  
25 "EchoStar." Do you see that?

1 A. Yes.

2 Q. You know Mike George is Christopher Tarnovsky, correct?

3 A. Yes.

4 Q. Mr. Tarnovsky says, "I'm guessing there are at least  
5 100,000 original cards professional E3M'd or EchoStar 3M.  
6 Now, the ROM for 2 and 3 ROMs presently in use by the USA  
7 are public and have more disassembly done to them than the  
8 P2 ROM."

9 So the P2 ROM, the DirecTV ROM?

10 A. It appears he's talking about the EchoStar ROM.

11 Q. But P2 -- is P2 DirecTV?

12 A. P2 is DirecTV.

13 Q. Period 2 card for DirecTV, correct?

14 A. Yes.

15 Q. He says, "There's more disassembly done to them than  
16 the P2 ROM, the ROM where their hole is located, of which  
17 they can never shut down. They can only swap out."

18 Do you see that, sir?

19 A. I do.

20 Q. Now, Mr. Tarnovsky, to your knowledge, is saying that  
21 EchoStar can only swap out its ROM 3 cards?

22 A. That's what he was saying, yes.

23 Q. Okay. If we go to the next sentence: "EchoStar is  
24 hackable via PIT card. There's a hack for EchoStar on all  
25 older hardware/plastic original cards that have been around

1 for DTV," and he gives some examples. Do you see that?

2 A. Yes, he does.

3 Q. Then after the examples, he says, "NagraVision is  
4 hacked worldwide because they use the same card around the  
5 world. NDS -- NDS is hacked in North America."

6 Do you see that?

7 A. I do.

8 Q. Then skipping to the next paragraph, he says, "I would  
9 guess there must be well over another 100,000 users using  
10 \$5 AVR cards or older battery cards for either ExpressVu or  
11 EchoStar."

12

13 Do you see that?

14 A. Yes.

15 Q. Mr. Tarnovsky sent you this e-mail approximately a  
16 month and a half, maybe a little less, then, after  
17 EchoStar's codes were posted on the Internet in  
18 December 2000, correct?

19 A. Correct.

20 MR. NOLL: I'm going ask Steve to pass you  
21 Exhibit 77, please.

22 THE COURT: The difficulty is the court reporter  
23 just approached the Court. She believes the small words are  
24 being left out from what she's reading on the screen and  
25 your reading of the same document. So she's going to take



1 your words.

2 MR. NOLL: Okay.

3 THE COURT: Okay, Counsel.

4 BY MR. NOLL:

5 Q. Do you have Exhibit 77, Mr. Norris?

6 A. Yes, I do.

7 Q. And you've heard of a gentleman named Dean Love; is  
8 that correct?

9 A. Correct.

10 Q. You understand that Dean Love used a nickname,  
11 "Northsat"?

12 A. Yes.

13 Q. Have you seen Exhibit 77 before, sir?

14 A. Yes.

15 Q. And is Exhibit 77 an e-mail exchange between you and  
16 Dean Love?

17 A. Yes.

18 MR. NOLL: Your Honor, plaintiff's offer  
19 Exhibit 77.

20 THE COURT: Any objection?

21 MR. KLEIN: No, objection.

22 THE COURT: Received.

23 (Exhibit No. 77 received in evidence.)

24 BY MR. NOLL:

25 Q. Focus down on -- let's look at the top. From Northsat.

1 You see that?

2 A. Yep.

3 Q. December 7th, 2000, is the date?

4 A. Yes.

5 Q. And the subject is, "Could you find out?" question  
6 mark. Do you see that?

7 A. Yes.

8 Q. Mr. Love said -- says, "that was someone you guys  
9 should have some interest in if he's not already on the  
10 roll: Von. But BTW, John, when we were talking here  
11 earlier and we were talking about J from EDM area, I was  
12 confusing him with this guy. This Von is they [sic] guy who  
13 also popped the Nagra and did all the Swiss cheese crap that  
14 was released through dr7."

15 Do you see that, sir?

16 A. I do.

17 Q. And Dean Love told you this as of December 7th, 2000,  
18 correct?

19 A. Correct.

20 Q. And when you got this e-mail, you didn't do anything to  
21 investigate Mr. Tarnovsky?

22 A. Correct.

23 Q. In fact, Dean Love, he's a former -- or he's a  
24 satellite pirate, right?

25 A. Correct.

1 Q. And NDS was interested in recruiting Mr. Love; is that  
2 correct?

3 A. There was an interest.

4 Q. That's partly why you're having this e-mail exchange  
5 with him, 'cause you were in the process of recruiting him,  
6 correct?

7 A. Correct.

8 Q. Dean Love ultimately refused to go to work for NDS,  
9 right?

10 A. Correct.

11 Q. You don't recall ever authorizing Mr. Tarnovsky to send  
12 access cards to Al Menard; is that right, sir?

13 A. Correct.

14 Q. I mean, if you did, you just can't remember doing it.  
15 Is that a fair statement of what your testimony would be  
16 here?

17 A. That's correct.

18 Q. Let's look at Exhibit 771, please.

19 Could you identify Exhibit 771, Mr. Norris?

20 A. Yes. E-mails between myself, Yoni Shiloh, and  
21 Michael George/Chris Tarnovsky.

22 MR. NOLL: Your Honor, offer Exhibit 771.

23 THE COURT: Any objection?

24 MR. KLEIN: No, Your Honor.

25 THE COURT: Received.

1 (Exhibit No. 771 received in evidence.)

2 BY MR. NOLL:

3 Q. Let's focus on the first thread on the first page:  
4 From John Norris, Saturday, August 22nd, 1998, to Michael  
5 George, who we know is Chris Tarnovsky, correct?

6 A. Yep.

7 Q. And the subject is "Dr7's ECM-CAM," correct?

8 A. Correct.

9 Q. And you say, "why would dr7 name the CAM you gave him  
10 the same tech as the one you gave Ron?" Did I read that  
11 correctly?

12 A. Yes, you did.

13 Q. Now, CAM is a conditional access module, correct?

14 A. Correct.

15 Q. In other words, a Smart Card, correct?

16 A. Correct.

17 Q. And these are your words?

18 A. Correct.

19 Q. And you did in fact give permission to Chris Tarnovsky  
20 to give Al Menard a Smart Card in 1998; is that correct?

21 A. I don't think that's correct. No, that's not correct.

22 Q. Okay. How would you explain that, sir?

23 A. I think -- I think what I'm reading here is Tarnovsky  
24 gave a version of code to -- a DirecTV version of code that  
25 NDS developed to Al Menard and to Ron Ereiser, apparently,

1 and that they put that in their Smart Card. And when the  
2 Smart Cards went down, Mr. Menard's Smart Card did not go  
3 down, and there was confusion why it did not go down.

4 Q. NDS was working with Al Menard as early as 1998,  
5 correct?

6 A. No.

7 Q. Okay. Focus up on the top thread from Mr. Tarnovsky  
8 back to you, August 23rd, 1998. I'm going to focus you on  
9 the last sentence of what appears to be the second  
10 paragraph, and I'll read for you; see if you can get there:

11 "Remember, he's my eyes and my voice when I'm not  
12 there. The IRC" --

13 THE COURT: Just a moment. Where are you at,  
14 Counsel?

15 MR. NOLL: The last sentence of the second  
16 paragraph.

17 THE COURT: Just a moment. Underline that in  
18 yellow.

19 MR. NOLL: Starts with "Remember."

20 (Technician complies.)

21 BY MR. NOLL:

22 Q. Okay. We got it. "Remember he's my eyes and my voice  
23 when I'm not there, the IRC net. He does not need my card  
24 to watch the TV."

25 Mr. Tarnovsky is talking about Mr. Menard being his

1 eyes and his voice when Mr. Tarnovsky's not on the Internet,  
2 correct?

3 A. Correct.

4 Q. So you knew that Mr. Tarnovsky was working with  
5 Mr. Menard as early as 1998, correct?

6 A. It was a counter -- counter-piracy operation against  
7 Mr. Menard. He wasn't working with him. He was working an  
8 investigation against him.

9 Q. Earlier we talked about how you pride yourself in  
10 fighting piracy, correct? Let me ask you: Do you pride  
11 yourself in fighting piracy, sir?

12 A. Yes, I do.

13 Q. And you've prosecuted hundreds of pirates, correct?

14 A. Yes.

15 Q. You've shut down a lot of websites that were involved  
16 with piracy, correct?

17 A. Correct.

18 Q. But you have never prosecuted Al Menard; is that  
19 correct, sir?

20 A. Correct.

21 Q. You didn't sue Al Menard, correct?

22 A. That's correct.

23 Q. You didn't work with government officials to raid  
24 Al Menard, correct?

25 A. Correct.

1 Q. And you knew Al Menard's piracy website contained  
2 pirating of DirectTV as well, correct?

3 A. Correct.

4 Q. Early 2001, Mr. Norris, you became aware of a  
5 government investigation into Christopher Tarnovsky,  
6 correct, sir?

7 A. Correct.

8 Q. You understood U.S. Customs agents desired to image  
9 Mr. Tarnovsky's computer, correct?

10 A. Correct.

11 Q. You're aware that EchoStar was not allowed to image  
12 Mr. Tarnovsky's computers in this case?

13 A. I'm not aware of that.

14 Q. You recall the U.S. Attorney officials who were  
15 investigating Mr. Tarnovsky, correct?

16 A. Correct.

17 Q. One was a man by -- Attorney Chang, correct?

18 A. Correct.

19 Q. Another was an attorney named Spertus, correct?

20 A. Correct.

21 Q. And you personally met with Mr. Chang, correct?

22 A. Correct.

23 Q. You recall the meeting you had with Mr. Chang related  
24 to the government's investigation of Mr. Tarnovsky because  
25 it had intercepted packages stuffed with cash concealed in

1 electronic devices in San Marcos, Texas, correct?

2 A. Correct.

3 Q. There are two shipments: One was \$20,100. The other  
4 shipment was \$20,000.

5 Do you recall that, sir?

6 A. Yes.

7 Q. There were multiple events relating to Mr. Tarnovsky as  
8 you recall, correct?

9 A. There were those two events.

10 Q. And also present at this meeting with the  
11 U. S. Attorney was Mr. Hasak, Mr. Reuven Hasak, correct?

12 A. Correct.

13 Q. And Mr. Hasak, as we know, is the chief of global  
14 security for NDS, correct?

15 A. Correct.

16 Q. And also present at that meeting was Mr. Rick Stone,  
17 NDS's counsel sitting right there, correct?

18 A. That's correct.

19 Q. Mr. Tarnovsky wasn't present, was he?

20 A. No.

21 Q. In fact, you recall that Mr. Stone set that meeting up  
22 with the U. S. Attorney's office, correct?

23 A. That's correct.

24 Q. And you don't recall whether you disclosed to Mr. Chang  
25 at that time the other cash that Mr. Tarnovsky received in



1 Manassas, Virginia we talked about yesterday, correct?

2 A. The other cash that Mr. Tarnovsky received in  
3 Manassas, Virginia?

4 Q. Yeah. I'll refresh your recollection. Yesterday you  
5 testified that Mr. Tarnovsky received \$20,000 cash stuffed  
6 in an electronic device that was sent to his  
7 Manassas, Virginia mailbox. Do you remember that virtual?

8 A. I do recall that now, yeah.

9 Q. And at the time you met with the U. S. Attorneys'  
10 office, you did not disclose that cash to the  
11 U. S. Attorneys, correct?

12 A. That was not discussed.

13 Q. And according to you at this time you met with the  
14 U. S. Attorneys in 2001, this is when you first learned that  
15 the cash was being sent to Mr. Tarnovsky's Texas mailbox,  
16 correct?

17 A. Correct.

18 Q. And after you found this out, you interviewed  
19 Mr. Tarnovsky. Right, sir?

20 A. Correct.

21 Q. And you understood from Mr. Tarnovsky that he didn't  
22 know who this cash was from, correct?

23 A. Correct.

24 Q. You were concerned that Mr. Tarnovsky was receiving  
25 cash at a Texas mailbox, correct?

1 A. Correct.

2 Q. Bothered you, didn't it?

3 A. Yes.

4 Q. Bothered you that he received \$40,100 cash at his Texas  
5 mailbox during the 2000 time frame, correct?

6 A. Correct.

7 Q. But you never asked Mr. Tarnovsky to swear under oath  
8 that he did not have any involvement in the receipt of that  
9 cash, correct?

10 A. No -- I mean, correct.

11 Q. Tarnovsky denied it, correct?

12 A. Correct.

13 Q. You didn't fire Mr. Tarnovsky at that time, correct?

14 A. Correct.

15 Q. You didn't reprimand Mr. Tarnovsky, correct?

16 A. Correct.

17 Q. Took his word that he wasn't involved, correct?

18 A. We investigated the incident, correct.

19 Q. Wait a minute. You said you interviewed Mr. Tarnovsky?

20 A. Yeah.

21 Q. Right?

22 A. Yes, we did. Yes, I did.

23 Q. Okay. Shift gears for a moment.

24 You're aware that Oliver Kommerling was part of the NDS  
25 Haifa team in Israel; right, sir?

1 A. Yes, he was.

2 Q. And you understand that Mr. Kommerling claimed that  
3 Mr. Tarnovsky posted Canal+'s codes on the Internet;  
4 correct, sir?

5 A. Correct.

6 Q. And Mr. Tarnovsky reported directly to you throughout  
7 his tenure at NDS, correct?

8 A. Correct.

9 Q. And that tenure spanned approximately 10 years, right?

10 A. Correct.

11 Q. From 1997 till 2007, when Mr. Tarnovsky was fired,  
12 correct?

13 A. Correct.

14 Q. And in order to investigate the allegations that  
15 Tarnovsky was behind the Canal+ attack and posting of the  
16 codes, you questioned him, right?

17 A. Correct.

18 Q. And again, you understood Mr. Tarnovsky denied the  
19 allegations, correct?

20 A. Correct.

21 Q. You didn't reprimand Mr. Tarnovsky at that time?

22 A. That's correct.

23 Q. You didn't fire him?

24 A. That's correct.

25 Q. Wasn't put on probation?

1 A. No.

2 Q. Took his word for it?

3 A. That's correct.

4 Q. Now, focusing on the EchoStar case, you've read the  
5 EchoStar complaint, correct, sir?

6 A. I have.

7 Q. Once you read it, it's your testimony that you  
8 discussed it at great length with Mr. Tarnovsky, correct?

9 A. That's correct.

10 Q. And you understood there was just denial by  
11 Mr. Tarnovsky, correct?

12 A. Correct.

13 Q. Best sense of what Mr. Tarnovsky said to you was,  
14 "That's bullshit," correct?

15 A. That's correct.

16 Q. Mr. Tarnovsky gave no reasoning as to why he denied the  
17 allegations, correct?

18 A. He denied it. I don't recall any reasons, him giving  
19 any reasons.

20 Q. Right. He didn't explain, right? He just said, "I  
21 didn't do it. It's not me." Right?

22 A. Essentially that's correct.

23 Q. Let's talk about Al Menard for a minute.

24 You recall before 1998, Nagra's conditional access  
25 system used by EchoStar was not hacked in the United States,

1 correct?

2 A. Correct.

3 Q. You learned that Nagra was first hacked in the late  
4 1990s or early 2000, correct?

5 A. Correct.

6 Q. You understood the code was posted on dr7's website,  
7 correct?

8 A. That's correct.

9 Q. That is Al Menard's website, right?

10 A. That's correct.

11 Q. And you were aware that Al Menard had a relationship  
12 with Christopher Tarnovsky, correct?

13 A. Yes, that's correct.

14 Q. And you first became aware of this relationship in the  
15 late 1990's or early 2000, correct?

16 A. Correct.

17 Q. And you understood that Mr. Menard and Tarnovsky had a  
18 meeting in Canada in 2000, correct?

19 A. Correct.

20 Q. In fact, you instructed Mr. Tarnovsky to attend that  
21 meeting, correct?

22 A. That's correct.

23 Q. This meeting we're talking about was a meeting of  
24 people involved in the piracy of satellite signals and  
25 services, correct?

1 A. That's correct.

2 Q. You never prosecuted Mr. Al Menard, we know that.

3 Right?

4 A. That's correct.

5 Q. Instead, NDS entered into a consulting relationship  
6 with Mr. Menard, correct?

7 A. Correct.

8 Q. And NDS entered into this relationship March 31, 2003,  
9 correct?

10 A. That's correct.

11 Q. This was after you were aware that EchoStar was  
12 bringing claims against NDS for its alleged conduct and the  
13 conduct of Mr. Menard and Mr. Tarnovsky, correct?

14 A. Bringing claims or it already brought claims, I don't  
15 know.

16 Q. Yeah. Do you know EchoStar filed a motion to intervene  
17 in the Canal+ case in 2002?

18 A. Yes.

19 Q. Okay. And you hired Mr. Menard after that, right?

20 A. Correct.

21 Q. Let's turn to Exhibit 115, please.

22 Can you identify Exhibit 115, Mr. Norris?

23 A. It's a consulting agreement we had with Mr. Menard.

24 MR. NOLL: Plaintiffs offer 115, Your Honor.

25 THE COURT: Any objection?

1 MR. KLEIN: No, Your Honor.

2 THE COURT: Received.

3 (Exhibit No. 115 received in evidence.)

4 BY MR. NOLL:

5 Q. You were the individual on NDS's behalf who decided to  
6 enter into this consultancy with Mr. Menard, correct?

7 A. Correct.

8 Q. You signed the agreement on NDS's behalf, correct?

9 A. Correct.

10 Q. And you entered this relationship after you read the  
11 lawsuit filed by EchoStar against NDS, correct?

12 A. Correct.

13 Q. You read Mr. Menard's name in that lawsuit, right?

14 A. Correct.

15 Q. And you considered the allegations made by EchoStar  
16 against Mr. Menard before you negotiated his consultancy,  
17 correct?

18 A. Correct.

19 Q. Importantly, you also knew the relationship between  
20 Al Menard and Chris Tarnovsky, correct?

21 A. Correct.

22 Q. And you knew Mr. Menard's website contained information  
23 on how to hack EchoStar's security system, correct?

24 A. That's correct.

25 Q. Now, the services that NDS sought from Mr. Menard was

1 that Mr. Menard was able to image approximately 10 million  
2 documents related to satellite signal theft, correct?

3 A. Satellite signal theft of NDS technology.

4 Q. Is it your contention those 10 million documents didn't  
5 contain any satellite signal theft relating to EchoStar?

6 A. I don't know.

7 Q. You don't know because you've never seen that database;  
8 is that correct, sir?

9 A. That's correct.

10 Q. NDS has never gotten ahold of that database; is that  
11 right?

12 A. I think that's incorrect.

13 Q. NDS has the Menard database with 10 million documents  
14 relating to satellite piracy in it?

15 A. It's my understanding that the hard drive or contents  
16 are in the possession of NDS.

17 Q. Whose possession? Who has that at NDS, Mr. Norris?

18 A. I don't know the individual's name, but it would have  
19 been with our Internet group in Israel.

20 Q. Do you know whether those documents --

21 THE COURT: Just a moment. Who would be the  
22 supervisor or person in charge of that group? Is this the  
23 Jerusalem group or the Haifa group?

24 THE WITNESS: It's the Jerusalem group, sir.

25 THE COURT: Who would that person be in charge?



1 THE WITNESS: It could be -- I don't -- Ted Rose?

2 THE COURT: Thank you.

3 THE WITNESS: Ted Rose, I believe.

4 THE COURT: Thank you.

5 BY MR. NOLL:

6 Q. Do you know whether those documents have ever been  
7 provided to EchoStar in this case, sir?

8 A. I don't know.

9 Q. Let's focus on the first page of the agreement that NDS  
10 entered into with Al Menard. I'm going to focus your  
11 attention to Paragraph 2:

12 "Duties: Consultant shall render such consulting and  
13 advisory services concerning the business of company as may  
14 be requested by company from time to time to the best of  
15 consultant's ability."

16 Do you see that, sir?

17 A. Yep.

18 Q. What services does that mean?

19 A. The services were to monitor the Internet, actually,  
20 the global Internet, with postings that involve piracy of  
21 NDS technology, whether it's forums, websites, bulletin  
22 boards, anything on the Internet that contained attacks on  
23 NDS conditional access.

24 Q. Okay. Let's skip a sentence, okay? And to the next  
25 sentence that says, "Consultant agrees to devote a minimum

1 of 120 hours per month in performing his consulting services  
2 to company."

3 Do you see that?

4 A. Yes.

5 Q. Do you know if Mr. Menard devoted a minimum of  
6 120 hours of work to NDS per month?

7 A. Yes, he did.

8 Q. Next sentence: "Consultant will maintain an accurate  
9 and detailed log of hours spent in fulfilling consultant --  
10 consulting obligations under this agreement."

11 Do you see that, sir?

12 A. Yes, I do.

13 Q. Mr. Menard keep a log?

14 A. I don't know.

15 Q. Have you ever seen a log?

16 A. No, I haven't.

17 Q. Do you know whether a log exists --

18 A. No.

19 Q. -- that Mr. Menard kept concerning his consultancy with  
20 NDS?

21 A. No, I don't.

22 Q. Next sentence: "A certified monthly copy of this log  
23 will be made available to company upon written request."

24 Do you see that, sir?

25 A. Yes, I do.

1 Q. Did you ever make any written request to Mr. Menard for  
2 a log of what he was doing on behalf of NDS?

3 A. No, I didn't.

4 Q. Are you aware of anyone at NDS ever making that request  
5 to Mr. Menard?

6 A. No, I'm not.

7 Q. Focus down to Paragraph 3 in the first page,  
8 "Compensation: Consultant shall be paid by company a  
9 monthly fee of 6,500 US."

10 Do you see that, sir?

11 A. Yes, I do.

12 Q. And Mr. Menard was, in fact, paid that amount per  
13 month; is that correct?

14 A. That's correct.

15 Q. And this relationship with Mr. Menard lasted  
16 approximately four years; is that right?

17 A. That's correct.

18 Q. So if we do the math, Mr. Menard was paid more than  
19 \$300,000 by NDS for his consultancy, correct?

20 A. Correct.

21 Q. And Mr. Menard's contract was not renewed by NDS on  
22 April 1st, 2007; is that right?

23 A. That's correct.

24 Q. That was your decision, correct?

25 A. Correct.

1 Q. And you interviewed Mr. Menard concerning the packages  
2 that were sent to Christopher Tarnovsky's mailbox in  
3 San Marcos, Texas, right?

4 A. Correct.

5 Q. And your understanding is Mr. Menard denied involvement  
6 in sending those packages to San Marcos, correct?

7 A. That's correct.

8 Q. You didn't think Mr. Menard was lying, did you, sir?

9 A. No, I didn't.

10 Q. You believed him, right?

11 A. That's correct.

12 Q. You believed that he -- when he told you he wasn't  
13 involved, you believed it, correct?

14 A. That's correct.

15 Q. But you didn't renew his contract, right?

16 A. Correct.

17 Q. And you would say, sir, that the work Mr. Menard was  
18 performing was very important to NDS, correct?

19 A. It was very helpful, yes.

20 Q. I mean, Mr. Menard had excellent Internet skills,  
21 correct?

22 A. Correct.

23 Q. According to you, Mr. Menard helped out the government  
24 in at least one instance concerning satellite piracy,  
25 correct?

1 A. That's correct.

2 Q. And after you let Mr. Menard go, you didn't renew his  
3 contract, you didn't hire anyone to replace Mr. Menard; is  
4 that correct?

5 A. That's correct.

6 Q. In fact, is it your understanding that Mr. Menard is  
7 now sacking groceries in Canada for a living?

8 A. I have no idea.

9 Q. You don't know what he's doing now?

10 A. I do not.

11 Q. Now, focusing on Mr. Tarnovsky. Mr. Tarnovsky's  
12 employment with NDS was terminated on March 30th, 2007,  
13 right?

14 A. Correct.

15 Q. NDS has also not hired anyone to replace Mr. Tarnovsky,  
16 correct?

17 A. That's correct.

18 Q. But NDS still employs Mr. Tarnovsky's father, George  
19 Tarnovsky, right?

20 A. That's correct.

21 Q. And you understand there's no contemplation by NDS to  
22 terminate George Tarnovsky at this time, correct?

23 A. I have no contemplation to fire Mr. Tarnovsky at this  
24 time or...

25 Q. After the federal investigation of Mr. Tarnovsky, you

1 didn't fire him, right?

2 A. Correct.

3 Q. After U.S. Customs investigated him, you didn't fire  
4 Mr. Tarnovsky, correct?

5 A. That's correct.

6 Q. NDS didn't terminate Mr. Tarnovsky 'cause of the  
7 allegations in the Canal+ dispute, correct?

8 A. I'm sorry?

9 Q. NDS did not terminate Mr. Tarnovsky because of the  
10 allegations made against him in the Canal+ dispute, correct?

11 A. That's correct.

12 Q. NDS also did not terminate Mr. Tarnovsky when the  
13 allegations were leveled against him by DirectTV, correct?

14 A. That's correct.

15 Q. And the reason, according to you, that NDS terminated  
16 Mr. Tarnovsky after nearly 10 years of employment with NDS,  
17 was because NDS believed that Mr. Tarnovsky was less than  
18 truthful about the packages he received in San Marcos, Texas  
19 in 2001, correct?

20 A. That's not correct.

21 Q. Well, what is the reason, sir?

22 A. Well, he didn't receive the packages. He was not  
23 candid with us regarding who sent the packages, as far as we  
24 could tell.

25 Q. Six years earlier, right?

1 A. Correct.

2 Q. And to be clear on the packages, you're talking about  
3 the \$40,100, San Marcos, Texas, right?

4 A. That's correct.

5 Q. The lie told to you by Mr. Tarnovsky was that it was  
6 his position he didn't know who was sending him that cash,  
7 right?

8 A. That's correct.

9 Q. Now, you believe this day and time that Mr. Tarnovsky,  
10 he lied you to back then?

11 A. Correct.

12 Q. Now, Mr. Tarnovsky's employment and Mr. Menard's  
13 consultancy relationship ended on the same day; is that  
14 right?

15 A. That's correct.

16 Q. And it's your testimony, sir, that this was just a  
17 coincidence, correct?

18 A. It's not a coincidence.

19 Q. You supervised Tarnovsky for 10 years, right?

20 A. Correct.

21 Q. But you don't know who on behalf of NDS made the final  
22 decision to fire Mr. Tarnovsky, correct?

23 A. It was a collective decision, sir, of management.

24 Q. Something different than what you said in your  
25 deposition?

1 A. Yeah. I didn't know a specific person. It was a  
2 collective decision, I believe, sir.

3 Q. Page 72 of your deposition:

4 "QUESTION: Just so I'm clear, you don't know who on  
5 behalf of NDS made the ultimate decision to fire  
6 Mr. Tarnovsky.

7 "ANSWER: That's correct."

8 A. That's correct.

9 Q. Is that still true here today, sir?

10 A. That's correct.

11 Q. You agreed with the decision, right?

12 A. Yes.

13 Q. And since Mr. Tarnovsky's been gone from NDS, you've  
14 referred him for employment to a company call Sirius  
15 Satelllite, correct?

16 A. That's correct.

17 Q. In fact, you recommended him for a job position there,  
18 right?

19 A. For a project or consulting, not a job.

20 Q. And you felt comfortable recommending Mr. Tarnovsky,  
21 right?

22 A. Correct.

23 Q. But you didn't disclose to Sirius that Mr. Tarnovsky  
24 was the subject of several federal investigations, right?

25 A. That's correct.



1 Q. You didn't disclose to Sirius that he was a key player  
2 in several lawsuits that were filed against NDS, correct?

3 A. That's correct.

4 Q. And you also didn't disclose that NDS had recently  
5 terminated Mr. Tarnovsky, right?

6 A. That's correct.

7 Q. Don't you think Sirius would have wanted to know those  
8 things?

9 A. They would have discovered that or learned that if they  
10 wanted to enter into a relationship with him, when they did  
11 their due diligence.

12 Q. Just have a few more questions for you, Mr. Norris.

13 A. Certainly.

14 Q. These are important.

15 It's your position, sir, that you do not know whether  
16 Mr. Tarnovsky ever used the Nipper alias to post EchoStar's  
17 codes on the Internet, correct?

18 A. That's correct.

19 Q. The fact is you never asked Mr. Tarnovsky whether he  
20 used the alias Nipper, correct?

21 A. I may have asked him, "Who is Nipper?" and he said, I  
22 don't know.

23 I believe --

24 THE COURT: Well --

25 THE WITNESS: I'm sorry, sir.

1 THE COURT: Please answer the question.

2 THE WITNESS: Yes, sir.

3 Could you ask the question again, please?

4 BY MR. NOLL:

5 Q. Yeah. You never asked Mr. Tarnovsky if he was Nipper,  
6 correct?

7 A. Correct.

8 Q. You can't recall even asking Mr. Tarnovsky whether he  
9 used the Nipper alias in any shape or form, correct?

10 A. That's correct.

11 Q. And you, the head of NDS Americas security, have no  
12 idea who is responsible for the hack of EchoStar's first  
13 generation Smart Card, correct, sir?

14 A. That's correct.

15 Q. But you do know that EchoStar's first generation Smart  
16 Card is the point of most, if not all, pirate websites  
17 today; isn't that correct, sir?

18 A. I'm sorry. Could you please repeat that again?

19 Q. You do know, sir, that the hack of EchoStar's Smart  
20 Card is the point of most, if not all, pirating websites  
21 today, correct?

22 A. I'm -- I don't understand the question, "the point of  
23 most"?

24 Q. It's the focus.

25 THE COURT: What do you mean, Counsel?

1 MR. NOLL: I'll reask the question.

2 THE COURT: I'm going to strike the question.

3 It's not understandable.

4 MR. NOLL: Okay.

5 BY MR. NOLL:

6 Q. You don't know who's responsible for the EchoStar hack,  
7 right?

8 A. That's correct.

9 Q. But you do know that the focus of all hacking efforts  
10 on piracy websites today is upon the EchoStar conditional  
11 access system, correct?

12 A. That's correct.

13 MR. NOLL: Okay. No further questions. Pass the  
14 witness.

15 THE COURT: All right. We're going to take a  
16 witness out of order for just a moment.

17 Sir, if you would be kind enough to step down.  
18 And we'll call you back in just a moment.

19 THE WITNESS: Okay.

20 THE COURT: Thank you very much.

21 (Witness steps down.)

22 THE COURT: Counsel, call your next witness,  
23 please.

24 MR. WELCH: Your Honor, we would like to call Dov  
25 Rubin to the stand.

1 For the record, my name is Wade Welch.

2 THE COURT: Thank you. This witness is being  
3 called out of order.

4 Sir, would you raise your right hand, please.

5 DOV RUBIN, PLAINTIFF'S WITNESS, SWORN

6 THE WITNESS: I do.

7 THE COURT: Thank you, sir. If you would please  
8 be seated on the witness stand. Sir, would you state your  
9 full name.

10 THE WITNESS: My name is Dov Rubin.

11 THE COURT: Would you spell your first name,  
12 please, for the jury.

13 THE WITNESS: First name is D-O-V.

14 THE COURT: And your last name, sir.

15 THE WITNESS: Last name's R-U-B-I-N.

16 THE COURT: Thank you.

17 This would be direct examination on behalf of  
18 EchoStar and NagraStar.

19 MR. WELCH: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. WELCH:

22 Q. Mr. Rubin, where do you currently work?

23 A. I work at NDS Americas.

24 Q. What's your current title there?

25 A. I'm the vice president and general manager.

1 Q. Could you give the jury a flavor for what it is you do  
2 as a vice president and general manager of NDS Americas?

3 A. First of all, here in the United States I'm responsible  
4 for support of our large customers -- or all our customers  
5 in North and South America. I'm responsible for sales, new  
6 sales, also for our Smart Card manufacturing plants that we  
7 have right down the road here in Costa Mesa. And I also  
8 participate in the management forum and executive committee  
9 of our company.

10 Q. Now, Mr. Norris, the gentleman that just got off the  
11 stand, does he report to you?

12 A. Yes, he does.

13 Q. Is it a direct report? He's right underneath you?

14 A. Yes. We have a matrix arrangement in the company, and  
15 so each region has the local employees reporting to a local  
16 manager, in this case --

17 THE COURT: Slow way down.

18 THE WITNESS: Okay. Apologize.

19 THE COURT: Strike the question.

20 (To the reporter:) We're going to strike the  
21 answer, Debbie.

22 We're going to start over again very slowly.

23 MR. WELCH: Sorry about that, Your Honor.

24 BY MR. WELCH:

25 Q. And what is the relationship between you and

1 Mr. Norris? Is it a direct one?

2 A. Yes, it is.

3 Q. Okay. And the business of NDS Americas and NDS Group  
4 is providing conditional access service to satellite  
5 providers such as EchoStar and DirectTV, correct?

6 A. Among other things, yes.

7 Q. Now, could you please tell the jury what the  
8 relationship is between the two defendants in this case?  
9 You have NDS Group and NDS Americas.

10 A. NDS Americas is a direct subsidiary of NDS Group, which  
11 is based in the UK.

12 Q. So does NDS Group own 100 percent of NDS Americas?

13 A. They do.

14 Q. Now, who do you report to?

15 A. I report to the chairman and chief executive of the  
16 company, Dr. Abe Peled.

17 Q. And where does Mr. Peled reside?

18 A. He resides in the UK. That's England.

19 Q. Now, up to this point the jury's heard some testimony  
20 about a corporation called "News Corporation." Are you  
21 familiar with that company?

22 A. I am.

23 Q. And could you tell us what News Corporation is?

24 A. News Corporation is a shareholder of -- within the News  
25 group.

1 Q. And News Corporation actually controls the NDS Group  
2 company, correct? The defendants in this case?

3 A. They own 79 percent of the company. And the other  
4 21 percent is publicly traded on the NASDAQ.

5 Q. And as the controlling shareholder, News Corporation  
6 gets to appoint the majority of the board members for NDS,  
7 correct?

8 A. That's correct.

9 Q. Now, you were here for Mr. Ergen's testimony, correct?

10 A. Yes.

11 Q. And he's the top as far as it goes, as far as running  
12 EchoStar, correct?

13 A. Yes.

14 Q. Okay. Now, if we talk about News Corporation, who's at  
15 the top of that chain?

16 A. It's Mr. Rupert Murdoch.

17 Q. But he's the chief. That's where the buck stops, is  
18 Mr. Murdoch, correct?

19 A. I'm not sure what you mean by "the buck stops."

20 Q. Okay. But he's the top guy?

21 A. Yes.

22 Q. And Mr. Peled reports to Mr. Murdoch?

23 A. Hum. I guess. I don't think that there's a formal  
24 structure other than, again, it's Mr. Murdoch, News  
25 Corporation, is a shareholder in the company. I'm not sure

1 what the formal relationship is in that sense.

2 Q. Okay. Now, you're aware that one of NDS's primary  
3 competitors is NagraStar, the conditional access supplier  
4 for EchoStar, correct?

5 A. No.

6 Q. Sir, could you please look at Exhibit 210 -- 2010.  
7 If you could turn to page 12 in the document. I don't  
8 know if yours is numbered, but you go 12 pages in.

9 First of all, can you tell the jury what Exhibit 2010  
10 is?

11 A. Well, I haven't seen this before. It says on the title  
12 page Form 10-K. Form 10-K would be a form of public filing  
13 that a public company has to do.

14 Q. I'm going to represent to you that this is a 10-K that  
15 we pulled off the Internet for the NDS group of companies.  
16 Okay?

17 A. Okay.

18 Q. Do you have any reason to dispute that that's an  
19 accurate copy of the 10-K?

20 A. No, I don't.

21 MR. WELCH: Your Honor, at this time we would like  
22 to move for admission of Exhibit 2010.

23 THE COURT: It's received.

24 (Exhibit No. 2010 received in evidence.)  
25



1 BY MR. WELCH:

2 Q. Now, do you see it has a line entitled Competition?

3 A. I counted 12 pages, but I don't have it here.

4 THE COURT: Just one moment.

5 BY MR. WELCH:

6 Q. Do you see where it says --

7 THE COURT: Counsel, Counsel, Counsel.

8 MR. WELCH: Did you give him 2010, Steve?

9 THE COURT: Counsel, no.

10 For the record, what we're doing is making certain  
11 that the Court has the accurate document in front of it and  
12 the page so the Court can listen to both the testimony as  
13 well as following the document.

14 Did you leave out that page, Counsel?

15 MR. WELCH: Sorry about that, Your Honor. Your  
16 copy's double-sided.

17 THE COURT: No problem. I just appreciate having  
18 that in front of me, as we discussed over the weekend.

19 All right. Thank you. Please continue, Counsel.

20 MR. WELCH: Thank you, Your Honor.

21 THE COURT: Thank you for your courtesy, sir.

22 BY MR. WELCH:

23 Q. Could you please just read -- I'm going to read it for  
24 you. The first line under Competition says, "We compete  
25 primarily with technology such has NagraVision developed by

1 Kudelski SA."

2 That's the first one listed, correct?

3 A. That's correct.

4 Q. And they supply the conditional access system to the  
5 plaintiffs, correct?

6 A. That's correct.

7 Q. Now, NDS provides conditional access services to a  
8 company called "DirecTV," correct?

9 A. That's correct.

10 Q. And you're aware that DirecTV's competitor is EchoStar  
11 Corporation, correct?

12 A. Yes.

13 Q. Now, for the jury, if you could just let us know about  
14 DirecTV and NDS. DirecTV today is the largest client of  
15 NDS, isn't it?

16 A. Yes, it is.

17 Q. It accounts for over a quarter of the revenues of NDS?

18 A. That's approximately correct.

19 Q. Now, it wasn't always that way, right?

20 A. What specifically?

21 Q. Yeah. DirecTV, you actually didn't have a relationship  
22 with DirecTV until approximately '92; is that right?

23 A. That's correct. That's when DirecTV was started.

24 Q. And you had no presence in the United States on a  
25 conditional access platform up until that point in time,

1 correct?

2 A. That's correct.

3 Q. Would you agree with me today that the crown jewel of  
4 NDS in providing conditional access services is DirecTV?

5 A. No, not necessarily. We have other crown jewels.

6 Q. Well, DirecTV is the largest provider of revenues to  
7 you, isn't it? We established that.

8 A. Fairly close, yes.

9 Q. Would you agree with me that it's important for NDS to  
10 keep the DirecTV business?

11 A. Absolutely, yes.

12 Q. And when you entered into that agreement in 1992, you  
13 knew that the United States had a large television market,  
14 didn't you?

15 A. It has a large potential market, yes.

16 Q. And you knew that there was a potential that DirecTV  
17 could become your largest source of revenues, didn't you?

18 A. We certainly hoped so.

19 Q. Now, this isn't the first time we've met, is it, sir?

20 A. No, it's not.

21 Q. We actually met back in '98, didn't we?

22 A. We did.

23 Q. Remember, we met during the first litigation between  
24 EchoStar and News Corporation. Do you recall that, sir?

25 A. I do.

1 Q. And do you recall that one of the main points in that  
2 litigation was whose conditional access system was better,  
3 whether it be NDS or the Nagra system?

4 A. Yes.

5 Q. Okay. Now, I want to focus -- that time period, that  
6 litigation was filed in '97, correct?

7 A. Something in that time frame, yes.

8 Q. Now, at that point in time, you know that the Nagra  
9 system wasn't hacked, correct?

10 A. I didn't have direct knowledge of that. No, I didn't.

11 Q. Okay. And if we focus on that '97 time period when  
12 that litigation began, the conditional access system that  
13 your company was providing to DirectTV, that was hacked,  
14 wasn't it?

15 A. I believe we had seen some hobbyist level abilities,  
16 from what I could tell. Yes, there were ways of  
17 circumventing the system. Yes.

18 Q. Now, if one of the main contentions in that litigation  
19 or one of the sticking points was whose system was better --

20 A. Yes.

21 Q. -- the Nagra system or the NDS system, would you agree  
22 with me that it would be beneficial to NDS to be able to  
23 show that the Nagra system was compromised?

24 A. No, not at all.

25 Q. Are you sure?

1 A. Yes. In fact, during that litigation I issued a memo  
2 of about 10 points and 10 reasons why I felt that the Nagra  
3 system going forward was actually a poor choice for EchoStar  
4 to take. I enumerated those reasons in a memorandum. That  
5 was one of the centerpieces of that litigation.

6 And I still uphold by those points even today. Despite  
7 the fact that there may have been some temporary penetration  
8 of our system, of the DirecTV system, we felt that we would  
9 be recovering from that, and we still think that it would be  
10 a better decision for EchoStar.

11 Q. Let's talk about --

12 THE COURT: No, Counsel. I want Debbie to make  
13 sure we have an accurate transcript, and as the answers get  
14 longer and the two of you get more excited in your  
15 conversation...

16 Okay. Counsel, please.

17 BY MR. WELCH:

18 Q. Now, you said that there was some -- you had some idea  
19 that there was some penetration into the NDS service. I  
20 think that's what you said in your last answer.

21 A. Correct.

22 Q. That's not entirely accurate. If we talk about the '96  
23 time period, DirecTV was already hacked in '96 too, wasn't  
24 it.

25 A. Yes, it was.

1 Q. It was even hacked in '95.

2 A. Yes. And as your CEO pointed out, there were different  
3 levels of the activity.

4 Q. Okay. Now, I want to focus on this '97 time period.  
5 We've got the litigation, and you've got Nagra Secure,  
6 you've got NDS is hacked. Okay. I want to start -- that's  
7 my starting point.

8 In 1997 NDS went out and hired Christopher Tarnovsky,  
9 didn't they, sir?

10 A. I believe that was the time frame.

11 Q. Now, at the time that your company hired Mr. Tarnovsky,  
12 you were aware, weren't you, that he was a hacker?

13 A. Yes.

14 Q. And you understand that when a company such as yours  
15 that's entrusted with protecting revenues -- that's what  
16 conditional access service does, isn't it?

17 A. Yes.

18 Q. And it protects copyrighted programming, correct?

19 A. Yes.

20 Q. Now, you understood that the risks of hiring hackers  
21 were that not only, one, they could hack your system,  
22 correct?

23 A. Yes.

24 Q. Okay. And were you aware that that was one of the  
25 things that Mr. Tarnovsky was doing when he was hired, is

1 that he was involved in hacking DirecTV?

2 A. Well, we had proceeded -- starting the company back in  
3 1988, to proceed developing straightforward Smart Card  
4 conditional access systems.

5 MR. WELCH: Your Honor, I'm going to object as  
6 nonresponsive.

7 THE COURT: Sustain the objection. Strike the  
8 answer.

9 THE WITNESS: Could you repeat the question, then?  
10 I'm sorry.

11 BY MR. WELCH:

12 Q. Yes. At the time that you hired Mr. Tarnovsky in '97,  
13 you were aware that he was involved in hacking the DirecTV  
14 system, which was one of your clients?

15 A. Yes.

16 Q. But you hired him anyway, correct?

17 A. That's correct. We needed to --

18 Q. I think we've got it.

19 A. Okay.

20 Q. Now, you understood not only was there a risk that he  
21 would continue to hack your clients, you knew that there was  
22 a risk that he'd hack Nagra, didn't you --

23 A. I --

24 Q. -- or any of your competitors?

25 A. I did not think of it that way, no.

1 Q. Now, I want to move forward in time. We've got the  
2 litigation in '97 where whose system was better is at issue.  
3 And I want to move you forward to '98.

4 In 1998 was the DirecTV contract, the original one that  
5 started in '92 -- was it set to expire?

6 A. Yes.

7 Q. And in 1998 you entered into a one-year extension of  
8 that contract, correct?

9 A. Sometime during the negotiation. We began the  
10 negotiation, and the contract was due to expire. And by  
11 mutual agreement, we agreed to that one-year extension while  
12 we negotiated the new agreement.

13 Q. Okay. And during that time period, you learned from  
14 DirecTV, didn't you, sir, that they were actually shopping  
15 around or looking to see if they might want to switch from  
16 your conditional access system to the Nagra system? You're  
17 aware of that, aren't you?

18 A. No, I'm not.

19 MR. WELCH: Could you please hand Mr. Rubin his  
20 deposition, and also the Court, page 58, lines 20 to 23.

21 BY MR. WELCH:

22 Q. Now, while we're getting that, Mr. Rubin, you were  
23 deposed in this case, correct?

24 A. Yes, that's correct.

25 Q. And you were deposed as what's called a corporate



1 representative of NDS, correct?

2 A. That's correct.

3 Q. You were there to talk as if you were NDS?

4 A. That's correct.

5 (Documents provided to witness and Court.)

6 MR. WELCH: Your Honor, the lines are 20 to 23.

7 THE COURT: You may read those portions.

8 BY MR. WELCH:

9 Q. I'm just going to read it for you, sir, okay?

10 The question put to you was, "Did you ever consider  
11 that one of those conditional access or CA providers was  
12 NagraStar, or NagraStar's -- one of NagraStar's parent  
13 companies, NagraVision?"

14 And your answer was, "We assumed that was one of 'em."

15 So you did, in fact, know in 1998 when DirectTV was  
16 shopping around?

17 A. We did not know; we only assumed.

18 Q. Okay, you assumed.

19 A. Your original question was -- no.

20 Q. Sorry about that, sir.

21 A. Okay.

22 Q. Now, you would agree with me, sir, wouldn't you, that  
23 it would be beneficial to NDS if the Nagra system -- if  
24 there was some evidence, say, out on the Internet published  
25 about it that maybe it was compromised? That would assist

1 you in your negotiations, wouldn't it? Yes or no.

2 A. No.

3 Q. If we talk about that time period in '97, you believed  
4 that the Nagra system was inferior to your system, correct?

5 A. Yes.

6 Q. Now, you've heard the testimony up to this point. You  
7 heard from Mr. Shkedy and you heard from Mr. Mordinson,  
8 correct?

9 A. That's correct.

10 Q. And you're aware that in 1998 NDS began efforts to  
11 reverse-engineer this inferior system?

12 A. I'm aware of these activities, yes, of the chip.

13 Q. And Mr. Peled, your direct supervisor, he was the one  
14 that gave the order to reverse-engineer, correct?

15 A. That was my understanding.

16 THE COURT: Excuse me, sir. I'm going to counsel  
17 you, as I have all the other witnesses, to be as clear as  
18 you can. Words like "may," "could be," "to the best of my  
19 recollection."

20 THE WITNESS: Okay.

21 THE COURT: If you want to clarify that answer,  
22 that's fine. If you want to stay with the answer, that's  
23 fine. But some adverse inferences may be drawn at the end  
24 of this case in terms of what I call qualifying and hedge  
25 words by any witness and all witnesses across the board,

1 from NDS to EchoStar. Understood?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4 Reask the question, Counsel.

5 MR. WELCH: Sure.

6 THE COURT: Ladies and gentlemen, I may be  
7 instructing you at the end of the case, when it's done, you  
8 can view some of the answers given by all the parties and  
9 all the witnesses. I'm still making up my mind about that.  
10 But you've heard me repeatedly say words like "to the best  
11 of my recollection" -- just those hedge words.

12 I think the jury deserves the best recollection of  
13 all the people who testify.

14 Now, that's going to apply across the board to  
15 both sides, NDS and EchoStar. And we'll discuss that later.

16 Thank you. You can ask the question, Counsel.

17 BY MR. WELCH:

18 Q. Mr. Peled would have been the person at NDS who made  
19 the decision to reverse-engineer EchoStar's conditional  
20 access system, correct?

21 A. He may have been the one to approve that decision.

22 Q. Now, you recall Mr. Shkedy and Mr. Mordinson's  
23 testimony that it took approximately -- I think it was six  
24 months -- we did this planes, trains, automobile thing. It  
25 took them approximately six months to reverse-engineer this

1 inferior system, didn't it?

2 MR. SNYDER: Objection, Your Honor. There is no  
3 reason to reprise for the jury the testimony of other  
4 witnesses that the jury has heard and in which Dr. Rubin has  
5 had no involvement.

6 THE COURT: It's foundational. Overruled.

7 BY MR. WELCH:

8 Q. Would you like me to reask it, sir?

9 A. Yeah.

10 Q. Okay. Now, you recall that Mr. Shkedy and  
11 Mr. Mordinson testified that it took them approximately six  
12 months to reverse-engineer this inferior conditional access  
13 system, correct?

14 A. Considering that to --

15 Q. Yes or no?

16 A. Sorry.

17 Q. Is that a "yes" or "no"?

18 A. I'm sorry. I lost the question. I'm sorry.

19 Q. Okay.

20 A. One more time.

21 Q. You recall that Mr. Shkedy and Mr. Mordinson testified  
22 that it took approximately six months to reverse-engineer  
23 this inferior system, correct?

24 A. Yes.

25 Q. And do you recall the testimony that some of the ROM

1 code was published on the Internet in 1999?

2 A. I've heard testimony. I don't have direct knowledge of  
3 that.

4 Q. Okay. Now, after a portion of the EchoStar ROM code --  
5 or the Nagra ROM code was posted on the Internet, NDS and  
6 DirecTV entered into a longer-term agreement; isn't that  
7 correct, sir?

8 A. Yes, that's correct.

9 Q. And they entered into that long-term agreement after  
10 the one-year extension?

11 A. Yes.

12 Q. They entered into that agreement in approximately  
13 August of '99, correct?

14 A. That's correct.

15 Q. And I believe that was a four-year deal?

16 A. That's correct.

17 Q. Now, at the time that they entered into this agreement,  
18 the end of '99, what's referred to as the P3, or the  
19 period 3 card, was being rolled out with DirecTV, correct?

20 A. That's correct.

21 Q. And what the August '99 agreement related to was the  
22 development of a P4, or a more secure card, correct?

23 A. That is correct.

24 Q. And that P4 card didn't get -- DirecTV simulcast or  
25 simulcrypt between the P3 and the P4 for a period of time,

1 correct?

2 A. That is correct.

3 Q. And you didn't shut the P3 stream off until April of  
4 2004, correct?

5 A. (No audible response.)

6 Q. Somewhere thereabouts?

7 A. I'm trying to think when DirecTV gave us the  
8 instruction. When to turn it off would have been up to  
9 DirecTV to tell us.

10 Q. Okay.

11 A. I don't recall the exact time frame.

12 Q. Do you recall that it was sometime after Mr. Murdoch,  
13 or News Corporation, made its bid to purchase DirecTV?

14 A. Yes. The timing was coincidental, but yes.

15 Q. And once News Corporation purchased DirecTV, DirecTV  
16 finally became secure, didn't it?

17 A. Yes, it did.

18 Q. And so it was secure in 2004 when News Corporation  
19 owned it, correct?

20 A. Yes.

21 Q. It was secure in 2005 when News Corporation owned it?

22 A. Yes.

23 Q. It was secure in 2006 when News Corporation owned it?

24 A. Correct.

25 Q. Was it secure in 2007?

1 A. 2007 and to 2008 and even after they sold it, yes.

2 Q. Okay. Now, if we back up before Mr. Murdoch bought  
3 it -- or News Corporation bought it -- sorry, sir -- it was  
4 pretty much compromised every year, wasn't it?

5 A. There were hacks as long as the older cards were still  
6 in the system and not flushed out of the system and it  
7 wasn't a new complete card swap to the period 4. Yes, it  
8 was.

9 Q. So we can take the period '95, say, all the way up  
10 until the time News Corp. buys it in 2004, and it was  
11 compromised for that entire period, wasn't it?

12 A. Well --

13 Q. At some level?

14 A. At some level, yes.

15 Q. Now, sir, I'm going to have you look at what's been  
16 marked as Exhibit 650.

17 Before we get into that, I want you to focus on the  
18 time period 1999 when you did your contract -- your new  
19 four-year contract in August of '99. Are you with me?

20 A. Yes, I am.

21 THE COURT: Counsel, I'm sorry. Could you remind  
22 us, what year did News Corp., or Mr. Murdoch, make the bid  
23 to purchase DirecTV?

24 MR. WELCH: I believe it was fall 2003,  
25 Your Honor, and it actually closed in April 2004.

1 THE COURT: Let's find out from the witness.

2 THE WITNESS: I believe those are the time frames.  
3 I'm just...

4 BY MR. WELCH:

5 Q. Do you have any reason to doubt that --

6 THE COURT: Well, just a moment.

7 THE WITNESS: Why don't you give me the time  
8 frames. I'm happy to --

9 THE COURT: I'm sorry. Who would know if you  
10 don't? In other words, how do I get accurate information --

11 THE WITNESS: It would come from me. I just need  
12 to think. I wasn't thinking about it, but --

13 BY MR. WELCH:

14 Q. Would Mr. Murdoch know?

15 THE COURT: Excuse me. Your answer is?

16 THE WITNESS: I should know that.

17 THE COURT: What are the dates?

18 THE WITNESS: The bid, I think, was made in late  
19 2003, and maybe it was approved sometime in 2004, but I'm  
20 not sure about the month.

21 THE COURT: Okay. Thank you very much.

22 THE WITNESS: Okay.

23 BY MR. WELCH:

24 Q. Now, I want to focus you on the late '99 time period,  
25 okay? In August '99 we have the four-year contract to



1 extend the business that NDS is gonna get from DirecTV,  
2 correct?

3 A. That's correct.

4 Q. Now, at that point in time, NDS was a wholly owned  
5 subsidiary of News Corporation, correct? It was not a  
6 public company?

7 A. No. We went public sometime after that, yes.

8 Q. Approximately three months later, correct?

9 A. That's correct.

10 Q. Now, could you tell the jury what it means to go public  
11 or have an initial public offering?

12 A. Well, that means that part of our company is being  
13 offered to the public as shareholders, and we would be  
14 traded openly on the stock market, that portion of the  
15 company.

16 Q. Now, you would agree with me that when you're going to  
17 take a company public, it's nice to have a four-year deal  
18 with DirecTV in your pocket, isn't it?

19 A. It's good to solidify all your deals.

20 Q. Okay.

21 Now, if we talk about that time period of 1998 and 1999  
22 before you go public, Mr. Murdoch was chairman of the News  
23 Corporation, correct?

24 A. Yes.

25 Q. And he was actually News Corporation's largest

1 shareholder, approximately 30 percent, correct?

2 A. I'm sorry. I don't sit on News Corporation. I will  
3 take your word for it.

4 Q. Now, if we talk about when the contract was extended or  
5 you have this four-year deal that starts in '99, there came  
6 a point in time where DirecTV became concerned about NDS's  
7 practice of hiring and employing hackers, correct?

8 A. Some of that information was known to me as the  
9 corporate representative during the deposition.

10 Q. So is the answer yes?

11 A. The answer is a qualified yes, simply because I was not  
12 personally involved.

13 Q. And you're aware that as the corporate rep -- now, you  
14 got prepped by your lawyers in that deposition, correct?

15 A. I did.

16 Q. Okay. And you're aware after this prep session that  
17 DirecTV went so far as to ask NDS to remove Christopher  
18 Tarnovsky from any DirecTV projects, correct?

19 A. I'm aware of that, yes.

20 Q. And NDS didn't do that for 'em, did it?

21 A. We did.

22 Q. Did you do it right after they asked?

23 A. To my recollection, yes, pretty much -- pretty soon  
24 after that.

25 Q. Now, did you do it 'cause you had concerns that maybe

1 where there's smoke, there's fire?

2 A. No. I did it out of concern. For most of the things  
3 that I do, we're responsive to our customers; and if the  
4 customer asks for certain things, we may not necessarily  
5 want to agree with it, but he is the customer, so we did  
6 comply.

7 Q. But you didn't terminate Mr. Tarnovsky when they asked,  
8 did you?

9 A. No, we didn't. We complied with DirecTV's request,  
10 though, to move him off the DirecTV project.

11 Q. But you kept him employed otherwise?

12 A. Yes, we did.

13 Q. Now, was part of his job to go out and try to hack the  
14 plaintiff's system?

15 A. Not to my knowledge, no.

16 Q. Now, if we talk about the reverse engineering that your  
17 company did, Mr. Mordinson and Mr. Shkedy with their planes,  
18 trains and automobiles, all that stuff, you're not aware of  
19 anything that your company did to improve its conditional  
20 access system as a result of all those efforts, are you?

21 A. I wasn't known of -- I don't know of any direct  
22 benefits that we got out of it. However --

23 Q. Thank you.

24 And you did not come up with any new electronic  
25 countermeasures as a result of their reverse engineering,

1 correct?

2 A. It was not known to me.

3 Q. And that was one of the things that you were there to  
4 talk about in your deposition, correct?

5 A. That's correct.

6 Q. Now, I want to go to the Exhibit 650 that we have in  
7 front of you. Do you recall being asked questions about  
8 this in your deposition?

9 A. Yes, I do.

10 Q. And could you tell the jury what Exhibit 650 is?

11 A. This is a list of revenues that we received year by  
12 year from DirecTV.

13 Q. And this shows the revenues you got from having this  
14 one-year extension, correct?

15 A. The one-year extension is in there.

16 Q. And it also shows the revenues you got from getting  
17 this four-year deal?

18 A. All revenues received. There's no differentiation.

19 MR. WELCH: Your Honor, at this time we'd like to  
20 admit Exhibit 650.

21 THE COURT: Any objection?

22 MR. SNYDER: No, objection.

23 THE COURT: Received.

24 (Exhibit No. 650 received in evidence.)

25

1 BY MR. WELCH:

2 Q. Now, this is important, Mr. Rubin, so I'm gonna kind of  
3 go slow here, okay?

4 A. Okay.

5 Q. In 1999 NDS made \$94 1/2 million off of retaining the  
6 DirecTV business, correct?

7 A. That's correct.

8 Q. And in 2000 NDS made \$94 million off of retaining the  
9 DirecTV business?

10 A. That's correct.

11 Q. And in 2000 NDS made \$91 million off of retaining --

12 THE COURT: You said --

13 THE WITNESS: 2001.

14 BY MR. WELCH:

15 Q. 2001, sorry. Is that correct?

16 A. I'm sorry. Repeat the number.

17 Q. Yes. And in 2001 the NDS defendants made approximately  
18 \$91 million off of retaining the DirecTV business?

19 A. That's correct.

20 Q. And in 2002 NDS -- the NDS defendants made  
21 approximately \$112 million off of retaining the DirecTV  
22 business, correct?

23 A. That's correct.

24 Q. And in 2003 the NDS defendants made approximately  
25 \$155 million off of retaining the DirecTV business, correct?

1 A. That's correct.

2 Q. And in 2004 you made approximately \$81 million off of  
3 retaining the DirecTV business, correct?

4 A. That's correct.

5 Q. And that's the year that News Corporation bought it.  
6 It went down. That's the year that News Corporation bought  
7 DirecTV, correct? -- or bought controlling interest in it?

8 A. Sometime in that time period, yes.

9 Q. And if you go on to 2005, after you bought it -- or  
10 after News Corporation bought it, it jumps way up to  
11 \$202 million, correct?

12 A. Yes. Especially considering they took other products  
13 as well.

14 Q. I missed the number --

15 A. Oh, sorry.

16 Q. In 2005, the year after you closed the deal, you made  
17 approximately -- NDS made approximately \$198 million off it,  
18 correct?

19 A. That is correct.

20 Q. And then the jury can look and see what you made for  
21 2006 and 2007.

22 Now, would you agree with me, sir, that a hack of a  
23 conditional access system can have devastating effects both  
24 to a conditional access supplier as well as a satellite  
25 platform?

1 A. Yes.

2 Q. It could require you to have to perform a card swap?

3 A. It could.

4 Q. And when these companies have several millions of  
5 subscribers, would you agree with me that a card swap could  
6 cause significant business interruption?

7 A. Depends how it's handled.

8 Q. Okay. But you're going to see spikes in customer  
9 service calls, things like that?

10 A. Well, if it's done properly, I think that you can  
11 actually manage it.

12 Q. Could piracy or hacking of a conditional access system  
13 cause a company such as DirectTV, or in this case EchoStar,  
14 to lose profits? You would agree with me on that, wouldn't  
15 you?

16 A. Yes, with an explanation, of course, if I may explain.

17 Q. Your attorneys will be able to cover that with you.

18 A. Okay.

19 Q. Now, you heard the testimony of Mr. Norris about these  
20 cash payments that he knew Mr. Tarnovsky was receiving. You  
21 heard that, didn't you?

22 A. Yes, I did.

23 Q. Were you ever told about those cash payments in 1998?

24 A. No, I was not.

25 Q. Would you have liked to have been told?

1 A. No.

2 Q. Okay.

3 Were you aware in 2000 of the cash that was found by  
4 Detective Cumberland through his investigation into  
5 Mr. Tarnovsky's Mailbox and More account in San Marcos,  
6 Texas? Anybody tell you about that?

7 A. I was not told about it, no.

8 Q. I --

9 A. I read about it.

10 Q. You're aware that Mr. Norris was aware of the '98 cash  
11 payments related to DirecTV, aren't you?

12 A. I heard that in yesterday's testimony.

13 Q. Okay. And you're aware that Mr. Norris was aware of  
14 this investigation into Mr. Tarnovsky in 2000, correct?

15 A. That's correct.

16 Q. Would you have wanted to know about this investigation  
17 into the Mailbox and More account in 2000?

18 A. I would want to know that we were doing the most to  
19 find out what the story was, because I had full belief in my  
20 personnel.

21 Q. Okay. Your business has -- what you provided to us  
22 as -- I believe it is Exhibit 1027 that we talked about  
23 previously.

24 A. Yes.

25 Q. Okay. That is -- it sets forth certain business



1 practices and standards that you want your employees,  
2 especially officers such as Mr. Norris, to adhere to,  
3 correct?

4 A. That's correct.

5 Q. Okay. We had asked you to see if there was any  
6 previous drafts of this or any versions that NDS had in its  
7 records. Were you able to do that for us?

8 A. Yes, I was.

9 Q. Were you able to find any?

10 A. Yes, I was.

11 MR. WELCH: Your Honor, this hasn't been produced  
12 to us, so we may end up having to --

13 THE WITNESS: I only was able to get hold of it  
14 this morning. Everything is coming together. But, yes, I  
15 have a previous version of this document.

16 BY MR. WELCH:

17 Q. When was that version enacted?

18 A. That version was enacted in May of 2004.

19 Q. May of 2004?

20 A. Yes.

21 Q. So there were no written standards to guide your  
22 company and its hacking employees prior to 2004? There was  
23 nothing in writing?

24 A. It depends on the region within NDS.

25 Q. How about in America?

1 A. Okay. So in the United States from --

2 Q. Was there a written document?

3 A. Yes, there's a written document for the United States.

4 Q. And what's the date of that?

5 A. That would be 1998.

6 Q. 1998?

7 A. Yes.

8 Q. Did you give that to your lawyers to give to us?

9 A. We -- they have an electronic copy. I made an  
10 electronic copy available this morning.

11 Q. Okay. I guess we'll be talking to you next week.

12 A. That's fine.

13 Q. Now, if you had known that Mr. Tarnovsky was receiving  
14 these cash payments in 1998 related to DirectTV piracy, and  
15 the decision was put to you, would you have terminated him?

16 A. I would have investigated and seen what the  
17 circumstances were. I would like to not be judge and jury.  
18 I think I'd rather hear the side and hear the situation.

19 Q. Well, you heard Mr. Norris testify that he went up to  
20 Canada and he had \$20,000 shipped down to him and that  
21 Mr. Norris told him to keep the money. You heard all that,  
22 didn't you?

23 A. I haven't had a chance to hear our own  
24 cross-examination. I'd like to hear the benefit of both  
25 sides.

1 Q. Now, you're not aware of any reason why Mr. Tarnovsky  
2 would need this Headend Report, Exhibit 98? You're not  
3 aware of why he would need that to do his job, are you?

4 A. I'm not aware.

5 Q. And you're aware that Exhibit 98 contains sensitive  
6 information about the plaintiff's conditional access system?

7 A. Yes. I've seen that here in court.

8 Q. Now, you're aware that Mr. Tarnovsky was deposed in  
9 this case in approximately April of 2007, correct?

10 A. I believe so. I don't have direct knowledge of the  
11 dates.

12 Q. Okay. I was there. I'm gonna tell you -- I'm gonna  
13 represent to you that it was on a Tuesday, approximately  
14 April 4th of 2007.

15 THE COURT: Why don't we take the recess right  
16 now.

17 MR. WELCH: Thank you, Your Honor.

18 THE COURT: We've been in session two hours.

19 You're admonished not to discuss this matter among  
20 yourselves, nor to form or express any opinion concerning  
21 the case.

22 Would 20 minutes be acceptable to you? About  
23 20 minutes, okay. Have a nice recess.

24 Counsel, have a nice recess.

25 (Recess held at 10:02 a.m.)

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(Further proceedings reported by Jane Rule in  
Volume II.)

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2  
3 CERTIFICATE

4  
5 I hereby certify that pursuant to Section 753,  
6 Title 28, United States Code, the foregoing is a true and  
7 correct transcript of the stenographically reported  
8 proceedings held in the above-entitled matter and that the  
9 transcript page format is in conformance with the  
10 regulations of the Judicial Conference of the United States.

11  
12 Date: April 18, 2008

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16 DEBBIE GALE, U.S. COURT REPORTER

17 CSR NO. 9472, RPR  
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<b>A</b>				
<b>Abe</b> 62:16	73:22 81:16	<b>Anybody</b> 88:6	<b>attachment</b> 12:5	<b>bag</b> 23:11,22,24 24:5
<b>abilities</b> 68:15	83:5 86:22 87:5 87:14	<b>anyway</b> 71:16	<b>attack</b> 43:15	<b>based</b> 10:12 62:11
<b>ability</b> 49:15	<b>agreed</b> 56:11	<b>apologies</b> 11:22	<b>attacks</b> 49:22	<b>battery</b> 32:10
<b>able</b> 22:6 28:16	72:11	<b>Apologize</b> 61:18	<b>attend</b> 45:20	<b>bearing</b> 17:24
48:1 68:22	<b>agreement</b> 3:14	<b>apparently</b> 36:25	<b>attention</b> 6:21	<b>began</b> 68:12 72:9 74:10
87:17 89:7,9,13	46:23 47:8 49:9	<b>APPEARANCES</b>	20:17 28:3	<b>behalf</b> 47:5,8 51:2 55:21 56:5 60:17
<b>above-entitled</b>	50:10 67:12	2:1	49:11	<b>belief</b> 88:19
93:8	72:11,12 77:6,9 77:12,17,21	<b>appears</b> 31:10	<b>attorney</b> 39:14,17	<b>believe</b> 5:4 7:2,5 11:17,19 15:18 16:16 25:20 27:19,21 49:3 55:9 56:2 57:23 68:15 70:10 77:15 79:24 80:2 88:22 91:10
<b>absolutely</b> 15:22	<b>agrees</b> 49:25	37:9	39:19 40:11	<b>believed</b> 52:10,12 52:13 54:17 74:3
18:1 67:11	<b>ahold</b> 48:10	<b>apply</b> 75:14	<b>attorneys</b> 2:6,14	<b>believes</b> 32:23
<b>acceptable</b> 91:22	<b>al</b> 1:5,8 2:3,11	<b>appoint</b> 63:6	2:19 41:9,11,14	<b>beneficial</b> 68:22 73:23
<b>access</b> 7:25 11:5,7	35:12 36:20,25	<b>appreciate</b> 65:17	87:17	<b>benefit</b> 90:24
15:12 24:15,23	37:4 38:18,21	<b>approach</b> 5:17	<b>Attorney's</b> 40:22	<b>benefits</b> 83:22
35:12 36:13	38:24 39:1	<b>approached</b> 32:23	<b>audible</b> 78:5	<b>best</b> 7:7 17:24 44:13 49:14 74:18 75:10,12
44:24 49:23	44:23 45:9,11	<b>approve</b> 75:21	<b>August</b> 17:6 36:4	<b>Beth</b> 28:6,19
59:11 62:4 64:3	46:2 47:20	<b>approved</b> 80:19	37:8 77:13,21	<b>better</b> 68:2,19 69:10 72:2
66:4,7,25 67:4	49:10	<b>approximately</b>	79:19 80:25	<b>bid</b> 78:13 79:22 80:18
68:2,12 70:16	<b>alerted</b> 4:14	32:15 43:9 48:1	<b>authenticated</b>	<b>bit</b> 8:14 14:6
71:4 72:16	<b>alias</b> 57:16,20	51:16 66:18,22	4:25	<b>Black</b> 28:11,22 30:3
73:11 75:20	58:9	75:23,25 76:11	<b>authenticity</b> 5:2	<b>board</b> 63:6 74:25 75:14
76:12 83:20	<b>aliases</b> 25:23 26:1	76:22 77:12	<b>authorizing</b> 35:11	<b>boards</b> 49:22
86:23,24 87:12	26:9 27:1	81:8 82:1 85:17	<b>automobile</b> 75:24	<b>body</b> 21:6
91:6	<b>allegations</b> 43:14	85:21,24 86:2	<b>automobiles</b>	<b>Bothered</b> 42:2,4
<b>account</b> 25:19	43:19 44:17	86:17,17 91:9	83:18	<b>bottom</b> 7:3
88:5,17	47:15 54:7,10	91:13	<b>available</b> 50:23	<b>bought</b> 79:2,3 86:5,6,7,9,10
<b>accounts</b> 66:17	54:13	<b>April</b> 1:17 4:1	90:10	<b>Bowl</b> 28:14 30:10 30:14
<b>accurate</b> 7:12	<b>alleged</b> 46:12	51:22 78:3	<b>Avenue</b> 2:20	<b>bringing</b> 46:12,14
50:8 64:19	<b>allow</b> 16:10 24:16	79:25 91:9,14	<b>Avigail</b> 28:9	
65:11 69:13,22	39:11	93:12	30:24	
80:10	<b>allowed</b> 4:11 5:12	<b>area</b> 34:11	<b>AVR</b> 32:10	
<b>action</b> 10:12,12	<b>almanac</b> 4:11 5:12	<b>argument</b> 14:25	<b>aware</b> 9:25 17:11	
10:14	<b>America</b> 32:5	20:5	22:12 39:4,11	
<b>activities</b> 74:12	61:5 89:25	<b>arrangement</b>	39:13 42:24	
<b>activity</b> 70:3	<b>Americas</b> 24:22	61:14	45:11,14 46:11	
<b>adequate</b> 5:4	58:11 60:23	<b>asked</b> 11:4 25:18	51:4 64:2 66:10	
<b>adhere</b> 89:2	61:2 62:3,9,10	26:8,24 42:7	70:12,24 71:13	
<b>admission</b> 64:22	62:12	57:19,21 58:5	72:17 74:10,12	
<b>admit</b> 84:20	<b>amount</b> 51:12	82:22 83:7 84:7	82:13,16,19	
<b>admitted</b> 20:13	<b>Ana</b> 1:16,23 4:1	89:5	83:18 88:3,10	
<b>admonished</b>	<b>Andy</b> 20:24	<b>asking</b> 11:10 15:1	88:10,13,13	
91:19	<b>Angeles</b> 2:21	15:17 58:8	91:1,3,4,5,8	
<b>advance</b> 10:15	<b>answer</b> 9:23 15:2	<b>asks</b> 83:4	<b>a.m</b> 4:3 91:25	
<b>advantage</b> 28:12	18:3 56:7 58:1	<b>assignment</b> 9:3		
<b>adverse</b> 74:23	61:21 69:20	<b>assignments</b> 8:18	<b>B</b>	
<b>advisory</b> 49:13	71:8 73:14	8:21 9:21	<b>back</b> 5:21 6:8	
<b>agents</b> 39:8	74:21,22 80:15	<b>assist</b> 73:25	11:13,21 19:1	
<b>agree</b> 20:19 25:11	82:10,11	<b>ASSOCIATES</b>	24:19 29:18	
67:3,9 68:21	<b>answers</b> 17:22	2:4	30:19 37:8	
	69:13 75:8	<b>assumed</b> 73:14,17	55:10 59:18	
		73:18	67:21 71:2 79:2	

<b>broke</b> 6:23	<b>Carter</b> 1:3 9:5	<b>chip</b> 19:4,5 74:12	89:14	<b>concluded</b> 18:24
<b>brought</b> 46:14	<b>cartons</b> 15:15	<b>choice</b> 69:3	<b>committee</b> 61:8	<b>conditional</b> 7:25
<b>BTW</b> 34:10	<b>cartoon</b> 15:15	<b>Chris</b> 36:5,19	<b>community</b> 8:19	15:12 24:15,23
<b>buck</b> 63:17,19	<b>case</b> 8:22 17:11	47:20	8:21 9:22	36:13 44:24
<b>bulletin</b> 49:21	39:12 44:4	<b>CHRISTINE</b> 2:5	<b>companies</b> 64:15	49:23 59:10
<b>bullshit</b> 44:14	46:17 49:7	<b>Christopher</b>	73:13 87:4	62:4 64:3 66:4,7
<b>business</b> 49:13	61:16 62:8 63:2	21:17 26:4 31:2	<b>company</b> 49:13	66:25 67:4 68:2
62:3 67:10 81:1	72:23 74:24	39:5 45:12 52:2	49:14 50:2,23	68:12 70:16
85:6,9,18,22,25	75:7 87:13 91:9	70:8 82:17	51:8 56:14 61:9	71:4 72:16
86:3 87:6 88:21	91:21	<b>circumstances</b>	61:14 62:16,21	73:11 75:19
88:25	<b>cash</b> 39:25 40:25	90:17	63:2,3,25 64:13	76:12 83:19
<b>buys</b> 79:10	41:2,5,10,15,22	<b>circumventing</b>	66:8 68:13	86:23,24 87:12
	41:25 42:4,9	68:17	70:11,14 71:2	91:6
<b>C</b>	55:6 87:20,23	<b>citing</b> 24:13	81:6,12,15,17	<b>conduct</b> 46:12,13
<b>CA</b> 73:11	88:3,10 90:14	<b>claimed</b> 43:2	83:17,19 87:13	<b>Conference</b> 93:10
<b>California</b> 1:2,16	<b>cat's</b> 23:10,22,24	<b>claims</b> 17:11	89:22	<b>conformance</b>
1:23 2:15,21 4:1	24:5	22:12,23 23:18	<b>company's</b> 4:13	93:9
21:24 27:4	<b>cause</b> 16:17 35:5	46:12,14,14	<b>Compensation</b>	<b>confusing</b> 34:12
<b>call</b> 56:14 59:18	54:6 82:25 87:6	<b>clarify</b> 74:21	51:8	<b>confusion</b> 29:19
59:22,24 74:24	87:13	<b>clear</b> 13:16 20:2	<b>compete</b> 65:24	37:3
<b>called</b> 17:15 60:3	<b>caution</b> 5:17	24:17 55:2 56:4	<b>Competition</b> 65:2	<b>consider</b> 5:12
62:20 66:8	<b>cc</b> 28:7 30:24	74:17	65:24	73:10
72:25	<b>center</b> 2:14 20:18	<b>client</b> 66:14	<b>competitor</b> 66:10	<b>considered</b> 47:15
<b>calls</b> 87:9	20:21	<b>clients</b> 71:14,21	<b>competitors</b> 64:3	<b>considering</b> 76:14
<b>CAM</b> 15:8,11,18	<b>centerpieces</b> 69:5	<b>clip</b> 9:18	71:24	86:12
36:9,13	<b>CENTRAL</b> 1:2	<b>close</b> 67:8	<b>complaint</b> 44:5	<b>consistently</b> 17:23
<b>Canada</b> 45:18	<b>CEO</b> 70:2	<b>closed</b> 79:25	<b>complete</b> 79:7	<b>consultancy</b> 47:6
53:7 90:20	<b>certain</b> 7:25 8:8	86:16	<b>complied</b> 83:9	47:16 50:19
<b>Canal</b> 43:3,15	15:22 18:1	<b>code</b> 14:9 15:24	<b>complies</b> 9:6	51:19 55:13
46:17 54:7,10	25:25 65:10	16:1,2,7 24:11	11:23 29:10	<b>consultant</b> 49:12
<b>candid</b> 54:23	83:4 88:25	24:14,14 25:13	37:20	49:25 50:8,9
<b>card</b> 15:19,24,25	<b>certainly</b> 57:13	25:15,16 36:24	<b>comply</b> 83:6	51:8
16:2,7,7,9,10	67:18	36:24 45:6 77:1	<b>compromised</b>	<b>consultant's</b>
19:17,20,23	<b>CERTIFICATE</b>	77:4,5 93:6	68:23 73:25	49:15
23:15,23 24:15	93:3	<b>codes</b> 17:12 22:13	79:4,11	<b>consulting</b> 3:14
24:16 31:13,24	<b>certified</b> 50:22	22:24 23:19	<b>computer</b> 12:6	46:5,23 49:12
32:4 36:15,20	<b>certify</b> 93:5	32:17 43:3,16	13:12,17 14:22	50:1,10 56:19
37:1,2,23 58:13	<b>cetera</b> 5:16 18:1	57:17	16:17,18 39:9	<b>contact</b> 14:8 20:3
58:16,20 61:6	<b>CHAD</b> 2:5	<b>coincidence</b> 55:17	<b>computers</b> 27:3,7	<b>contain</b> 48:5
71:3 77:19,22	<b>Chaim</b> 13:9 14:7	55:18	39:12	<b>contained</b> 39:1
77:24 79:7 87:2	<b>chain</b> 63:15	<b>coincidental</b>	<b>concealed</b> 39:25	47:22 49:22
87:5	<b>chairman</b> 62:15	78:14	<b>concern</b> 10:5,7,11	<b>contains</b> 91:5
<b>cards</b> 11:5,7,8,11	81:22	<b>collective</b> 55:23	83:2	<b>contemplation</b>
15:15 28:25	<b>chance</b> 4:16 90:23	56:2	<b>concerned</b> 10:4,6	53:21,23
31:5,21,25	<b>Chang</b> 39:17,21	<b>come</b> 6:8 24:17	41:24 82:6	<b>contention</b> 48:4
32:10,10 35:12	39:23 40:24	80:11 83:24	<b>concerning</b> 5:14	<b>contentions</b> 68:18
37:2 79:5	<b>charge</b> 48:22,25	<b>comes</b> 15:24 16:7	49:13 50:19	<b>contents</b> 48:15
<b>Card's</b> 19:14	<b>cheese</b> 34:13	<b>comfortable</b>	52:1,24 91:20	<b>continue</b> 10:1
<b>carefully</b> 17:21	<b>chief</b> 40:13 62:15	56:20	<b>concerns</b> 26:14,21	29:25 65:19
<b>carrying</b> 28:14	63:17	<b>coming</b> 5:20	82:25	71:21

<b>continuing</b> 6:16	26:23 27:1,2,4,5	56:22,25 57:2,3	9:14,17 12:11	<b>DARIN</b> 2:13
<b>contract</b> 51:21	27:8 30:5,6,8,12	57:6,17,18,20	12:13,17,20	<b>database</b> 48:7,10
52:15 53:3 72:4	30:15,16 31:2	58:6,7,9,10,13	13:22,25 15:2	48:13
72:8,10 79:18	31:13 32:18,19	58:14,17,21	16:20 17:1,3,20	<b>date</b> 17:6 34:3
79:19 80:25	33:8,9 34:18,19	59:8,11,12 62:5	18:5,7 20:6 23:2	90:4 93:12
82:4	34:22,25 35:2,6	63:2,7,8,9,12,18	23:4 27:23,25	<b>dated</b> 22:21
<b>controlling</b> 63:5	35:7,10,13,17	64:4 66:2,3,5,6	29:2,6,11,16,21	<b>dates</b> 80:17 91:11
86:7	36:5,7,8,13,14	66:8,9,11,18,23	32:22,22,23	<b>David</b> 1:3 2:13,24
<b>controls</b> 63:1	36:15,16,18,20	67:1,2 68:6,9	33:3,20,22	<b>Dawson</b> 4:23 5:1
<b>conversation</b>	36:21,21 37:5	69:21 70:18,22	35:23,25 37:13	<b>day</b> 1:8 4:2 22:23
69:15	38:2,3,5,10,13	71:16,17 72:8	37:17 46:25	23:18 55:9,13
<b>convicted</b> 25:7	38:16,17,19,20	72:23,24 73:1,2	47:2 48:21,25	<b>deal</b> 77:15 81:17
<b>copy</b> 12:25 17:2	38:21,22,24,25	73:4 74:4,8,9,14	49:2,4 57:24	82:5 84:17
19:1 26:24	39:2,3,6,7,9,10	75:20 76:13,23	58:1,25 59:2,15	86:16
29:13,17,22,23	39:15,16,17,18	77:7,8,13,14,16	59:20,22 60:2,7	<b>deals</b> 81:19
50:22 64:19	39:19,20,21,22	77:19,20,22,23	60:11,14,16	<b>Dean</b> 33:7,10,16
90:9,10	40:1,2,8,11,12	78:1,2,4,19,24	61:17,19 64:23	34:17,23 35:8
<b>copyrighted</b>	40:14,15,17,18	81:2,3,5,8,9,23	65:4,7,9,11,12	<b>Debbie</b> 1:21 61:21
70:18	40:22,23 41:1	82:1,7,14,18	65:17,21 69:12	69:12 93:15
<b>copy's</b> 65:16	41:11,16,17,20	84:1,4,5,14 85:6	71:7 72:20 73:5	<b>December</b> 22:14
<b>corner</b> 7:3	41:22,23,25	85:7,10,15,19	73:7 74:16,21	22:21 23:10
<b>Corp</b> 1:5 79:10,22	42:1,5,6,9,10,11	85:22,23,25	75:3,6 76:6	32:18 34:3,17
<b>corporate</b> 4:13	42:12,13,14,15	86:1,3,4,7,11,18	79:21 80:1,6,9	<b>decided</b> 47:5
72:25 82:9,13	42:16,17,18	86:19 88:14,15	80:15,17,21	<b>decision</b> 51:24
<b>corporation</b> 2:3	43:4,5,7,8,10,12	89:3,4 91:9 93:7	84:21,23 85:12	55:22,23 56:2,5
62:20,20,23,24	43:13,17,19,20	<b>correctly</b> 36:11	91:7,15,18	56:11 69:10
63:1,5,14,25	43:22,24 44:3,5	<b>Costa</b> 61:7	93:15	75:19,21 90:15
66:11 67:24	44:8,9,11,12,14	<b>counsel</b> 4:7 6:1	<b>courtesy</b> 65:21	<b>DEFENDANT</b>
78:13,15,18,21	44:15,17,22	9:8 16:20 18:8	<b>cover</b> 87:17	2:11
78:23 79:3 81:5	45:1,2,4,5,7,8	29:2 33:3 37:14	<b>crap</b> 34:13	<b>defendants</b> 1:9
81:23 82:2 86:5	45:10,12,13,15	40:17 58:25	<b>created</b> 17:5,9	62:8 63:2 85:17
86:6,10	45:16,18,19,21	59:22 65:7,7,7,9	<b>CROSS</b> 3:3	85:20,24
<b>Corporation's</b>	45:22,25 46:1,4	65:14,19 69:12	<b>cross-examinati...</b>	<b>deferred</b> 4:12
81:25	46:6,7,9,10,13	69:16 74:16	6:8 90:24	<b>demonstrated</b>
<b>correct</b> 8:5,11,12	46:20 47:6,7,8,9	75:4,16 79:21	<b>crown</b> 67:3,5	22:3
8:15,16,19 9:11	47:11,12,14,17	91:24	<b>CSR</b> 1:21 93:16	<b>denial</b> 44:10
10:2,24 11:5,8,9	47:18,20,21,23	<b>counted</b> 65:3	<b>Cumberland</b> 88:4	<b>denied</b> 42:11
11:11,14 13:13	47:24 48:2,8,9	<b>counter</b> 38:6	<b>current</b> 60:24	43:18 44:16,18
13:17,18 14:24	51:13,14,17,19	<b>countermeasure</b>	<b>currently</b> 60:22	52:5
16:18,19 17:9	51:20,23,24,25	28:23 29:1 30:4	<b>customer</b> 28:24	<b>department</b> 28:20
17:10,13,14	52:4,6,7,11,13	30:7	83:4,5 87:8	<b>depends</b> 87:7
21:4,18,21,22	52:14,16,18,21	<b>countermeasures</b>	<b>customers</b> 61:4,4	89:24
21:25 22:1,5,7,8	52:22,25 53:1,4	83:25	83:3	<b>deposed</b> 72:23,25
22:14,15,19,20	53:5,14,16,17	<b>counter-piracy</b>	<b>Customs</b> 39:8	91:8
22:21,22,24,25	53:20,22 54:2,4	38:6	54:3	<b>deposition</b> 8:22
23:19,20 25:1,4	54:5,7,10,11,13	<b>course</b> 26:5 87:16	<b>cut</b> 15:14	8:24 55:25 56:3
25:5,6,8,9,12,13	54:14,19,20	<b>court</b> 1:1,21,22		72:20 82:9,14
25:19,23,24	55:1,4,8,11,15	4:5,14,19 5:8,11	<b>D</b>	84:4,8
26:2,3,6,7,9,10	55:17,20,22	5:14,25 6:14 7:5	<b>D</b> 2:5,19 3:1	<b>descrambler</b>
26:12,13,16,22	56:7,8,10,15,16	7:9,12 9:7,11,13	<b>Dani</b> 20:25	15:18



<b>deserves</b> 75:12	<b>DirecTV's</b> 66:10	<b>dr7's</b> 36:7 45:6	<b>efforts</b> 59:9 74:10	<b>evidence</b> 3:9
<b>desired</b> 39:8	83:9	<b>DTH</b> 28:10	83:20	12:14,21 20:14
<b>Despite</b> 69:6	<b>disable</b> 28:24	<b>DTV</b> 32:1	<b>either</b> 4:11 7:9	23:5 28:1 33:23
<b>detailed</b> 50:9	<b>disassembly</b> 31:7	<b>due</b> 57:11 72:10	32:10	36:1 47:3 64:24
<b>Detective</b> 88:4	31:15	<b>dump</b> 23:15	<b>electronic</b> 28:23	73:24 84:24
<b>devastating</b> 86:23	<b>disclose</b> 41:10	<b>duties</b> 24:7,21	30:4 40:1 41:6	<b>exact</b> 78:11
<b>developed</b> 16:1	56:23 57:1,4	49:12	83:24 90:9,10	<b>examination</b> 6:16
28:24 36:25	<b>disclosed</b> 40:24	<b>D-O-V</b> 60:13	<b>em</b> 73:14 82:20	6:17 60:17,20
65:25	<b>discovered</b> 57:9	<b>D6V1</b> 1:25	<b>Embarcadero</b>	<b>examples</b> 32:1,3
<b>developing</b> 71:3	<b>discuss</b> 75:15		2:14	<b>excellent</b> 52:20
<b>development</b>	91:19	<b>E</b>	<b>employed</b> 83:11	<b>exchange</b> 33:15
77:22	<b>discussed</b> 41:12	<b>E</b> 3:1	<b>employee</b> 8:14,16	35:4
<b>device</b> 41:6	44:8 65:18	<b>earlier</b> 24:11	26:16	<b>exchanges</b> 27:17
<b>devices</b> 8:1,4,8,10	<b>discussions</b> 24:4	34:11 38:9	<b>employees</b> 21:4	<b>excited</b> 28:11
30:5 40:1	<b>DISH</b> 19:21	54:25	61:15 89:1,22	69:14
<b>devote</b> 49:25	<b>displayed</b> 16:23	<b>early</b> 37:4 38:5	<b>employing</b> 82:7	<b>Excuse</b> 74:16
<b>devoted</b> 50:5	20:15	39:4 45:4,15	<b>employment</b>	80:15
<b>different</b> 9:1	<b>dispute</b> 17:8 54:7	<b>EBERHART</b>	53:12 54:16	<b>executive</b> 61:8
55:24 70:2	54:10 64:18	2:13	55:12 56:14	62:15
<b>differentiation</b>	<b>distinction</b> 10:7,9	<b>EchoStar</b> 1:5,25	<b>employs</b> 53:18	<b>exhibit</b> 3:9 6:22
84:18	<b>District</b> 1:1,2,22	2:3 7:25 8:4,5,8	<b>enacted</b> 89:17,18	6:23 7:1,4,14,20
<b>difficulty</b> 5:13	<b>DOC</b> 1:7	8:10 11:5,7,11	<b>encrypted</b> 12:6	10:16 11:3,13
29:12 32:22	<b>document</b> 7:20	15:24 16:7,7,9	<b>ended</b> 55:13	11:18,20,21,22
<b>diligence</b> 57:11	9:11,12 11:14	19:13,17 21:9	<b>engineering</b> 13:9	12:2,9,14,21,23
<b>direct</b> 3:3 6:16,17	11:17 12:6	21:10 22:2,12	18:23 83:16,25	16:12,24 17:9
60:17,20 61:13	13:11,11,16	22:23 23:18,23	<b>England</b> 62:18	19:2 20:4,12,17
62:1,10 68:10	16:16,23 17:15	24:14,16,17	<b>enter</b> 47:6 57:10	20:18 22:9,10
74:13 77:2	20:15 27:16	25:13,15,16	<b>entered</b> 46:5,8	22:16 23:1,5
83:21 91:10	28:10 29:3,4,7,8	28:13,14,16	47:10 49:10	27:12,14,22
<b>directly</b> 43:6	29:9 32:25 64:7	30:25 31:5,10	67:12 72:7 77:6	28:1 30:20
<b>DirecTV</b> 3:16	65:11,13 89:15	31:21,23,24	77:9,12,17	32:21 33:5,13
15:12,19 24:15	90:2,3	32:11 39:11	<b>entire</b> 79:11	33:15,19,23
28:11,24,25	<b>documents</b> 4:24	44:4,5,25 46:11	<b>entirely</b> 69:22	35:18,19,22
30:4,5,13 31:9	48:2,4,13,20	46:16 47:11,15	<b>entitled</b> 65:2	36:1 46:21,22
31:11,12,13	49:6 73:5	48:5 49:7 59:6	<b>entrusted</b> 70:15	47:3 64:6,9,22
36:24 39:2	<b>doing</b> 35:14 51:2	59:10 60:18	<b>enumerated</b> 69:4	64:24 79:16
54:13 62:5 66:8	53:9 65:10	62:5 63:12 64:4	<b>Ereiser</b> 5:10,11	84:6,10,20,24
66:14,14,21,22	70:25 88:18	66:10 67:24	36:25	88:22 91:2,5
66:23 67:4,6,10	<b>double-sided</b>	69:3,10 75:1,15	<b>Ereiser's</b> 5:19	<b>EXHIBITS</b> 3:8
67:16 68:13	65:16	77:4 87:13	<b>Erez</b> 28:6,19	<b>exists</b> 50:17
69:8,23 71:1,13	<b>doubt</b> 80:5	<b>EchoStar's</b> 17:11	<b>Ergen's</b> 63:9	<b>expert</b> 5:16
72:4,14 73:15	<b>Dov</b> 2:24 3:6	17:12,19 18:15	<b>especially</b> 86:12	<b>expire</b> 72:5,10
77:6,19,24 78:7	59:24 60:5,10	22:6,13 24:8,23	89:2	<b>explain</b> 36:22
78:9,13,15,15	<b>Dr</b> 4:13 6:7 62:16	32:17 47:23	<b>Essentially</b> 44:22	44:20 87:16
79:23 81:1,18	76:4	57:16 58:12,15	<b>established</b> 67:7	<b>explanation</b> 87:16
82:6,17,18	<b>drafts</b> 89:6	58:19 75:19	<b>et</b> 1:5,8 2:3,11	<b>express</b> 91:20
83:10 84:12	<b>drawn</b> 74:23	<b>ECM-CAM</b> 36:7	5:16 18:1	<b>ExpressVu</b> 32:10
85:6,9,18,21,25	<b>drive</b> 48:15	<b>EDM</b> 34:11	<b>event</b> 28:11,16	<b>extend</b> 81:1
86:3,7 87:13	<b>dr7</b> 23:14 34:14	<b>effective</b> 30:7	<b>events</b> 40:7,9	<b>extended</b> 82:4
88:11 90:14	36:9	<b>effects</b> 86:23	<b>eventually</b> 5:8	<b>extension</b> 72:7,11

77:10 84:14,15 <b>eyes</b> 37:11,22 38:1 <b>e-mail</b> 3:10,12,13 3:18 12:5,6,7 13:8,15 14:16 14:17,22 15:5 21:3,7 22:18 23:9,10,19 24:5 24:11 25:10 27:16,20 30:20 32:15 33:15 34:20 35:4 <b>e-mails</b> 3:11,17 4:23 5:1,2,5 10:20,23 11:15 20:19 28:4 35:20 <b>E3M'd</b> 31:5	<b>filed</b> 46:16 47:11 57:2 68:6 <b>filing</b> 64:12 <b>final</b> 55:21 <b>finally</b> 78:16 <b>find</b> 34:5 80:1 88:19 89:9 <b>fine</b> 74:22,23 90:12 <b>finger</b> 24:25 <b>fingerprint</b> 15:25 <b>finish</b> 6:2 <b>fire</b> 42:13 43:23 53:23 54:1,3 55:22 56:5 83:1 <b>fired</b> 43:11 <b>first</b> 4:10,11 12:24 28:4 36:3 36:3 41:14 45:3 45:14 49:9 51:7 58:12,15 60:11 60:13 61:3 64:9 65:24 66:2 67:19,23 <b>flavor</b> 61:1 <b>flight</b> 4:17,18 <b>flip</b> 16:12 <b>flushed</b> 79:6 <b>focus</b> 6:21 12:16 14:6 15:20 17:5 20:17 23:7 28:3 30:20 33:25 36:3 37:7,8 49:9 49:10 51:7 58:24 59:9 68:5 68:11 70:4 79:17 80:24 <b>focusing</b> 12:23 19:1 30:19 44:4 53:11 <b>following</b> 65:13 <b>follows</b> 9:19 <b>foregoing</b> 93:6 <b>forgeries</b> 5:3 <b>form</b> 3:19 58:9 64:12,12,12 91:20 <b>formal</b> 63:23 64:1 <b>format</b> 93:9 <b>formation</b> 5:15	<b>former</b> 34:23 <b>forth</b> 88:25 <b>forum</b> 61:8 <b>forums</b> 49:21 <b>forward</b> 69:3 72:1 72:3 <b>found</b> 13:11,16 14:22 16:16 41:18 88:3 <b>foundation</b> 5:4,6 5:9,20 <b>foundational</b> 76:6 <b>Fountainview</b> 2:7 <b>four</b> 51:16 <b>fourth</b> 17:1 <b>four-year</b> 77:15 79:19 80:25 81:17 82:5 84:17 <b>frame</b> 18:21 42:5 68:7 70:10 78:11 <b>frames</b> 80:2,8 <b>Francisco</b> 2:15 <b>free</b> 22:7 <b>front</b> 29:18 30:19 65:11,18 84:7 <b>fulfilling</b> 50:9 <b>full</b> 60:9 88:19 <b>further</b> 14:6 59:13 92:1	61:1 65:8 80:7 90:8,8 <b>given</b> 8:20 75:8 <b>gives</b> 32:1 <b>giving</b> 8:22 9:2 44:18 <b>global</b> 40:13 49:20 <b>go</b> 11:21 22:9 24:1 31:23 35:8 37:2,3 53:2 64:8 81:10,22 83:13 84:6 85:3 86:9 <b>goal</b> 30:13 <b>goes</b> 5:15 15:13 15:18 63:11 <b>going</b> 4:19 5:19 5:22 6:2,5,7,21 10:17 11:13 15:7 20:17 21:6 30:20 32:20,25 37:8 49:10 59:2 59:15 61:20,22 64:14 65:23 69:3 71:5 73:9 74:16 75:14 79:15 81:16 87:8 <b>gonna</b> 81:1 85:2 91:12,12 <b>good</b> 5:25 6:19,20 81:19 <b>gotten</b> 48:10 <b>government</b> 38:23 39:5 52:23 <b>government's</b> 39:24 <b>grandchildren</b> 4:16 <b>granted</b> 4:19 <b>great</b> 44:8 <b>groceries</b> 53:7 <b>group</b> 1:8 2:11 27:10 48:19,22 48:23,23,24 62:3,9,10,12,25 63:1 64:15 <b>guess</b> 28:15 32:9 63:23 90:11	<b>guessing</b> 31:4 <b>guide</b> 89:21 <b>Gutman</b> 30:24 <b>guy</b> 34:12,12 63:20 <b>guys</b> 34:8
<hr/> <b>F</b> <hr/> <b>facilities</b> 27:8 <b>fact</b> 26:11 34:23 36:19 40:21 45:20 51:12 53:6 56:17 57:19 69:1,7 73:15 <b>fair</b> 35:15 <b>Fairly</b> 67:8 <b>fall</b> 79:24 <b>familiar</b> 29:3 62:21 <b>far</b> 54:23 63:11 63:11 82:17 <b>father</b> 53:18 <b>February</b> 28:6 30:21 <b>federal</b> 1:21 53:25 56:24 <b>fee</b> 51:9 <b>felt</b> 56:20 69:2,8 <b>FERGUSON</b> 9:6 9:12 11:23 29:5 29:10 <b>field</b> 9:3 14:7,12 14:14,15,18,23 20:3 <b>fighting</b> 38:10,11 <b>file</b> 21:9 23:13	<hr/> <b>G</b> <hr/> <b>Gale</b> 1:21 93:15 <b>gears</b> 42:23 <b>general</b> 60:25 61:2 <b>generation</b> 58:13 58:15 <b>gentleman</b> 6:3,6 6:14 33:7 61:10 <b>gentlemen</b> 75:6 <b>George</b> 21:20 23:9 30:21 31:2 36:5 53:18,22 <b>George/Chris</b> 35:21 <b>getting</b> 72:22 84:16 <b>give</b> 8:20 36:19,20	<b>guessing</b> 31:4 <b>guide</b> 89:21 <b>Gutman</b> 30:24 <b>guy</b> 34:12,12 63:20 <b>guys</b> 34:8	<hr/> <b>H</b> <hr/> <b>hack</b> 21:9 22:3 31:24 47:23 58:12,19 59:6 70:21 71:21,22 83:13 86:22 <b>hackable</b> 31:24 <b>hacked</b> 17:12,19 23:23 28:13 32:4,5 44:25 45:3 68:9,13 69:23 70:1,6 <b>hacker</b> 8:19,21 9:22 70:12 <b>hackers</b> 70:20 82:7 <b>hacking</b> 59:9 71:1 71:13 87:12 89:22 <b>hacks</b> 79:5 <b>HAGAN</b> 2:5 5:10 <b>Haifa</b> 42:25 48:23 <b>half</b> 32:16 <b>hand</b> 6:23 9:4 10:17 11:21 60:4 72:19 <b>handbook</b> 8:15,16 <b>handed</b> 29:7,8 <b>handled</b> 87:7 <b>happening</b> 29:17 <b>happy</b> 80:8 <b>hard</b> 12:25 29:13 29:17,22 48:15 <b>hardware/plastic</b> 31:25 <b>HARTSON</b> 2:18 <b>Hasak</b> 28:7 40:11 40:11,13 <b>head</b> 13:9 14:21 24:21 58:11 <b>Headend</b> 17:15 18:11 19:25 91:2	

<b>hear</b> 7:6 90:18,18 90:23,24	<b>ID</b> 15:23 19:4,5,7 19:10	<b>instruction</b> 5:21 78:8	<b>Israel</b> 4:15,18,19 11:4,8 13:9 19:24 28:21 42:25 48:19	20:5 23:3 27:24 33:21 35:24 47:1
<b>heard</b> 33:7 62:19 74:6,7,7 75:10 76:4 77:2 87:19 87:21 88:12 90:19,21	<b>idea</b> 13:5 14:3,18 53:8 58:12 69:18	<b>instructions</b> 9:2 22:24	<b>issue</b> 72:2	<b>knew</b> 38:4 39:1 47:19,22 67:13 67:16 71:21 87:20
<b>hearsay</b> 5:13	<b>ideas</b> 28:16	<b>instructs</b> 5:14	<b>issued</b> 27:3 69:1	<b>know</b> 6:24 7:10 7:11,17,20,22 8:3,7,10 10:14 10:23 13:6,10 13:12,14,19,20 13:21,23 14:3 14:13,13,14,15 14:16,22,23 15:4,5,13,16 16:5,11 18:23 19:10,11,16 20:9,9 23:21 28:13 31:2 36:5 40:13 41:22 46:2,15,16 48:6 48:7,18,20 49:6 49:8 50:5,14,17 53:9 55:6,21 56:1,4 57:7,15 57:22 58:15,19 59:6,9 64:8 66:13 68:8 73:15,17 80:9 80:14,16 83:21 88:16,18
<b>hedge</b> 74:24 75:11	<b>IDENTIFICAT...</b> 3:9	<b>interest</b> 34:9 35:3 86:7	<b>issues</b> 4:9	<b>knowledge</b> 17:18 18:14,17,19,22 19:19 31:20 68:10 77:2 83:15 91:10
<b>held</b> 91:25 93:8	<b>identified</b> 16:10	<b>interested</b> 35:1	<hr/> <b>J</b> <hr/>	<b>known</b> 82:8 83:21 84:2 90:13
<b>help</b> 28:13	<b>identify</b> 6:25 10:19 11:14 12:2 27:14 35:19 46:22	<b>internal</b> 22:18	<b>J</b> 34:11	<b>Kommerling</b> 42:24 43:2
<b>helped</b> 52:23	<b>identifying</b> 15:23	<b>Internet</b> 17:12 21:10,13 22:3 22:13,24 23:13 23:19 24:12,13 24:13 26:9 27:1 27:9,10 32:17 38:1 43:3 48:19 49:19,20,22 52:20 57:17 64:15 73:24 77:1,5	<b>Jane</b> 92:1	<b>Korean</b> 28:10
<b>helpful</b> 52:19	<b>identity</b> 16:6,8	<b>interruption</b> 87:6	<b>January</b> 30:8,17	<b>Kudelski</b> 66:1
<b>Hi</b> 28:9	<b>II</b> 92:2	<b>intervene</b> 46:16	<b>Jerusalem</b> 27:10 48:23,24	<hr/> <b>L</b> <hr/>
<b>hidden</b> 15:23	<b>illegal</b> 28:15	<b>interviewed</b> 41:18 42:19 52:1	<b>jewel</b> 67:3	<b>L</b> 2:18
<b>hire</b> 53:3	<b>image</b> 14:8 15:8 39:8,11 48:1	<b>introduced</b> 6:14	<b>jewels</b> 67:5	<b>labs</b> 24:19
<b>hired</b> 46:19 53:15 70:8,11,25 71:12,16	<b>images</b> 15:14,18	<b>investigate</b> 34:21 43:14	<b>JN</b> 21:14	<b>lack</b> 5:4
<b>hiring</b> 70:20 82:7	<b>implemented</b> 30:8,10	<b>investigated</b> 42:18 54:3 90:16	<b>job</b> 24:7,12,21 56:17,19 83:13 91:3	<b>Ladies</b> 75:6
<b>hobbyist</b> 68:15	<b>important</b> 15:21 52:18 57:14 67:9 85:2	<b>investigating</b> 39:15	<b>John</b> 3:4 6:12,15 20:21 28:6,9 30:24 34:10 36:4	<b>laid</b> 5:7,9
<b>HOGAN</b> 2:18	<b>Importantly</b> 47:19	<b>investigation</b> 38:8 39:5,24 53:25 88:4,14,16	<b>judge</b> 1:3 9:5 90:17	
<b>hold</b> 89:13	<b>improve</b> 83:19	<b>investigations</b> 25:21 56:24	<b>Judicial</b> 93:10	
<b>hole</b> 31:16	<b>incident</b> 42:18	<b>involve</b> 10:23 49:20	<b>jumps</b> 86:10	
<b>holiday</b> 4:15	<b>incorrect</b> 11:18 27:20 48:12	<b>involved</b> 11:15 38:15 42:17 45:24 52:13 71:1,13 82:12	<b>jury</b> 1:15 4:4,6 5:6,17,23,24 6:15 60:12 61:1 62:7 64:9 66:13 75:12 76:3,4 81:10 84:10 86:20 90:17	
<b>home</b> 21:24	<b>indicated</b> 4:24	<b>investigation</b> 38:8 39:5,24 53:25 88:4,14,16	<b>jury's</b> 62:19	
<b>Honor</b> 4:8,21 5:10 7:15 9:16 12:10 14:25 18:9 20:5 23:1 27:22 29:15 33:18 35:22,24 46:24 47:1 59:24 60:19 61:23 64:21 65:15,20 71:5 73:6 76:2 79:25 84:19 89:11 91:17	<b>individual</b> 47:5	<b>involve</b> 10:23 49:20	<b>keep</b> 15:7 29:21 50:13 67:10 90:21	
<b>HONORABLE</b> 1:3	<b>individuals</b> 25:22	<b>involved</b> 11:15 38:15 42:17 45:24 52:13 71:1,13 82:12	<b>KENNETH</b> 2:19	
<b>hoped</b> 67:18	<b>individual's</b> 48:18	<b>involvement</b> 42:8 52:5 76:5	<b>kept</b> 50:19 83:11	
<b>hours</b> 50:1,6,9 91:18	<b>industry</b> 25:1	<b>involves</b> 27:16	<b>key</b> 57:1	
<b>house</b> 27:4	<b>inferences</b> 74:23	<b>IRC</b> 37:12,23	<b>kill</b> 30:4	
<b>Houston</b> 2:8	<b>inferior</b> 74:4,11 76:1,12,23	<b>IRD</b> 15:13	<b>kind</b> 15:24 29:18 59:17 85:2	
<b>Hum</b> 63:23	<b>info</b> 15:14		<b>KLEIN</b> 2:19 7:15 12:12,19 14:25	
<b>hundreds</b> 38:13	<b>information</b> 16:6 16:9 20:10 24:2 26:1,15,22 47:22 80:10 82:8 91:6			
<hr/> <b>I</b> <hr/>	<b>initial</b> 81:11			
	<b>inside</b> 16:9			
	<b>instance</b> 52:24			
	<b>instructed</b> 45:20			
	<b>instructing</b> 75:7			

<b>language</b> 16:8	21:8 32:16	<b>Marcos</b> 40:1 52:3	<b>middle-1998</b>	<b>motion</b> 4:24 5:22
<b>large</b> 61:4 67:13	<b>living</b> 53:7	52:6 54:18 55:3	18:20	46:16
67:15	<b>local</b> 61:15,15	88:5	<b>Mike</b> 21:17,17,20	<b>move</b> 7:23 10:16
<b>largest</b> 66:14 67:6	<b>located</b> 29:4,6	<b>mark</b> 34:6	23:9,15 31:2	64:22 72:1,3
67:17 81:25	31:16	<b>marked</b> 79:16	<b>Mike's</b> 21:9,23,24	83:10
<b>lasted</b> 51:15	<b>log</b> 50:9,13,15,17	<b>market</b> 67:13,15	<b>million</b> 48:1,4,13	<b>multiple</b> 40:7
<b>late</b> 45:3,15 80:18	50:22 51:2	81:14	85:5,8,11,18,21	<b>Murdoch</b> 63:16
80:24	<b>long</b> 79:5	<b>marketing</b> 28:20	85:25 86:2,11	63:18,22,24
<b>Law</b> 2:6,14,19	<b>longer</b> 69:14	<b>masking</b> 16:8	86:17	78:12 79:2,22
<b>lawsuit</b> 22:12	<b>longer-term</b> 77:6	<b>math</b> 51:18	<b>millions</b> 87:4	80:14 81:22
47:11,13	<b>long-term</b> 77:9	<b>matrix</b> 61:14	<b>mind</b> 75:9	<b>mutual</b> 72:11
<b>lawsuits</b> 57:2	<b>look</b> 6:22,24 7:3	<b>matter</b> 5:18 91:19	<b>minimum</b> 49:25	<b>MYERS</b> 2:12
<b>lawyers</b> 82:14	10:22,25 12:23	93:8	50:5	
90:8	24:1 33:25	<b>mean</b> 14:19 35:14	<b>minute</b> 42:19	N
<b>LAX</b> 4:17	35:18 64:6	42:10 49:18	44:23	<b>N</b> 3:1
<b>lay</b> 5:19	79:15 86:20	52:20 58:25	<b>minutes</b> 6:9 91:22	<b>Nagra</b> 34:13 45:3
<b>learned</b> 41:14	<b>looking</b> 29:21	63:19	91:23	68:3,8,21,23
45:3 57:9 72:13	72:15	<b>means</b> 15:16	<b>missed</b> 86:14	69:2 70:5 71:22
<b>leave</b> 65:14	<b>Los</b> 2:21	81:10,12	<b>missing</b> 13:1	72:16 73:23
<b>left</b> 32:24	<b>lose</b> 87:14	<b>meant</b> 23:21	<b>Misstates</b> 7:15	74:4 77:5
<b>length</b> 44:8	<b>lost</b> 76:18	<b>meet</b> 4:16	<b>module</b> 15:12	<b>NagraStar</b> 60:18
<b>let's</b> 10:16 11:21	<b>lot</b> 21:13 25:3	<b>meeting</b> 39:23	36:13	64:3 73:12
12:16,23 13:16	38:15	40:10,16,21	<b>moment</b> 6:2 7:5	<b>NagraStar's</b>
14:6 15:7,20	<b>Love</b> 33:7,10,16	45:18,21,23,23	16:20 17:20,20	73:12,12
16:12 22:9 23:7	34:8,17,23 35:1	<b>members</b> 63:6	17:22 29:2	<b>NagraVision</b>
27:12 33:25	35:8	<b>memo</b> 69:1	37:13,17 42:23	23:15 32:3
35:18 36:3	<b>lying</b> 52:8	<b>memorandum</b>	48:21 59:16,18	65:25 73:13
44:23 46:21		69:4	65:4 80:6	<b>Nagra's</b> 44:24
49:9,24 69:11	M	<b>Menard</b> 4:23 5:1	<b>Monday</b> 20:22	<b>name</b> 36:9 47:13
80:1	<b>M</b> 2:5	35:12 36:20,25	<b>money</b> 90:21	48:18 60:1,9,10
<b>level</b> 68:15 79:13	<b>mailbox</b> 41:7,15	37:4,25 38:5,7	<b>monitor</b> 24:18	60:11,13,14
79:14	41:25 42:5 52:2	38:18,21,24	27:6,11 49:19	<b>named</b> 33:7 39:19
<b>leveled</b> 54:13	88:5,17	44:23 45:11,17	<b>monitored</b> 24:24	<b>names</b> 20:25
<b>levels</b> 70:3	<b>main</b> 68:1,18	46:2,6,13,19,23	24:25	<b>name's</b> 60:15
<b>lie</b> 55:5	<b>maintain</b> 50:8	47:6,16,20,25	<b>monitoring</b> 24:12	<b>NASDAQ</b> 63:4
<b>lied</b> 55:10	<b>major</b> 30:3	48:1,13 49:10	<b>month</b> 32:16 50:1	<b>NDS</b> 1:8 2:11 3:15
<b>liked</b> 87:25	<b>majority</b> 63:6	50:5,13,19 51:1	50:6 51:13	3:19 4:7 7:20
<b>Limine</b> 4:24	<b>making</b> 51:4	51:5,12,15,18	80:20	11:4 13:9,14,21
<b>line</b> 19:5,7 23:7	65:10 75:9	52:1,5,8,17,20	<b>monthly</b> 50:22	14:3,15,21
65:2,24	<b>man</b> 39:17	52:23 53:2,3,6	51:9	15:12 17:12,18
<b>lines</b> 9:5,8,9 72:20	<b>manage</b> 87:11	<b>Menard's</b> 37:2	<b>months</b> 75:24,25	18:12,14,24
73:6	<b>management</b>	39:1 45:9 47:13	76:12,22 81:8	19:24 20:9 21:3
<b>list</b> 3:15 26:8,12	55:23 61:8	47:22 51:21	<b>Mordinson</b> 74:7	21:20 24:15,22
84:11	<b>manager</b> 60:25	55:12	76:11,21 83:17	25:3,19 26:6,12
<b>listed</b> 66:2	61:2,16	<b>Mesa</b> 61:7	<b>Mordinson's</b>	26:16 27:3,7
<b>listen</b> 65:12	<b>Manassas</b> 41:1,3	<b>met</b> 39:21 41:9,13	75:22	28:23 30:4 32:5
<b>litigation</b> 67:23	41:7	67:19,21,23	<b>morning</b> 4:12	32:5 35:1,8
68:2,6,12,18	<b>manufacturing</b>	<b>metadata</b> 16:17	5:25 6:19,20	36:25 37:4
69:1,5 70:5 72:2	61:6	<b>Michael</b> 30:21	89:14 90:10	40:14 42:24
<b>little</b> 8:14 14:6	<b>March</b> 46:8 53:12	35:21 36:4	<b>Moskowitz</b> 2:24	43:7 46:5,8,12

47:11,25 48:3 48:10,13,16,17 49:9,21,23 50:6 50:20 51:2,4,19 51:21 52:18 53:12,15,18,21 54:6,9,12,15,16 54:17 55:21 56:5,13 57:2,4 58:11 60:23 61:2 62:3,3,9,9 62:10,10,12,12 63:1,6 64:15 66:7,14,15,17 67:4,9 68:3,21 68:22 69:19 70:6,8 73:1,3,23 74:10 75:1,15 75:18 77:5 81:1 81:4 82:17,20 85:5,8,11,17,20 85:20,24 86:17 89:6,24 <b>NDS's</b> 27:8 40:17 47:5,8 64:2 82:6 <b>nearly</b> 54:16 <b>necessarily</b> 67:5 83:4 <b>need</b> 4:22 15:8,13 15:22 37:23 80:11 91:2,3 <b>needed</b> 71:17 <b>negotiated</b> 47:16 72:12 <b>negotiation</b> 72:9 72:10 <b>negotiations</b> 74:1 <b>net</b> 37:23 <b>Network</b> 19:21 <b>never</b> 7:14 26:8 26:24 27:6 31:17 38:18 42:7 46:2 48:7 48:10 57:19 58:5 <b>new</b> 61:5 72:12 79:7,18 83:24 <b>News</b> 62:20,23,24 62:24 63:1,5,14 63:24 67:24	78:13,15,18,21 78:23 79:3,10 79:22 81:5,22 81:25 82:2 86:5 86:6,10 <b>nice</b> 81:17 91:23 91:24 <b>nickname</b> 21:20 33:10 <b>nicknames</b> 25:23 26:1 <b>night</b> 6:22 <b>Nipper</b> 57:16,20 57:21 58:5,9 <b>Noll</b> 3:4 6:16,18 7:13,19 9:4,9,16 9:18,24 11:20 12:1,9,16,18,22 14:2 15:6 16:24 17:2,4 18:9,10 20:8,12,16 23:1 23:6 27:22 28:2 29:15,20 30:1,2 32:20 33:2,4,18 33:24 35:22 36:2 37:15,19 37:21 46:24 47:4 49:5 58:4 59:1,4,5,13 <b>nonresponsive</b> 71:6 <b>Norris</b> 3:4 6:3,3,5 6:8,12,15,19 7:1 9:25 12:2 14:15 16:13,14 17:5 20:2,18,21 23:8 25:18,21 27:14 28:7,22 30:3,24 33:5 35:19 36:4 39:4 46:22 48:17 57:12 61:10 62:1 87:19 88:10,13 89:2 90:19,21 <b>North</b> 32:5 61:5 <b>Northsat</b> 33:11,25 <b>November</b> 20:22 <b>number</b> 15:8,13 15:13,18,25 19:16,20 85:16	86:14 <b>numbered</b> 64:8 <b>numbers</b> 19:13 <hr/> <b>O</b> <hr/> <b>O</b> 1:3 <b>oath</b> 42:7 <b>object</b> 14:25 71:5 <b>objection</b> 4:22 7:15 12:11,12 12:18,19 20:5 23:2,3 27:23,24 33:20,21 35:23 46:25 71:7 76:2 84:21,22 <b>obligations</b> 50:10 <b>offer</b> 11:20 12:9 12:18 23:1 27:22 33:18 35:22 46:24 <b>offered</b> 20:13 81:13 <b>offering</b> 81:11 <b>office</b> 21:24 40:22 41:10 <b>officer</b> 24:22 <b>officers</b> 89:2 <b>Official</b> 1:21 <b>officials</b> 38:23 39:14 <b>oftentimes</b> 25:23 <b>Oh</b> 86:15 <b>okay</b> 4:5 7:3,8,23 8:2 9:4,14 10:21 11:2,3,13,20 12:8 14:6 15:7 16:12 17:5 18:5 19:3 20:2,21 25:10 27:13 29:11 30:1,19 31:23 33:2,3 36:22 37:7,22 42:23 46:19 49:24,24 59:4 59:13,19 61:18 62:3 63:14,20 64:2,16,17 68:5 68:11 69:16 70:4,6,24 71:19 72:13 73:9,18	73:21 74:20 76:10,19 77:4 78:10 79:2 80:21,22,25 81:20 82:16 85:3,4 87:8,18 88:2,13,21,25 89:5 90:1,11 91:12,23 <b>older</b> 31:25 32:10 79:5 <b>Oliver</b> 42:24 <b>once</b> 44:7 78:15 <b>one-year</b> 72:7,11 77:10 84:14,15 <b>oOo</b> 92:3 93:1 <b>openly</b> 81:14 <b>operation</b> 38:6 <b>operational</b> 26:5 <b>opinion</b> 5:13,15 91:20 <b>order</b> 6:6 8:13 43:14 59:16 60:3 74:14 <b>original</b> 28:5 29:8 31:5,25 72:4 73:19 <b>outside</b> 4:4,5 27:8 <b>Overruled</b> 15:2 20:6 76:6 <b>owned</b> 78:19,21 78:23 81:4 <b>O'MELVENEY</b> 2:12 <hr/> <b>P</b> <hr/> <b>packages</b> 39:25 52:1,6 54:18,22 54:23 55:2 <b>page</b> 9:5,9,9 16:12 16:24 17:1,2 19:1 28:3 29:16 29:21,22 30:19 36:3 49:9 51:7 56:3 64:7,12 65:12,14 72:20 93:9 <b>pages</b> 26:25 29:12 29:19 64:8 65:3 <b>paid</b> 51:8,12,18	<b>paired</b> 16:1 <b>paragraph</b> 12:24 15:20 32:8 37:10,16 49:11 51:7 <b>parent</b> 73:12 <b>part</b> 12:23 24:12 30:13 42:24 81:12 83:13 <b>participants</b> 5:3 <b>participate</b> 61:8 <b>particular</b> 19:17 <b>parties</b> 75:8 <b>partly</b> 35:4 <b>pass</b> 32:20 59:13 <b>Passover</b> 4:15 <b>payments</b> 87:20 87:23 88:11 90:14 <b>Peled</b> 62:16,17 63:22 74:13 75:18 <b>penetration</b> 69:7 69:19 <b>people</b> 21:3 24:13 25:7 45:24 75:13 <b>percent</b> 62:12 63:3,4 82:1 <b>perform</b> 87:2 <b>performing</b> 8:18 9:21 50:1 52:18 <b>period</b> 31:13 68:5 68:11 69:23 70:4 72:13 74:3 77:19,25 79:7,9 79:11,18 80:24 81:21 86:8 <b>permission</b> 36:19 <b>person</b> 15:17 48:22,25 56:1 75:18 <b>personal</b> 27:10 <b>personally</b> 27:6 39:21 82:12 <b>personnel</b> 88:20 <b>person's</b> 5:16 <b>PhD</b> 28:20 <b>piracy</b> 24:24,25 25:22 26:1
---	--	--	--	--

38:10,11,16 39:1 45:24 48:14 49:20 52:24 59:10 87:12 90:14 <b>piracy-related</b> 26:15,22 <b>pirate</b> 10:1 25:1,8 25:11,19 30:5 34:24 58:16 <b>pirated</b> 24:14 28:25 <b>pirates</b> 25:3 30:13 38:13 <b>pirating</b> 39:2 58:20 <b>PIT</b> 31:24 <b>place</b> 9:20 <b>placed</b> 8:17 24:16 <b>PLAINTIFF</b> 2:3 <b>plaintiffs</b> 1:6 11:20 12:9 46:24 66:5 <b>plaintiff's</b> 6:12 33:18 60:5 83:14 91:6 <b>planes</b> 75:24 83:17 <b>plans</b> 4:15 <b>plants</b> 61:6 <b>platform</b> 66:25 86:25 <b>play</b> 5:5 9:16,18 <b>played</b> 9:19 <b>player</b> 57:1 <b>PLC</b> 1:8 2:11 <b>please</b> 5:23 6:1,10 9:18 10:16 16:21 20:12 22:9 27:12 29:6 29:9,25 32:21 35:18 46:21 58:1,3,18 59:23 60:4,7,12 62:7 64:6 65:19,23 69:16 72:19 <b>pocket</b> 81:18 <b>point</b> 25:18 58:16 58:20,22 62:19 66:25 68:8 70:7	74:6 81:4 82:6 <b>pointed</b> 70:2 <b>pointing</b> 28:12 <b>points</b> 68:1,19 69:2,6 <b>poor</b> 69:3 <b>popped</b> 34:13 <b>portion</b> 77:4 81:14 <b>portions</b> 73:7 <b>position</b> 55:6 56:17 57:15 <b>possession</b> 48:16 48:17 <b>possibility</b> 9:25 10:3 15:23 <b>possibly</b> 7:6 <b>post</b> 25:22 26:15 57:16 <b>posted</b> 17:12 22:13,23 23:18 23:25 24:2,11 26:1 32:17 43:3 45:6 77:5 <b>posting</b> 26:22 27:11 43:15 <b>postings</b> 49:20 <b>potential</b> 67:15,16 <b>practice</b> 82:7 <b>practices</b> 89:1 <b>prejudicial</b> 5:5 <b>prep</b> 82:16 <b>prepped</b> 82:14 <b>presence</b> 4:4,6 5:24 66:24 <b>present</b> 2:23 40:10,16,19 <b>presently</b> 31:6 <b>president</b> 60:25 61:2 <b>PRESIDING</b> 1:3 <b>pretty</b> 79:4 82:23 82:23 <b>previous</b> 89:6,15 <b>previously</b> 6:12 88:23 <b>pride</b> 38:9,10 <b>primarily</b> 65:25 <b>primary</b> 64:2 <b>prior</b> 89:22	<b>probably</b> 10:6 24:3 <b>probation</b> 43:25 <b>problem</b> 65:17 <b>proceed</b> 71:3 <b>proceeded</b> 71:2 <b>proceedings</b> 1:14 92:1 93:8 <b>process</b> 35:5 <b>produce</b> 28:10 <b>produced</b> 89:11 <b>products</b> 86:12 <b>professional</b> 31:5 <b>profiles</b> 26:25 <b>profits</b> 87:14 <b>programming</b> 21:11 22:7 70:18 <b>project</b> 17:16 18:11,23 19:25 56:19 83:10 <b>projects</b> 82:18 <b>properly</b> 4:25 87:10 <b>properties</b> 16:14 <b>prosecuted</b> 25:3 38:13,18 46:2 <b>protecting</b> 70:15 <b>protects</b> 70:18 <b>provide</b> 26:8,24 <b>provided</b> 49:7 73:5 88:21 <b>provider</b> 67:6 <b>providers</b> 62:5 73:11 <b>provides</b> 9:12 66:7 <b>providing</b> 26:11 62:4 67:4 68:13 <b>public</b> 23:13,23 31:7 64:12,13 81:6,7,10,11,13 81:17,22 <b>publicly</b> 63:4 <b>published</b> 73:24 77:1 <b>pulled</b> 64:15 <b>pulse</b> 25:1 <b>purchase</b> 78:13 79:23	<b>purchased</b> 78:15 <b>purport</b> 4:25 <b>pursuant</b> 93:5 <b>put</b> 4:22 5:6 16:21 20:12 21:10,10 24:14 37:1 43:25 73:10 90:15 <b>puts</b> 19:13 <b>P1</b> 21:10,10 <b>P1s</b> 21:13 <b>P2</b> 21:12 31:8,9 31:11,11,12,16 <b>P3</b> 77:18,25 78:3 <b>P4</b> 77:22,24,25	17:8 27:19,21 54:15,21 64:18 76:3 80:5 91:1 <b>reasoning</b> 44:16 <b>reasons</b> 44:18,19 69:2,4 <b>recall</b> 8:1,17,22 9:2,23 11:4,6,7 11:10 17:17 18:2,13 25:14 25:15 26:11,14 30:11,17,18 35:11 39:14,23 40:5,8,21,24 41:8 44:18,24 58:8 67:24 68:1 75:22 76:10,21 76:25 78:11,12 84:7 <b>receipt</b> 42:8 <b>receive</b> 22:6 23:19 54:22 <b>received</b> 3:15 12:13,14,20,21 13:1 23:4,5 27:25 28:1 33:22,23 35:25 36:1 40:25 41:2 41:5 42:4 47:2,3 54:18 64:23,24 84:11,18,23,24 <b>receiver</b> 15:17 19:17,21 21:11 24:16 <b>receivers</b> 8:3 19:14 <b>receiver's</b> 15:25 <b>receiving</b> 41:24 87:20 90:13 <b>recess</b> 91:15,23 91:24,25 <b>recognize</b> 25:16 <b>recollection</b> 7:7 17:25 41:4 74:19 75:11,12 82:23 <b>recommended</b> 56:17 <b>recommending</b> 56:20
			<b>Q</b>	
			<b>qualified</b> 82:11 <b>qualifying</b> 74:24 <b>quarter</b> 66:17 <b>question</b> 9:20 13:22,23 15:3 18:8,8 26:17 34:5 56:4 58:1,3 58:22 59:1,2 61:19 71:9 73:10,19 75:4 75:16 76:18 <b>questioned</b> 43:16 <b>questions</b> 57:12 59:13 84:7	
			<b>R</b>	
			<b>R</b> 2:13 <b>raid</b> 38:23 <b>raise</b> 60:4 <b>ran</b> 28:20 <b>Ratner</b> 20:25 <b>read</b> 9:15 21:6 36:10 37:10 44:4,7 47:10,13 65:23,23 73:7,9 88:9 <b>reading</b> 32:24,25 36:23 <b>really</b> 10:12 25:16 28:11 <b>reask</b> 59:1 75:4 76:8 <b>reason</b> 11:17,19	

<b>record</b> 4:5,22 7:12 60:1 65:10	58:18 71:9 85:16	85:11,18,21,25 86:3	<b>rolled</b> 77:19	21:8,12 23:13 28:9 31:4,15 32:3,8 34:8 49:25 64:11 65:6,24
<b>records</b> 89:7	<b>repeatedly</b> 75:10	<b>retake</b> 6:10	<b>ROM</b> 23:15 31:6 31:8,9,9,10,16 31:16,21 76:25 77:4,5	<b>scheduled</b> 6:6
<b>recovering</b> 69:9	<b>replace</b> 53:3,15	<b>return</b> 4:15	<b>ROMs</b> 31:6	<b>Schwartz</b> 20:24
<b>RECROSS</b> 3:3	<b>report</b> 17:16 18:11 24:18,19 61:11,13 62:14 62:15 91:2	<b>Reuven</b> 28:7 40:11	<b>Ron</b> 36:10,25	<b>screen</b> 16:21 32:24
<b>recruiting</b> 35:1,5	<b>reported</b> 43:6 92:1 93:7	<b>revenues</b> 3:15 66:17 67:6,17 70:15 84:11,13 84:16,18	<b>ROO</b> 19:16,20	<b>seat</b> 6:1
<b>REDIRECT</b> 3:3	<b>reporter</b> 1:21 32:22 61:20 93:15	<b>reverse</b> 18:23 83:16,25	<b>Room</b> 1:22	<b>seated</b> 60:8
<b>reference</b> 12:25	<b>REPORTER'S</b> 1:14	<b>reversed-engin...</b> 18:15	<b>ROO17942225</b> 19:7	<b>second</b> 4:22 5:12 14:8 15:8 16:2 19:1 23:7 28:3 37:9,15
<b>references</b> 25:10	<b>reporting</b> 61:15	<b>reverse-engineer</b> 74:11,14 75:19 75:25 76:12,22	<b>Rose</b> 49:1,3	<b>Section</b> 93:5
<b>referred</b> 20:4 56:14 77:18	<b>reports</b> 63:22	<b>reverse-enginee...</b> 7:25 8:4,7,11 17:19 18:18 19:24	<b>RPR</b> 1:21 93:16	<b>secure</b> 70:5 77:22 78:16,18,21,23 78:25
<b>referring</b> 16:5,22 29:14	<b>represent</b> 64:14 91:13	<b>reverse-enginee...</b> 18:20	<b>Rubin</b> 2:24 3:6 4:11,13 6:7 59:25 60:5,10 60:22 72:19,22 76:4 85:2	<b>security</b> 14:21 18:15 24:8,22 26:5 40:14 47:23 58:11
<b>refresh</b> 41:4	<b>representation</b> 5:19	<b>review</b> 9:5	<b>Rubin's</b> 6:8	<b>see</b> 4:16 13:1 14:10 15:9 16:3 16:14 17:6 19:4 19:5,8 20:22 21:1,15 22:10 23:11,16 28:7 28:17 30:22,25 31:18 32:1,6,13 34:1,6,15 37:10 49:16 50:3,11 50:24 51:10 65:2,6 72:15 86:20 87:8 89:5
<b>refused</b> 35:8	<b>representative</b> 4:13 73:1 82:9	<b>RICHARD</b> 2:18	<b>Rule</b> 92:1	<b>seeing</b> 21:13 25:15
<b>regarding</b> 5:2,5 54:23	<b>representing</b> 5:8	<b>Rick</b> 40:16	<b>running</b> 63:11	<b>seen</b> 7:1,14,17 17:15 18:11 22:16 33:13 48:7 50:15 64:11 68:15 90:16 91:7
<b>region</b> 61:15 89:24	<b>reprimand</b> 42:15 43:21	<b>right</b> 5:23 8:3,8,9 10:4 22:4,16 26:19 29:24 30:10 34:24 35:9,12 40:17 41:19 42:21,25 43:9,16 44:20 44:20,21 45:9 46:3,19 47:13 48:11 51:16,22 52:3,10,15 53:13,19 54:1 54:25 55:3,7,14 55:19 56:11,18 56:21,24 57:5 59:7,15 60:4 61:7,13 65:19 66:19,22 75:3 82:22 91:15	<b>Rupert</b> 63:16	<b>send</b> 19:24 35:11
<b>registration</b> 26:25	<b>reprise</b> 76:3	<b>right-hand</b> 7:3	<b>R-U-B-I-N</b> 60:15	<b>sending</b> 11:7 52:6 55:6
<b>regulations</b> 93:10	<b>request</b> 4:10 14:7 50:23 51:1,4 83:9	<b>risk</b> 71:20,22	<b>R0017942225</b> 19:10	<b>sense</b> 44:13 64:1
<b>relate</b> 24:8,22	<b>requested</b> 49:14	<b>risks</b> 70:20	<b>S</b>	<b>sensitive</b> 91:5
<b>related</b> 8:5 39:23 48:2 77:21 88:11 90:14	<b>requests</b> 21:13	<b>road</b> 61:7	<b>s</b> 40:11,22 41:9,11 41:14 43:3	<b>sent</b> 15:15 20:21
<b>relates</b> 19:16,20 25:17	<b>require</b> 87:2	<b>roll</b> 34:10	<b>SA</b> 66:1	
<b>relating</b> 40:7 48:5 48:14	<b>requirement</b> 14:8		<b>sacking</b> 53:7	
<b>relationship</b> 45:11,14 46:5,8 47:10,19 51:15 55:13 57:10 61:25 62:8 64:1 66:21	<b>reside</b> 62:17		<b>SACV</b> 1:7	
<b>relatively</b> 6:9	<b>residence</b> 21:24		<b>sales</b> 61:5,6	
<b>released</b> 34:14	<b>resides</b> 62:18		<b>San</b> 2:15 40:1 52:3,6 54:18 55:3 88:5	
<b>remember</b> 15:14 35:14 37:11,19 37:22 41:7 67:23	<b>response</b> 10:10 78:5		<b>Santa</b> 1:16,23 4:1	
<b>remind</b> 79:21	<b>responsibilities</b> 24:7,21		<b>satellite</b> 1:5 2:3 10:1 19:17,20 34:24 45:24 48:2,3,5,14 52:24 56:15 62:4 86:24	
<b>reminded</b> 17:23	<b>responsible</b> 58:12 59:6 61:3,5		<b>Saturday</b> 36:4	
<b>remove</b> 82:17	<b>responsive</b> 83:3		<b>saw</b> 23:14 25:13	
<b>render</b> 49:12	<b>restrictions</b> 8:17 8:21 9:20		<b>saying</b> 9:1 21:23 31:20,22	
<b>renew</b> 4:10 52:15 53:2	<b>result</b> 83:20,25		<b>says</b> 12:25 14:7 15:22 16:14 17:5 19:4,4,7	
<b>renewed</b> 51:21	<b>RESUMED</b> 6:13			
<b>rep</b> 82:13	<b>retain</b> 11:5,6,11			
<b>repeat</b> 26:18	<b>retaining</b> 85:5,8			

20:24 21:3 23:9 28:6 30:4,21 32:15 41:6,15 52:2 54:23 <b>sentence</b> 31:23 37:9,15 49:24 49:25 50:8,22 <b>serial</b> 15:25 19:13 <b>series</b> 3:11 10:20 10:23 11:14 20:18 28:3 <b>service</b> 62:4 69:19 70:16 87:9 <b>services</b> 24:17 45:25 47:25 49:13,18,19 50:1 66:7 67:4 <b>session</b> 82:16 91:18 <b>set</b> 25:19 27:1 40:21 72:5 <b>sets</b> 88:25 <b>shape</b> 58:9 <b>shareholder</b> 62:24 63:5,25 82:1 <b>shareholders</b> 81:13 <b>Shen-Orr</b> 13:9 <b>Shift</b> 42:23 <b>Shiloh</b> 20:24 35:20 <b>shipment</b> 40:4 <b>shipments</b> 40:3 <b>shipped</b> 90:20 <b>Shkedy</b> 74:7 75:22 76:10,21 83:17 <b>shopping</b> 72:14 73:16 <b>short</b> 6:9 <b>show</b> 16:22 29:3,6 68:23 <b>shows</b> 16:17 19:1 84:13,16 <b>shut</b> 31:17 38:15 78:3 <b>sic</b> 9:5 34:12 <b>side</b> 6:9 90:18 <b>sides</b> 75:15 90:25	<b>signal</b> 48:2,3,5 <b>signals</b> 45:24 <b>signature</b> 23:7 <b>signed</b> 47:8 <b>significant</b> 87:6 <b>simply</b> 5:21 82:11 <b>simulcast</b> 77:24 <b>simulcrypt</b> 77:25 <b>sir</b> 6:11 7:11 8:6 8:22 9:1 10:4 11:4 13:2,12,16 13:24 14:18 15:3,9 16:3 17:6 17:16 18:4,6,12 18:17 19:4,8,25 20:1,19,22 21:15 22:10 23:11,16 25:4 25:11 26:19 28:17 30:22 31:18 33:13 34:15 35:12 36:22 38:11,19 39:6 40:5 41:19 42:25 43:4 44:5 48:8,24 49:7,16 50:11,24 51:10 52:8,17 54:21 55:16,23 56:2,9 57:15,25 58:2 58:13,17,19 59:17 60:4,7,8 60:14 64:6 65:21 67:19,24 70:9 72:14 73:9 73:20,22 74:16 75:2 76:8 77:7 79:3,15 86:22 <b>Sirius</b> 56:14,23 57:1,7 <b>sit</b> 82:2 <b>sites</b> 23:25 24:1 <b>sitting</b> 40:17 <b>situation</b> 90:18 <b>six</b> 54:25 75:23,25 76:11,22 <b>skills</b> 52:20 <b>skip</b> 49:24 <b>skipping</b> 32:8 <b>slow</b> 61:17 85:3	<b>slowly</b> 61:22 <b>small</b> 32:23 <b>Smart</b> 11:8,11 19:14,17,20,23 36:15,20 37:1,2 37:2 58:13,15 58:19 61:6 71:3 <b>smoke</b> 83:1 <b>Snyder</b> 2:13 4:7,8 4:21 76:2 84:22 <b>sold</b> 79:1 <b>solidify</b> 81:19 <b>Somebody</b> 23:24 <b>soon</b> 82:23 <b>sorry</b> 8:6 54:8 57:25 58:18 61:23 65:15 71:10 73:20 76:16,18,18 79:3,21 80:9 82:2 85:15,16 86:15 <b>sought</b> 47:25 <b>source</b> 67:17 <b>South</b> 61:5 <b>spanned</b> 43:9 <b>specific</b> 56:1 <b>specifically</b> 11:3 11:10,12 66:20 <b>speculation</b> 15:1 <b>spell</b> 60:11 <b>spent</b> 50:9 <b>Spertus</b> 39:19 <b>spikes</b> 87:8 <b>staff</b> 24:20 <b>stand</b> 6:4,7,11,13 59:25 60:8 61:11 <b>standards</b> 89:1,21 <b>standpoint</b> 26:5 <b>Stars</b> 2:20 <b>start</b> 28:4 61:22 70:6 <b>started</b> 4:14 18:20 66:23 72:5 <b>starting</b> 70:7 71:2 <b>starts</b> 37:19 82:5 <b>state</b> 60:8 <b>statement</b> 35:15 <b>States</b> 1:1,22	14:21 44:25 61:3 66:24 67:13 90:1,3 93:6,10 <b>stay</b> 29:8 74:22 <b>stenographically</b> 93:7 <b>step</b> 59:17 <b>steps</b> 27:6,11 59:21 <b>Steve</b> 6:23 9:4 11:22 32:20 65:8 <b>Steve's</b> 10:17 <b>sticking</b> 68:19 <b>stock</b> 81:14 <b>Stone</b> 2:18 40:16 40:21 <b>stops</b> 63:17,19 <b>stored</b> 13:11 <b>story</b> 88:19 <b>straightforward</b> 71:3 <b>stream</b> 78:3 <b>Street</b> 1:22 <b>strike</b> 5:22 59:2 61:19,20 71:7 <b>Strong</b> 13:1,4,6 13:14,19,20 14:4,23 15:4 20:3 <b>structure</b> 63:24 <b>stuff</b> 83:18 <b>stuffed</b> 39:25 41:5 <b>subject</b> 5:22 23:10 30:24 34:5 36:7 56:24 <b>subscribed</b> 19:21 <b>subscribers</b> 87:5 <b>subsidiary</b> 62:10 81:5 <b>successful</b> 28:25 <b>sue</b> 38:21 <b>Suite</b> 2:7,15,20 <b>summary</b> 12:5 <b>Sunday</b> 17:6 28:11,22 30:3 <b>Super</b> 28:14 30:10,14 <b>supervise</b> 27:7	<b>supervised</b> 27:9 55:19 <b>supervisor</b> 26:4 26:19 48:22 74:13 <b>supplier</b> 64:3 86:24 <b>supply</b> 66:4 <b>support</b> 61:4 <b>sure</b> 8:7 10:18 11:1 26:17 63:19,25 68:25 69:13 75:5 80:20 <b>Sustain</b> 71:7 <b>swap</b> 31:17,21 79:7 87:2,5 <b>swear</b> 42:7 <b>Swiss</b> 34:13 <b>switch</b> 72:15 <b>SWORN</b> 6:12 60:5 <b>syntax</b> 23:15 <b>system</b> 18:15 24:8 24:23 28:10 44:25 47:23 59:11 66:4 68:2 68:3,9,12,17,19 68:21,21,23 69:3,8,8 70:21 71:14 72:2,16 72:16 73:23 74:4,4,11 75:20 76:1,13,23 79:6 79:6 83:14,20 86:23 87:12 91:6 <b>systems</b> 10:1 71:4
<b>T</b>				
<b>T</b> 2:4 <b>take</b> 5:17,22 6:5,7 6:24 24:14 27:10 28:12 32:25 59:15 69:4 79:9 81:17 82:3 91:15 <b>taken</b> 5:18 10:13 10:14 25:8 <b>talk</b> 11:3 44:23				



63:14 69:11,22 73:3 74:3 81:21 82:4 83:16 84:4 <b>talked</b> 8:13 38:9 41:1 88:22 <b>talking</b> 14:13 16:8 31:10 34:10,11 37:25 45:23 55:2 90:11 <b>Tarnovsky</b> 7:24 8:4,7,11,13 9:2 10:1 11:10 21:18 22:2,6,13 22:19,23 23:18 23:21 24:4 25:17,18,25 26:6,8,11,14,21 26:24 27:3,9 31:2,4,20 32:15 34:21 35:11,21 36:5,19,23 37:7 37:25 38:4 39:5 39:15,24 40:7 40:19,25 41:2,5 41:19,21,24 42:7,11,13,15 42:19 43:3,6,11 43:15,18,21 44:8,11,13,16 45:12,17,20 46:13 47:20 53:11,15,19,22 53:23,25 54:4,6 54:9,12,16,17 55:5,9,19,22 56:6,20,23 57:5 57:16,19 58:5,8 70:8,11,25 71:12 82:18 83:7 87:20 88:14 90:13 91:1,8 <b>Tarnovsky's</b> 8:18 9:21 19:20,23 21:20 24:7 26:4 26:19 27:7 38:1 39:9,12 41:15 52:2 53:11,18 55:12 56:13 88:5	<b>team</b> 42:25 <b>tech</b> 36:10 <b>technical</b> 16:6 25:16 <b>Technician</b> 37:20 <b>technology</b> 48:3 49:21 65:25 <b>Ted</b> 49:1,3 <b>television</b> 67:13 <b>tell</b> 11:21 54:24 62:7,23 64:9 68:16 78:9 81:10 84:10 88:6 91:12 <b>temporary</b> 69:7 <b>tenure</b> 43:7,9 <b>terminate</b> 53:22 54:6,9,12 83:7 <b>terminated</b> 53:12 54:15 57:5 90:15 <b>terms</b> 74:24 <b>terribly</b> 28:13 <b>test</b> 24:19 <b>testified</b> 7:24 41:5 76:11,21 <b>testify</b> 4:11 75:13 90:19 <b>testimony</b> 4:12 5:2,5,16 6:2 7:14,16 14:20 35:15 44:7 55:16 62:19 63:9 65:12 74:6 75:23 76:3,25 77:2 87:19 88:12 <b>Texas</b> 2:8 40:1 41:15,25 42:4 52:3 54:18 55:3 88:6 <b>Thank</b> 4:8,21 6:4 6:10 9:7,14 11:24 13:25 17:3 18:7,9 29:11,24 49:2,4 59:20 60:2,7,16 60:19 65:19,20 65:21 75:16 80:21 83:23	91:17 <b>theft</b> 48:2,3,5 <b>thereabouts</b> 78:6 <b>thing</b> 4:11 21:12 75:24 <b>things</b> 24:17 57:8 62:6 70:25 83:2 83:4 84:3 87:9 <b>think</b> 5:21 7:1 10:5,8,10,11 17:21 18:1 36:21,23,23 48:12 52:8 57:7 63:23 69:9,20 71:18,25 75:12 75:23 78:7 80:12,18 87:10 90:18 <b>thinking</b> 80:12 <b>third</b> 16:12,24 17:2 <b>thread</b> 28:4,5 30:20 36:3 37:7 <b>three</b> 29:12,19 81:8 <b>thrown</b> 25:6 <b>Thursday</b> 1:17 4:1 <b>till</b> 43:11 <b>time</b> 8:24 18:20 25:3 26:6 40:25 41:9,13 42:5,13 43:21 49:14,14 53:22,24 55:9 64:21 66:25 67:19 68:5,7,8 68:11 69:23 70:4,10,11 71:12 72:1,13 74:3 76:20 77:17,25 78:11 79:10,18 80:2,7 80:24 81:4,21 82:6 84:19 86:8 <b>timing</b> 78:14 <b>title</b> 60:24 64:11 93:6 <b>today</b> 6:6 9:1 14:20 56:9 58:17,21 59:10	66:14 67:3 69:6 <b>told</b> 8:24 14:7 34:17 52:12 55:5 87:23,25 88:7 90:21 <b>top</b> 12:23,24 16:14 19:2,5 33:25 37:7 63:11,15,20 <b>topic</b> 21:8 <b>traded</b> 63:4 81:14 <b>train</b> 8:13 <b>trains</b> 75:24 83:18 <b>transcript</b> 1:14 69:13 93:7,9 <b>trial</b> 1:15 4:14 <b>tried</b> 25:2 <b>true</b> 56:9 93:6 <b>truth</b> 5:15,18 8:24 <b>truthful</b> 54:18 <b>try</b> 83:13 <b>trying</b> 14:19 78:7 <b>Tuesday</b> 91:13 <b>turn</b> 27:12 28:24 29:16 46:21 64:7 78:8 <b>turned</b> 30:14 <b>TV</b> 30:14 37:24 <b>two</b> 4:8 23:25 29:13 40:3,9 62:8 69:14 91:18	<b>understanding</b> 11:13 14:19,20 14:24 18:18 19:12 48:15 52:5 53:6 74:15 <b>understood</b> 25:25 39:8 41:21 43:18 44:10 45:6,17 70:20 71:20 75:1 <b>undoing</b> 5:21 <b>unduly</b> 5:5 <b>United</b> 1:1,22 14:21 44:25 61:3 66:24 67:13 90:1,3 93:6,10 <b>uphold</b> 69:6 <b>USA</b> 31:6 <b>use</b> 25:23 27:7 31:6 32:4 <b>users</b> 32:9 <b>U.S</b> 39:8,14 54:3 93:15
<b>V</b>				
<b>validate</b> 5:20 <b>version</b> 36:24,24 89:15,17,18 <b>versions</b> 89:6 <b>ver.2chip</b> 19:5 <b>vice</b> 60:25 61:2 <b>video</b> 9:16 <b>Videotape</b> 9:19 <b>view</b> 28:16 75:8 <b>viewers</b> 28:15 <b>Virginia</b> 41:1,3,7 <b>virtual</b> 41:7 <b>visible</b> 23:24 <b>voice</b> 37:11,22 38:1 <b>Volume</b> 1:8 4:2 92:2 <b>Von</b> 34:10,12 <b>vs</b> 1:7				
<b>W</b>				
<b>W</b> 2:13 <b>Wade</b> 2:4,6 60:1 <b>Wait</b> 42:19				

<p><b>want</b> 17:21 68:5 69:12 70:4,6 72:1,3,15 74:21 74:22 79:17 80:24 83:5 84:6 88:18 89:1 <b>wanted</b> 57:7,10 88:16 <b>wasn't</b> 10:5,6 13:22 38:7 40:19 42:17 43:25 52:12 66:19 68:9,14 69:23 79:4,7,11 80:12 83:21 <b>watch</b> 37:24 <b>way</b> 7:12 8:5 19:13 24:8,22 61:17 66:19 71:25 79:9 86:10 <b>ways</b> 24:9 68:16 <b>website</b> 25:11,19 39:1 45:6,9 47:22 <b>websites</b> 25:8,23 26:2,15,22 38:15 49:21 58:16,20 59:10 <b>Wednesday</b> 30:21 <b>week</b> 4:12 90:11 <b>weekend</b> 65:18 <b>Welch</b> 2:4,6 3:6 59:24 60:1,19 60:21 61:23,24 64:21 65:1,5,8 65:15,20,22 69:17 71:5,11 72:19,21 73:6,8 75:5,17 76:7 79:24 80:4,13 80:23 84:19 85:1,14 89:11 89:16 91:17 <b>went</b> 9:3 25:7 37:2 70:8 81:7 82:17 86:6 90:19 <b>weren't</b> 10:4 70:12</p>	<p><b>West</b> 1:22 2:14 <b>we'll</b> 6:7 7:23 12:18 28:4 59:18 75:15 90:11 <b>we're</b> 4:5 6:2,5 21:13 45:23 59:15 61:20,22 65:10 72:22 83:3 <b>we've</b> 20:13 67:19 70:5 71:18 72:1 91:18 <b>wholly</b> 81:4 <b>WILLETTS</b> 2:5 <b>witness</b> 5:12 6:3,9 6:12 7:8,11,17 9:13 11:24 13:24 14:1 15:4 18:4,6 20:7 48:24 49:1,3 57:25 58:2 59:14,16,19,21 59:22 60:2,5,6,8 60:10,13,15 61:18 71:9 73:5 74:20,25 75:2 80:1,2,7,11,16 80:18,22 85:13 89:13 <b>witnesses</b> 3:3 17:23 74:17,25 75:9 76:4 <b>word</b> 42:17 44:2 82:3 <b>words</b> 17:24 32:23 33:1 36:15,17 74:18 74:25 75:10,11 80:10 <b>work</b> 35:8 38:23 50:6 52:17 60:22,23 <b>worked</b> 22:4 26:6 <b>working</b> 28:9 37:4 38:4,7,7 <b>world</b> 25:22 32:5 <b>worldwide</b> 32:4 <b>worried</b> 10:5,11 10:13</p>	<p><b>worry</b> 10:6,7 <b>wouldn't</b> 25:15 73:22 74:1 87:14 <b>writing</b> 89:23 <b>written</b> 50:23 51:1 89:21 90:2 90:3 <b>wrote</b> 13:15 14:14 14:16,16 15:5 <b>www.dr7.com</b> 25:10 <b>www.interestin...</b> 23:14</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p><b>X</b> 3:1 <b>xerox</b> 29:18,22</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yeah</b> 8:20 10:23 41:4,8 42:20 46:16 56:1 58:5 66:21 76:9 <b>year</b> 79:4,22 84:11,12 86:5,6 86:16 <b>years</b> 43:9 51:16 54:16,25 55:19 <b>yellow</b> 37:18 <b>Yep</b> 34:2 36:6 49:17 <b>yesterday</b> 6:15 7:24 8:14 21:9 41:1,4 <b>yesterday's</b> 88:12 <b>Yoni</b> 20:24 35:20</p> <hr/> <p style="text-align: center;"><b>\$</b></p> <hr/> <p><b>\$112</b> 85:21 <b>\$155</b> 85:25 <b>\$198</b> 86:17 <b>\$20,000</b> 40:4 41:5 90:20 <b>\$20,100</b> 40:3 <b>\$202</b> 86:11 <b>\$300,000</b> 51:19 <b>\$40,100</b> 42:4 55:3 <b>\$5</b> 32:10 <b>\$81</b> 86:2</p>	<p><b>\$91</b> 85:11,18 <b>\$94</b> 85:5,8</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>03-950</b> 1:7</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1</b> 15:8 <b>1st</b> 51:22 <b>1-053</b> 1:22 <b>1/2</b> 85:5 <b>1:15</b> 4:17 <b>10</b> 43:9 48:1,4,13 54:16 55:19 69:2,2 <b>10-K</b> 3:19 64:12 64:12,14,19 <b>10:02</b> 91:25 <b>100</b> 62:12 <b>100,000</b> 31:5 32:9 <b>1027</b> 88:22 <b>103</b> 6:22,23 7:1,4 7:14,20 <b>113</b> 3:13 22:9,10 22:16 23:1,5 <b>115</b> 3:14 46:21,22 46:24 47:3 <b>12</b> 3:11,18 64:7,8 65:3 <b>120</b> 50:1,6 <b>128</b> 9:9 <b>13</b> 9:5,10 <b>13th</b> 20:22 <b>1400</b> 2:20 <b>1568</b> 3:18 11:22 12:2,4,9,13,14 12:23 16:24 17:9 19:2 20:4 <b>1658</b> 16:12 <b>17</b> 1:17 4:1 <b>18</b> 93:12 <b>1988</b> 71:3 <b>1990s</b> 45:4 <b>1990's</b> 45:15 <b>1992</b> 67:12 <b>1997</b> 43:11 70:8 <b>1998</b> 17:6 18:15 36:4,20 37:4,8 38:5 44:24 72:4 72:7 73:15</p>	<p>74:10 81:21 87:23 90:5,6,14 <b>1999</b> 2:20 77:1 79:18 81:21 85:5</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2</b> 15:13 31:6,13 49:11 <b>20</b> 6:9 72:20 73:6 91:22,23 <b>2000</b> 20:22 22:14 22:21 23:10 32:18 34:3,17 42:5 45:4,15,18 85:8,11 88:3,14 88:17 <b>2001</b> 28:6 30:8,17 30:21 39:4 41:14 54:19 85:13,15,17 <b>2002</b> 46:17 85:20 <b>2003</b> 46:8 79:24 80:19 85:24 <b>2004</b> 78:4,18 79:10,25 80:19 86:2 89:18,19 89:22 <b>2005</b> 78:21 86:9 86:16 <b>2006</b> 78:23 86:21 <b>2007</b> 43:11 51:22 53:12 78:25 79:1 86:21 91:9 91:14 <b>2008</b> 1:17 4:1 79:1 93:12 <b>2008-04-17</b> 1:25 <b>2010</b> 3:19 64:6,9 64:22,24 65:8 <b>21</b> 63:4 <b>21st</b> 22:14 30:17 <b>210</b> 64:6 <b>22nd</b> 22:21 23:10 36:4 <b>23</b> 3:13 72:20 73:6 <b>23rd</b> 17:6 37:8 <b>2401</b> 2:7 <b>2600</b> 2:15</p>
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<p><b>275</b> 2:14  <b>28</b> 3:10 9:5,9 93:6</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3</b> 23:15 29:21  31:6,21 51:7  77:19  <b>3M</b> 31:5  <b>30</b> 82:1  <b>30th</b> 53:12  <b>31</b> 46:8  <b>310</b> 2:21  <b>33</b> 3:12  <b>36</b> 3:17</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>4</b> 29:22 79:7  <b>4th</b> 1:22 91:14  <b>41</b> 3:10 27:12,14  27:22 28:1  30:20  <b>411</b> 1:22  <b>415</b> 2:16  <b>42</b> 9:18  <b>47</b> 3:14</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>51</b> 3:11 10:16,17  10:19 11:3,13  11:18 12:15,17  12:18,21 20:12  20:17,18  <b>558-8141</b> 1:23  <b>58</b> 72:20</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6</b> 1:8 3:4 4:2,24  <b>6th</b> 28:6  <b>6,500</b> 51:9  <b>60</b> 3:6  <b>62</b> 9:18  <b>64</b> 3:19  <b>650</b> 3:15 79:16  84:6,10,20,24</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>7</b> 30:21  <b>7th</b> 34:3,17  <b>700</b> 2:7  <b>713</b> 2:8  <b>714</b> 1:23</p>	<p><b>72</b> 56:3  <b>753</b> 93:5  <b>77</b> 3:12 32:21  33:5,13,15,19  33:23  <b>77057</b> 2:8  <b>771</b> 3:17 35:18,19  35:22 36:1  <b>785-4600</b> 2:21  <b>79</b> 63:3</p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>8</b> 9:5,9  <b>8:04</b> 4:3  <b>84</b> 3:15</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>90067</b> 2:21  <b>92</b> 66:22 72:5  <b>92701</b> 1:23  <b>94111</b> 2:15  <b>9472</b> 1:21 93:16  <b>95</b> 70:1 79:9  <b>952-4334</b> 2:8  <b>96</b> 69:22,23  <b>97</b> 68:6,11 70:4  71:12 72:2 74:3  <b>98</b> 67:21 72:3  88:10 91:2,5  <b>984-8700</b> 2:16  <b>99</b> 77:13,18,21  79:19 80:24,25  82:5</p>			
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