

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

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ECHOSTAR SATELLITE CORPORATION,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. SACV 03-950 DOC
	)	Day 8, Volume II
NDS GROUP PLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Jury Trial  
Santa Ana, California  
Tuesday, April 22, 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 2008-04-22 D8V2

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APPEARANCES OF COUNSEL:

FOR PLAINTIFF ECHOSTAR SATELLITE CORPORATION, ET AL.:

T. WADE WELCH & ASSOCIATES

BY: CHAD M. HAGAN

CHRISTINE D. WILLETTS

WADE WELCH

Attorneys at Law

2401 Fountainview

Suite 700

Houston, Texas 77057

(713) 952-4334

FOR DEFENDANT NDS GROUP PLC, ET AL.:

O'MELVENY & MYERS

BY: DARIN W. SNYDER

DAVID R. EBERHART

Attorneys at Law

275 Embarcadero Center West

Suite 2600

San Francisco, California 94111

(415) 984-8700

-and-

HOGAN & HARTSON

BY: RICHARD L. STONE

KENNETH D. KLEIN

Attorneys at Law

1999 Avenue of the Stars

Suite 1400

Los Angeles, California 90067

(310) 785-4600

ALSO PRESENT:

David Moskowitz

Dov Rubin

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## I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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RUBIN, Dov

By Mr. Snyder

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By Mr. Welch

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ERISER, Ronald Lorne

By Mr. Noll

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## EXHIBITS

EXHIBIT NO.	IDENTIFICATION	IN EVIDENCE
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366	January 25, 2002 NDS	9
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overview for a

digital pay-TV system

1065	Form 20-F	21
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2011	Form 10-Q	21
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1 SANTA ANA, CALIFORNIA, TUESDAY, APRIL 22, 2008

2 Day 8, Volume II

3 (10:44 a.m.)

4 THE COURT: We're back in session. All counsel  
5 are present. The parties are present.

6 Dr. Rubin is on the witness stand. Mr. Snyder is  
7 continuing his cross-examination on behalf of NDS.

8 MR. SNYDER: Thank you, Your Honor.

9 DOV RUBIN, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

10 RESUMED THE STAND

11 CROSS-EXAMINATION (Continued)

12 BY MR. SNYDER:

13 Q. Dr. Rubin, could you please look at Exhibit 1270, which  
14 was previously admitted into evidence. It says, "NDS and  
15 Nagra conditional access system."

16 A. Yes.

17 Q. Can you remind the jury, please, Dr. Rubin, what this  
18 document is?

19 (Document displayed.)

20 THE WITNESS: This was a marketing competitive  
21 intelligence document comparing the NDS to Nagra conditional  
22 access system.

23 BY MR. SNYDER:

24 Q. Okay. And is this an internal NDS document?

25 A. Yes, it is, as you can see from the designation saying

1 "confidential."

2 Q. And is it designated confidential on every page?

3 A. Yes, it is.

4 Q. Dr. Rubin, does this document contain confidential NDS  
5 information?

6 A. Yes, it does.

7 Q. Can you give the jury an example of some of the  
8 confidential information that this document contains?

9 A. Just to pick one, for example, on page 1270-011.

10 MR. SNYDER: If you could show that, please,  
11 Charlie.

12 THE COURT: You may.

13 (Document displayed.)

14 THE WITNESS: Paragraph 4.5, the last paragraph.

15 BY MR. SNYDER:

16 Q. And what about that paragraph contains confidential NDS  
17 information just as an example of the kind of information  
18 that's in this document?

19 A. Okay. This describes how NDS would perform a blackout  
20 operation. And a blackout operation means the ability to  
21 determine who should view a particular program. For  
22 example, football games tend to be blocked out in the home  
23 region, and yet a satellite broadcasts to the entire  
24 United States.

25 It's a very complex operation. It's something that the

1 Nagra system did not perform particularly well. And this  
2 outlines exactly how it's done and how we do it as  
3 efficiently as we do.

4 Q. What was the purpose of this document, Exhibit 1270?

5 A. The document was intended for sales and marketing  
6 people, particularly the salespeople around the world who  
7 might be selling our products to customers who were hearing  
8 things about our system from our competitors. In this case  
9 it would be Nagra.

10 Q. If you could, please, Dr. Rubin, turn to the next page  
11 of this exhibit, which is marked 1270-12, and specifically  
12 the section 5.1 and the last paragraph of that section.

13 Do you have that in front of you?

14 A. Yes, I do.

15 Q. Okay. If you could look at the last sentence. This is  
16 one that plaintiff's counsel asked you about. It says, "Our  
17 estimate is that this commercial loss to EchoStar probably  
18 accounted for over a hundred thousand nonpaying  
19 subscribers." Do you see that?

20 A. Yes, I do.

21 Q. Was that estimate ever used in any of NDS's  
22 advertising?

23 A. No, it was not.

24 Q. Was that estimate ever used in any presentations with  
25 customers or potential customers?

1 A. No.

2 Q. Was that estimate ever used outside of NDS?

3 A. No.

4 Q. Does that estimate include pirates outside of the  
5 United States?

6 A. Yes, it does.

7 Q. And does that estimate include all versions that were  
8 in operation at the time of this document -- all versions of  
9 NagraStar's system that were in operation at the time of  
10 this document?

11 A. Yes, it does.

12 Q. What is the date on this document?

13 A. May 13th, 2001.

14 Q. Okay. Now, would it be harmful to NDS if the contents  
15 of this document were to get into the hands of NDS's  
16 competitors?

17 A. Yes, it would.

18 Q. Why?

19 A. Quite simply, it would take any one of our competitive  
20 advantages, any one of our arguments that we would attempt  
21 to make to the customer, and enable our competitor -- even  
22 if they didn't have or support these features -- to just  
23 misrepresent their system and claim that they do.

24 Q. Would it harm NDS if this information were to get into  
25 the hands of the general public or people other than NDS's

1 competitors?

2 A. Yes.

3 Q. Why?

4 A. There's information here talking about the particular  
5 microchip that we use in the Smart Card, talking about the  
6 different algorithms and authentication schemes, basically  
7 technical details that are not publicly known. And again,  
8 they could use that information to further their activities.

9 Q. Okay. So would it be potentially damaging to NDS if it  
10 were in the hands of satellite pirates?

11 A. Absolutely.

12 Q. Could you look, please, Dr. Rubin, at Exhibit 366.

13 Can you describe for the jury generally what  
14 Exhibit 366 is?

15 A. 366 is an internal document that we wrote describing at  
16 a high level and at a detailed level NDS's digital pay  
17 television system.

18 Q. And is this a document that was prepared in the regular  
19 course of NDS's business?

20 A. Yes, it was.

21 Q. Okay. And for what purpose was it prepared?

22 A. This was prepared for a potential customer and was  
23 given to a potential customer but after signing a  
24 confidentiality agreement.

25 MR. SNYDER: Your Honor, I move Exhibit 366.



1 MR. WELCH: No, objection, Your Honor.

2 THE COURT: Received.

3 (Exhibit No. 366 received in evidence.)

4 (Document displayed.)

5 BY MR. SNYDER:

6 Q. When was this document prepared, Dr. Rubin?

7 A. January 25th, 2002.

8 Q. And you indicated a moment ago that it was prepared for  
9 a customer?

10 A. Yes.

11 Q. Who was that customer?

12 A. The customer's Rico.

13 Q. And where is Rico located?

14 A. Well, they're located around the world. I think this  
15 particular bid was for the UK, for a customer in the UK.

16 Q. And does this document contain confidential NDS  
17 information?

18 A. Absolutely, yes.

19 Q. Okay. Can you give the jury an example of the kinds of  
20 confidential information, NDS information that it contains?

21 A. Well, for example -- can I give you the page just to  
22 look?

23 Q. Please.

24 A. Page 366-012.

25 (Document displayed.)

1 THE WITNESS: Okay.

2 BY MR. SNYDER:

3 Q. Please go ahead.

4 A. Paragraph 3.1, the first paragraph, for example, talks  
5 about the system configuration. So we give here a detailed  
6 system configuration where it accentuates a very important  
7 point that we tend to be overlooking and focusing just on  
8 the card piracy issue. But probably the most important  
9 factor for a broadcaster is the ability to send those  
10 comments and get responses in the home within 2 or  
11 3 seconds. And that requires a Headend architecture and  
12 powerful servers, which means large computers, to deliver  
13 that information fast and efficiently.

14 So we list the names, we talk about two HP,  
15 Hewlett-Packard, servers. We have the system diagrams of  
16 how we achieve that kind of performance. And that's  
17 performance which NDS gets praised -- I should be more  
18 precise. Our customers get praised year after year for high  
19 quality of performance.

20 Q. Would it be harmful to NDS if the contents of this  
21 document were in the hands of a competitor?

22 A. Yes.

23 Q. Why?

24 A. Again, giving the competitor the ability to make false  
25 claims about the system, saying that they support that

1 architecture, is certainly damaging. They could just take  
2 this document and try to emulate the things that we've done.

3 And it goes beyond that. There are many other examples  
4 in here of new products that we were looking to sell at the  
5 time or are looking to sell at this time relating to some of  
6 the newer technologies. We can go through this page by page  
7 of the examples.

8 Q. I'm pretty confident that nobody wants us to do that  
9 right now. So we're not going to go through it page by  
10 page.

11 A. Okay.

12 Q. Would it be harmful to NDS if that document were in the  
13 hands of even people who were not NDS competitors but were  
14 not within the control of NDS?

15 A. Yes.

16 Q. Now, I believe you mentioned that the document was  
17 given to a potential customer, Rico?

18 A. Yes.

19 Q. And under what circumstances was Rico allowed to see  
20 this information?

21 A. They had to sign a nonconfidentiality agreement,  
22 meaning that they have to keep the contents secret.

23 Q. A nonconfidentiality agreement or a nondisclosure  
24 agreement?

25 A. A nondisclosure. I beg your pardon, nondisclosure.

1 Q. Dr. Rubin, I want to take you back a bit. You were  
2 asked some questions on Thursday about a potential merger in  
3 1997 between EchoStar and News Corp. Do you remember that?

4 A. Yes.

5 Q. Okay. Did you participate in any of the discussions  
6 related to that potential merger?

7 A. Yes, I did.

8 Q. What was your role?

9 A. My role as the project manager for that merger between  
10 ASkyB and EchoStar was, first of all, to make sure that we  
11 could perform an engineering feasibility to see if our  
12 conditional access system would run on the EchoStar system  
13 alongside the NagraStar conditional access system.

14 Q. And was that engineering feasibility study completed?

15 A. Yes, it was.

16 Q. Was it successful?

17 A. It was successful. We completed that task within about  
18 three weeks.

19 Q. And after that engineering feasibility was completed,  
20 after that study was completed, then what happened?

21 A. There were discussions between the two major parties of  
22 that merger -- that would have been EchoStar and News  
23 Corporation -- to discuss the continuation of making that  
24 merger.

25 Q. Okay. And did you attend a meeting the subject of

1 which was which conditional access system, Nagra or NDS,  
2 would be used?

3 A. Yes, I did.

4 Q. And why did you attend that meeting?

5 A. I was asked by the News Corporation representative --  
6 his name is Greg Clark, C-L-A-R-K -- prior to that meeting  
7 to give him a list of weaknesses of the Nagra system.

8 Mr. Clark gave that memo to EchoStar, and they asked  
9 that I come to present those weaknesses to them personally,  
10 firsthand.

11 Q. Did you believe at the time of that meeting that the  
12 NDS conditional access system was superior to the Nagra  
13 system?

14 A. Yes, I did.

15 Q. Now, at the time of that meeting, the Nagra system in  
16 the United States was not pirated, correct?

17 A. I can't say that for sure.

18 Q. But at the time of that meeting, the NDS system was  
19 pirated in the United States; isn't that right?

20 A. Yes, it was.

21 Q. Why did you believe that the NDS system was still  
22 superior to the Nagra system?

23 A. In the years before that, in the two or three years  
24 before that, we had pirated difficulties -- pirating  
25 difficulties at our customer, BSkyB, in the United Kingdom.

1 And about a year or six months before that, before this  
2 meeting, we produced a card, a Smart Card, which overcame  
3 all of these problems. In fact, that card is still and that  
4 system is still secure to this day.

5 So although we were hacked in '97 at DirecTV, we had  
6 the confidence to know that we were on the right path; and  
7 with a little bit more time and little bit more cooperation,  
8 we would have a fully secure system to offer not only  
9 DirecTV but, in this case, EchoStar.

10 Q. Okay. And where was that system that you're referring  
11 to in use?

12 A. That system is in use today at Sky Television in  
13 England.

14 Q. Okay. And it remains unpirated to this day?

15 A. Yes, it does.

16 Q. Now, Dr. Rubin, during that meeting -- did Mr. Ergen  
17 attend that meeting?

18 A. Yes, he did.

19 Q. And during that meeting did Mr. Ergen express a  
20 preference for the Nagra technology?

21 A. Yes, he did.

22 Q. Did he say why he preferred that technology?

23 A. Well, one was he felt his system was less expensive,  
24 and the second reason was he said that our DirecTV system  
25 was hacked.

1 Q. And did Mr. Ergen do anything to demonstrate that the  
2 NDS system was pirated?

3 A. He did.

4 Q. What did Mr. Ergen do?

5 A. He instructed Mr. Dugan -- Mike Dugan, D-U-G-A-N -- to  
6 take a pirate card, put it into a DirecTV set-top box that  
7 was in the meeting room, in the EchoStar meeting room, and  
8 place it inside the set-top box; whereupon he said, "Look,  
9 it lights up like a Christmas tree."

10 Q. So Mr. Ergen and the other executives at EchoStar  
11 actually started receiving unauthorized DirecTV  
12 transmissions right there in the meeting?

13 A. That's correct.

14 Q. What did you do in response?

15 A. I kept silent.

16 Q. Now, Dr. Rubin, after that meeting, did you later learn  
17 that the EchoStar system was pirated?

18 A. Yes.

19 Q. At any time did you ever give any instruction to anyone  
20 at NDS for them to have any involvement in EchoStar piracy?

21 A. Absolutely not.

22 Q. At any time did anyone in NDS management ever give an  
23 instruction for someone at NDS to be involved in EchoStar  
24 piracy?

25 A. No.

1 Q. Did you ever hear from anyone that someone in NDS  
2 management had instructed NDS employees to become involved  
3 in EchoStar piracy?

4 A. Never.

5 Q. Have you ever heard from anyone at NDS that someone at  
6 NDS had suggested that an NDS employee become involved in  
7 EchoStar piracy?

8 A. No.

9 Q. Now, after your meeting with -- regarding ASkyB,  
10 several years later you met with Mr. Ergen in March of 2000?

11 A. Correct.

12 Q. I believe you already testified about that, so I don't  
13 want to go over that again.

14 Did you ever have another meeting with the people at  
15 EchoStar?

16 A. Yes, I did.

17 Q. When was that meeting?

18 A. Sometime in September 2006.

19 Q. And who did you meet with?

20 A. I met at that time with Mark Jackson, who's the, I  
21 think, senior vice president or president of EchoStar  
22 Technologies.

23 Q. And what prompted that meeting?

24 A. I had contacted -- I sent Mr. Jackson an e-mail  
25 requesting a meeting because I thought that we had products



1 that were not related to conditional access but  
2 future-looking products; for example, set-top boxes that  
3 would receive both satellite and Internet television,  
4 portable television on cell phones or portable media  
5 players, products that I saw EchoStar were lacking. And I  
6 thought that they would be interested in using those  
7 products or purchasing those products.

8 Q. Did you, in fact, attend a meeting with Mr. Jackson in  
9 September 2006?

10 A. Yes, I did.

11 Q. Did Mr. Jackson say anything about EchoStar's piracy  
12 issues?

13 A. Well, before we even got to the subject matter, Mark  
14 said to me that the piracy was killing them, the free-to-air  
15 boxes and the card-sharing piracy solutions were killing  
16 them, and do we have a solution.

17 Q. What did you say to him?

18 A. I said, "I really didn't come prepared to talk about  
19 the subject." But we did. We did. We discussed it.

20 Q. Did you discuss with Mr. Jackson NDS and EchoStar doing  
21 business together?

22 A. We did.

23 Q. What did Mr. Jackson say to you?

24 A. Mr. Jackson said that after -- especially after we had  
25 just successfully completed a demonstration in their sister

1 company, Bell ExpressVu in Canada, where we successfully  
2 installed our conditional access system to work opposite the  
3 Nagra system under the live signal in Canada -- first of  
4 all, Mr. Jackson said that he had attended that  
5 demonstration and thought that it went well. And so he felt  
6 confident that we might be able to apply the same solution  
7 for EchoStar.

8 Q. Did Mr. Jackson indicate that he was willing to do  
9 business with NDS and have NDS become EchoStar's conditional  
10 access provider?

11 A. Yes. But he put a few conditions.

12 Q. What were those conditions?

13 A. Number one was that we would be willing to locate the  
14 operational personnel on the EchoStar premises. And the  
15 second one was that the price had to be right.

16 Q. Did you tell Mr. Jackson that you were willing to  
17 locate NDS personnel on the EchoStar premises?

18 A. Yes, I did.

19 Q. And did you understand from Mr. Jackson's other comment  
20 that EchoStar was willing to have NDS provide EchoStar's  
21 conditional access system; it was only a matter of price?

22 A. Yes.

23 MR. SNYDER: No, more questions.

24 THE COURT: Redirect.

25 MR. WELCH: Your Honor, just brief redirect.

## REDIRECT EXAMINATION

1  
2 BY MR. WELCH:

3 Q. Mr. Rubin, the -- what you identified as the internal  
4 NDS documents, which would be Exhibit 366, 391, and 1270,  
5 you don't have any evidence whatsoever that plaintiffs ever  
6 posted any of that information on the Internet, do you?

7 A. I don't.

8 Q. You don't have any information that they disseminated  
9 that information out to any pirates, do you?

10 A. I don't have such information.

11 Q. And, in fact, if you look at the documents, they're  
12 dated in 2001.

13 THE COURT: Which document?

14 MR. WELCH: 366, 391 and 1270.

15 THE COURT: 366, 391 and 1270?

16 MR. WELCH: 1270.

17 THE COURT: Okay.

18 BY MR. WELCH:

19 Q. Those are in the early 2000 era, correct?

20 A. No. This one's 2002.

21 Q. Okay. We have 2001, 2002. You are aware, aren't you,  
22 that EchoStar and NagraStar didn't even get these documents  
23 until 2005 in connection with the litigation, correct?

24 A. I'm not aware.

25 Q. Okay. Now, I want to focus on your March 2000 meeting

1 with Mr. Ergen.

2 You said he was concerned about some piracy of the  
3 EchoStar system, correct?

4 A. Yes.

5 Q. Okay. Did you share with Mr. Ergen the Headend Report,  
6 Exhibit 98?

7 A. I never saw the Headend Report.

8 Q. Did you share with Mr. Ergen that Mr. Mordinson and  
9 Mr. Shkedy went on this planes, trains, and automobile ride  
10 in '98?

11 A. I was not aware that they did.

12 THE COURT: You may not know what planes, trains,  
13 and automobile --

14 I want you to be more definite in your question.

15 BY MR. WELCH:

16 Q. Did you inform Mr. Ergen of all the activities that  
17 Mr. Shkedy and Mr. Mordinson engaged in that we've heard  
18 about here from them on the stand?

19 A. I did not know of them or what they did at the time of  
20 my meeting.

21 Q. So it would be fair to say Mr. Ergen probably didn't  
22 know, either?

23 A. That would be fair statement.

24 MR. WELCH: Your Honor, as a housekeeping matter,  
25 I'd like to offer Exhibit 1065.

1 THE COURT: I don't know what exhibit that is.  
2 It's not in front of me, Counsel. Is that the Form 20-H?

3 MR. WELCH: Yes, sir.

4 THE COURT: All right. It's received.

5 (Exhibit No. 1065 received in evidence.)

6 THE COURT: And 2011 is the 10-Q?

7 MR. WELCH: 2011 is a 10-Q.

8 THE COURT: Has that been received?

9 MR. WELCH: I believe it has, Your Honor.

10 THE COURT: It was received. If it hasn't been,  
11 it's received.

12 (Exhibit No. 2011 received in evidence.)

13 BY MR. WELCH:

14 Q. Now, Mr. Rubin --

15 THE COURT: I'm also -- Mr. Snyder, on 366, if you  
16 didn't offer, it's received also.

17 MR. SNYDER: Thank you, Your Honor.

18 THE COURT: Received.

19 (Exhibit No. 366 previously received in evidence.)

20 BY MR. WELCH:

21 Q. We talked about the initial public offering of NDS  
22 which occurred in November 1999, correct?

23 A. Correct.

24 Q. And would you agree with me that if NDS and DirectTV had  
25 not entered into the August '99 contract, that would have

1     been detrimental to News Corporation as well as NDS?

2     A.    I don't understand why.

3     Q.    Okay.  Without the contract, the August '99 contract,  
4     would that have been detrimental to NDS's initial public  
5     offering in November of '99?

6     A.    No, I don't think so.

7     Q.    Even though that was a large source of revenues for  
8     NDS?

9     A.    That was a source of revenue, but I don't think it  
10    would have been detrimental.  We had many other customers as  
11    well at the time.

12    Q.    Is it your testimony that that was just coincidental,  
13    the August '99 extension and then the November '99 IPO?

14    A.    Yes.  That is my statement.

15    Q.    Okay.  Let's talk about something else you said was a  
16    coincidence.

17            Did I hear your testimony right that you're saying it's  
18    just a coincidence that DirecTV became secure when  
19    News Corporation purchased the controlling interest in  
20    DirecTV?  That's just a coincidence also?

21    A.    No, that's not a coincidence.  That took persuasion on  
22    our part.

23    Q.    Now, I want to talk to you a little bit about piracy  
24    and swapping out conditional access systems or changing your  
25    technology.

1           Now, NDS informs its customers that they may have to  
2 swap out their technology or improve their technology over  
3 time, correct?

4       A.    Yes.

5       Q.    Okay.  And if that is required -- having to swap it out  
6 or change technology -- if that's required because of  
7 somebody's pirate activities, that does not mean the pirate  
8 gets to go free, correct?

9       A.    It's a complex question.  I'd like to take it again.

10      Q.    Okay.  Now, NDS has filed lawsuits against hackers and  
11 pirates in the past, correct?

12      A.    Yes, we have.

13      Q.    So when you have to change your technology, even though  
14 you've put it kind of in -- calculated it in your head that  
15 you're going to have to change out the technology, it  
16 doesn't mean that there's nobody responsible, correct?

17           THE COURT:  Do you understand that question?

18           THE WITNESS:  I'm having a hard time.

19           THE COURT:  I'm having a hard time too, Counsel.

20           MR. WELCH:  I'm sorry.  It's convoluted.

21       BY MR. WELCH:

22      Q.    When NDS has been pirated or hacked, it proceeds and  
23 goes after pirates and hackers, correct?

24      A.    We would go after pirates and hackers even if we  
25 weren't hacked.

1 Q. And you have filed lawsuits against pirates and  
2 hackers, correct?

3 A. Yes, we have.

4 Q. And you alleged that these pirates and hackers that  
5 compromise your conditional access system cause you hundreds  
6 of millions of dollars in damage, correct?

7 A. I haven't seen the specific claims, but I will grant  
8 you that.

9 MR. WELCH: Your Honor, we have no further  
10 questions for Dr. Rubin.

11 THE COURT: Recross.

12 RE CROSS-EXAMINATION

13 BY MR. SNYDER:

14 Q. Dr. Rubin, when was the first time that you saw the  
15 Headend Report?

16 A. At my deposition in August of this year -- of 2007.

17 Q. And when was the first time that you learned about the  
18 reverse engineering done by Mr. Shkedy and Mr. Mordinson?

19 A. The same time.

20 Q. And do you understand why you were not told about that  
21 project before?

22 A. Yes.

23 Q. Why?

24 A. That information is highly sensitive, is highly secret.  
25 We don't want that information, even if it's about our



1 competitor, to be getting out. We want to maintain on a  
2 need-to-know basis, and as few people should know about it  
3 as possible.

4 MR. SNYDER: No further questions.

5 Thank you, Dr. Rubin.

6 THE COURT: Dr. Rubin, if you would remain.

7 Thank you very much, sir, you may step down.

8 (Witness steps down subject to recall.)

9 THE COURT: And Counsel, would you call your next  
10 witness, please.

11 MR. NOLL: David Noll for plaintiffs EchoStar and  
12 NagraStar.

13 Plaintiffs call Ronald Ereiser.

14 THE COURT: Okay. Thank you, sir.

15 If you would step forward and be kind enough to  
16 raise your right hand, sir.

17 RONALD LORNE EREISER, PLAINTIFF'S WITNESS, SWORN

18 THE WITNESS: Yes.

19 THE COURT: Thank you, sir.

20 Would you please be seated in the witness box to  
21 my left.

22 THE WITNESS: Certainly.

23 THE COURT: After you're comfortably seated, would  
24 you face the jury and state your full name to them and spell  
25 your last name for us.

1 THE WITNESS: Ronald Lorne Ereiser, E-R-E-I-S-E-R.

2 THE COURT: Mr. Ereiser, move that seat closer to  
3 the microphone or move that microphone closer to you.

4 THE WITNESS: Okay. Got it.

5 Lorne is the middle name, L-O-R-N-E.

6 THE COURT: Direct examination by Mr. Noll.

7 DIRECT EXAMINATION

8 BY MR. NOLL:

9 Q. Good morning, Mr. Ereiser.

10 A. Good morning.

11 Q. Doing all right today?

12 A. Yes.

13 Q. Okay. Before we get going, Mr. Ereiser, I want to let  
14 the jury know there's essentially three main topics I want  
15 to talk to you about this morning.

16 One of them is some CD's that you delivered to  
17 J. J. Gee and Alan Guggenheim. Do you remember doing that?

18 A. Yes, sir.

19 Q. The second thing I want to talk to you about is a  
20 person named Christopher Tarnovsky. Do you know a person  
21 named Christopher Tarnovsky, sir?

22 A. Yes, I do.

23 Q. The third thing I want to talk to you about today is  
24 some e-mails that you were given by a man named Dave Dawson.  
25 Do you recall those e-mails, sir?

1 A. Yes, I do.

2 Q. Before we get into that, I want to get a little bit of  
3 background from you.

4 Where are you from, Mr. Ereiser?

5 A. I am from Victoria, BC, Canada.

6 Q. Can you tell the jury a little bit about yourself so  
7 they can come to understand a little bit more about you.

8 A. Presently I'm 49 years old, three children, married,  
9 pretend that I know how to play guitar, enjoy yard work,  
10 that kind of stuff, living in Victoria. Fixing up our house  
11 presently, so learning how to do a little bit of carpentry,  
12 things like that.

13 Q. I understand you're a Canadian citizen; is that  
14 correct?

15 A. Yes, I am a Canadian citizen.

16 Q. Have you had a citizenship anywhere else, Mr. Ereiser,  
17 aside from Canada?

18 A. No, I have not.

19 Q. And you presently live in Victoria; is that correct?

20 A. Yes.

21 Q. Have you lived in any other parts of Canada?

22 A. Yes. I used to live in Saskatchewan.

23 Q. When did you move to Victoria?

24 A. I think it was in 2002 that we moved out.

25 Q. I want to take a moment, sir, to talk to you about a

1 topic called satellite piracy.

2 Do you know what satellite piracy is, Mr. Ereiser?

3 A. Yes, I do.

4 Q. And in your words, what is satellite piracy?

5 A. Satellite piracy is doing -- using devices or  
6 reprogramming the original cards that the companies that  
7 supply pay TV use and selling it to customers to where they  
8 get it free, get free programming.

9 Q. Have you ever had involvement in cyberpiracy,  
10 Mr. Ereiser?

11 A. Yes, I did.

12 Q. And did you sell Smart Cards or pirated devices at any  
13 time?

14 A. Yes, in 1996 is when we started. At that time, the  
15 laws in Canada were as such that it was not illegal to sell  
16 these types of devices. It was illegal to subscribe,  
17 actually, because there was no agent or company that you  
18 could pay for the services coming across the border. We  
19 couldn't pay anybody for the programming.

20 So it was actually legal to do this in Canada in 1996,  
21 '97, up to, I think 2001, where some provinces were still  
22 legal and some were not.

23 But, yes, I did it in Saskatchewan.

24 Q. And did you sell pirated access cards to the DirecTV  
25 system?

1 A. Yes, I did.

2 Q. Have you ever heard of a term called a "battery card"?

3 A. Yes, I have.

4 Q. And what is a battery card?

5 A. Battery card was a PCB card or printed circuit board  
6 card with processers on it that would pretty much emulate  
7 exactly what the original Smart Card -- the plastic original  
8 OEM Smart Card that you got with your system originally --  
9 it would do the same thing. You could reprogram it and/or  
10 program it, we'll say, and it would allow free programming.

11 Q. And we're going to talk about this a little bit later,  
12 but at some point in time, was Mr. Tarnovsky involved with  
13 working with you on the battery card?

14 A. Yes, he was.

15 Q. And before we get there, do you know who provides a  
16 conditional access system for DirectTV?

17 A. Yes, I do. I believe it is NDS.

18 Q. Did you ever have any disputes with NDS concerning your  
19 selling pirated Smart Cards?

20 A. Yes. It was in '96. It first started in -- I believe  
21 the battery card that came out was in late '95 or early '96,  
22 and I think in -- it was in June '96 I was raided by the  
23 RCMP in Canada on -- they had a search warrant looking for  
24 battery cards.

25 And we went to court over that and, actually, when the

1 Court was all done, the headlines read that the RCMP were  
2 duped by DirecTV and NDS because it was found out that  
3 that's when they decided that there was no legitimate agent  
4 to pay for the programming, and no company to pay, so there  
5 was nothing that we were doing wrong. So basically what  
6 they said, what came out in the court case, is that NDS and  
7 DirecTV had kind of tricked the RCMP into thinking we were  
8 doing something wrong when actually we were doing nothing  
9 wrong.

10 And it was about a week after that we were also -- I  
11 was also served with a civil suit from NDS.

12 Q. Let's focus a minute on those lawsuits.

13 Has NDS sued you more than once?

14 A. Yes, they have, twice.

15 Q. Have you ever been indicted for satellite piracy down  
16 in the United States to your knowledge?

17 A. I'm not -- I'm not positive. I can't say positively.

18 Q. Did NDS ever get a judgment against you for satellite  
19 piracy?

20 A. Yes, they did. They did have a default judgment in  
21 '96, '97, '98 -- somewhere in there -- that was not  
22 recognized in Canada.

23 Q. Now, when you said the words "nothing wrong" a moment  
24 ago, I want to be abundantly clear about that.

25 A. Sure.

1 Q. When you say "nothing wrong," is what you're saying  
2 that it wasn't illegal to do what you were doing in Canada  
3 at that time? Is that what you mean?

4 A. No, it was not.

5 Q. Okay. Now -- but you did understand that you were  
6 selling access cards for people to get pay television for  
7 free; is that right?

8 A. That's correct.

9 Q. And is it -- is that something that you, as you sit  
10 here today in front of this jury -- that you would say  
11 that's probably something that's wrong, that you shouldn't  
12 have done?

13 A. Yeah, I could probably say that.

14 Q. You don't have any problem with saying that; is that  
15 right?

16 A. No, I don't have any problem with saying that.

17 Q. Now focusing back on this 1996 time frame, did NDS ever  
18 try to recruit you?

19 A. It was shortly after the civil suit was served on us.  
20 I don't know how much longer, you know, maybe in the fall of  
21 '96. I had a meeting with John Norris and a fellow by the  
22 name of Roni Segoly out of Israel. They met me in  
23 Saskatoon. And the gist of the meeting was John Norris  
24 basically told me -- Norman Dick was our head engineer for  
25 the battery card. He did all the coding, all the

1 programming. He was the brains behind the battery card. We  
2 were basically the sellers.

3 He told me that if I informed on Norman that I could  
4 continue to do what I do, and they would pay me \$10,000 a  
5 month.

6 Q. Did Mr. Norris also indicate that NDS would drop its  
7 lawsuit against you?

8 A. No. He didn't -- he didn't say that.

9 Q. Okay. Just so I understand you, sir -- about --

10 A. But I think -- sorry -- but I think he did mention  
11 something to the effect that, you know, as they have done in  
12 other lawsuits, they won't necessarily drop it, but they  
13 won't pursue it, either.

14 THE COURT: Words like "I think," "could have  
15 been," "could," "would," "might" don't mean anything.  
16 They're called hedge words.

17 Did he say that or not?

18 THE WITNESS: I can't say positively, no.

19 BY MR. SNYDER:

20 Q. So did you choose to go to work for NDS?

21 A. No, I did not.

22 Q. And why not, sir?

23 A. Well, it struck me as kind of odd that he -- that I'd  
24 be sued for doing something that they think is wrong, yet  
25 they're going to allow me to keep doing it and pay me to do



1 it -- pay me while I'm doing it.

2 Q. And did you indicate that thought to Mr. Norris?

3 A. No, I did not indicate that thought. I just said,  
4 "I'll get back to you" kind of thing.

5 Q. And I want to understand a little bit more about when  
6 this recruitment was. Was this after the first lawsuit  
7 against you?

8 A. Yes, it was shortly after. Like I said, I think the  
9 lawsuit was delivered maybe sometime in June of '96, and I  
10 think I remember driving into the city. The weather then  
11 was probably fall of '96.

12 Q. Were there any other recruitment efforts by NDS to try  
13 to recruit you that you can recall?

14 A. No. Not really.

15 Q. Okay. One more background point I want to talk about  
16 before we get into the three main topics.

17 How are you presently employed, Mr. Ereiser?

18 A. I'm employed by NagraStar.

19 Q. You have a consultancy relationship with NagraStar?

20 A. Yes, I do.

21 Q. And do you work for a company directly?

22 A. Yes. I'm employed by NagraStar. I have a lab at my  
23 house with another employee there, where what we do is, we  
24 reverse engineer pirate devices, search forums, find as much  
25 information as we can about people that are pirating

1 EchoStar systems.

2 Q. You ever heard of a company called GES?

3 A. Yes. It's my company.

4 Q. And what does that stand for?

5 A. Global Encryption Services.

6 Q. Now, is the relationship that you have with NagraStar  
7 through your company, Global Encryption Services?

8 A. Yes, it is.

9 Q. So you're not directly employed by NagraStar, correct?

10 A. That's correct.

11 Q. You have a consultancy agreement, correct?

12 A. That's correct.

13 Q. Now, I believe you testified that you consult with  
14 NagraStar. And would that exclude EchoStar?

15 A. Yes, it's directly with NagraStar.

16 Q. Have you ever had a consultancy relationship with  
17 EchoStar?

18 A. No, I have not.

19 Q. When did Global Encryption System start consulting with  
20 NagraStar? What date?

21 A. I believe it was March.

22 Q. 2008? 2007?

23 A. 2007.

24 Q. Is it fair to state GES has been consulting with  
25 NagraStar for a little over a year?

1 A. Yeah, that's right.

2 Q. Now, we talked a little bit about your lab in your  
3 house. What specifically does GES do for NagraStar?

4 A. Well, I'm not as much of a technical person as the  
5 fellow that works with me. But with the instrument we have  
6 there, you know, he's able to reverse-engineer printed  
7 circuit-board cards that are made, JTAG, FTA receivers that  
8 are out there, to get the information out, to send it to  
9 NagraStar so that he can possibly ECM it or shut it down.

10 And we do a lot of forum searching, see who's saying  
11 what on forums, who the players are on these forums, 'cause  
12 they all like to talk, they all like to have their five  
13 minutes of fame on satellite forums.

14 Q. As I understand it, you're doing piracy investigations  
15 on behalf of NagraStar?

16 A. That's correct.

17 Q. And is it fair to state that the devices that you're  
18 reverse-engineering and looking at on NagraStar's behalf are  
19 pirated devices that are found on the Internet or can be  
20 purchased through the Internet?

21 A. Yes. Absolutely.

22 Q. Has NagraStar ever commissioned you to analyze any  
23 competitor's conditional access system?

24 A. Not at all. In fact, they don't even let us use their  
25 own plastic cards.

1 Q. Has NagraStar specifically instructed you that you're  
2 not to reverse-engineer or touch competitors' conditional  
3 access systems?

4 A. Yes, they have.

5 Q. Who at NagraStar has given you that instruction?

6 A. I believe it came from J.J. Gee and Pascal Lenoir.

7 THE COURT: You used the word "believe." Did it  
8 or not?

9 THE WITNESS: Yes, it did.

10 BY MR. SNYDER:

11 Q. Who is J.J. Gee?

12 A. He's the main security officer with NagraStar.

13 Q. Who is Pascal Lenoir?

14 A. CEO for NagraStar.

15 Q. That's him right there, correct?

16 A. That is Pascal Lenoir.

17 Q. Okay. Let's talk a little bit about this lab you have  
18 in Victoria. Can you tell us what kind of equipment is in  
19 this lab in Victoria?

20 A. We have an oscilloscope, a probing station, Axiotron  
21 microscope, bonder, laser cutter. That's about it.

22 Q. Now, who paid for the items you've just identified that  
23 are in your lab in Victoria?

24 A. NagraStar has.

25 Q. Does NagraStar own that equipment?

1 A. Yes, they do.

2 Q. And how much did this equipment --

3 A. Sorry. I'll add a logic analyzer in there too.

4 Q. Thank you, sir.

5 How much did this equipment cost?

6 A. Roughly what we did is we -- we searched very hard for  
7 used equipment on certain websites and whatnot. DoveBid was  
8 one of them, where you can run across some extremely good  
9 deals. And I think it's roughly in the 30-to-40 range.  
10 \$35,000 range right now.

11 Q. U.S. dollars?

12 A. U.S. dollars.

13 Q. And would your testimony be the same, Mr. Ereiser, that  
14 NagraStar has, in fact, instructed you not to use this  
15 equipment other than for antipiracy efforts that NagraStar's  
16 acted in?

17 A. That's correct.

18 Q. Now, you said there's another individual that works  
19 with you in this lab. Who is that individual?

20 A. His name is Chris Gerlinski.

21 Q. Is he an employee of GES?

22 A. Yes, he is.

23 Q. Now, I want to talk to you about the first main topic  
24 that I want to address with you here today, and that is the  
25 delivery of the CD's to Mr. Guggenheim and Mr. Gee.

1 Now, who is Alan Guggenheim, sir?

2 A. He was the CEO for NagraStar, as far as I know.

3 Q. How long have you known Mr. Guggenheim?

4 A. Roughly since 1999, '98 maybe.

5 Q. Do you know whether Mr. Guggenheim was ever involved in  
6 investigating satellite signal piracy?

7 A. Yes, I do know that he was.

8 Q. Did you ever have an understanding that Mr. Guggenheim  
9 was actively investigating the defendants, NDS, in this  
10 case?

11 A. Yes, I knew that.

12 Q. When do you recall having that understanding?

13 A. I can't say exactly, but it would have been when the  
14 first hack came out on the EchoStar card, which was, I  
15 think, early 2000 or something like that.

16 Q. Now, do you recall delivering certain CD's --

17 A. So excuse me. I'll add that's when I first did meet  
18 Alan Guggenheim, is shortly after that time. So it would  
19 have been in 2000, '98 or '99.

20 Q. Is it fair to state that's about the same time you met  
21 Mr. Gee?

22 A. No. I think he started later, possibly a year later,  
23 roughly, or something. I can't be certain on the exact time  
24 there, but it was later. He wasn't around at the beginning.

25 Q. Now, as to the CD's, did you deliver some CD's to

1 Mr. Gee and Mr. Guggenheim?

2 A. Yes, I did.

3 Q. And where were you when you gave these CD's to  
4 Mr. Guggenheim and Mr. Gee?

5 A. I was in Vancouver.

6 Q. That's Canada?

7 A. Yes.

8 Q. British Columbia province?

9 A. Yes, sorry.

10 Q. And where specifically were you? Do you recall?

11 A. At the airport.

12 Q. And Mr. Gee and Mr. Guggenheim flew to Vancouver to  
13 meet you?

14 A. Yes, they did. They flew to the Vancouver airport, and  
15 I met them there.

16 Q. And do you recall how you got into contact with Mr. Gee  
17 and Mr. Guggenheim in order to give these CD's?

18 A. I don't remember exactly, but I would have to assume  
19 that I contacted them.

20 Q. Did you ever tell Mr. Gee or Mr. Guggenheim how you got  
21 these CD's?

22 A. No, I did not.

23 Q. Now, you didn't tell 'em at the time you gave the CD's,  
24 and is it true also that you hadn't told them up till -- up  
25 to today, you have never told 'em where you got these CD's?

1 A. That's correct.

2 Q. Why didn't you tell 'em?

3 A. I just didn't think they needed to know where I got  
4 them.

5 Q. Was there anything secret, in your mind, about where  
6 you got them?

7 A. No, not really.

8 Q. You say "not really."

9 A. No, there was nothing secret. It's just who I got them  
10 from, you know, wished that I would never have given them to  
11 anybody, I suppose. So I didn't want to tell anybody where  
12 I got them from.

13 Q. Now, you recall -- you gave a deposition in this case.  
14 Do you recall, that?

15 A. Yes.

16 Q. And do you recall that you were asked by NagraStar's  
17 counsel at that deposition where you got the CD's?

18 A. That's correct.

19 Q. And do you recall you were also asked by NDS's counsel  
20 where you got the CD's?

21 A. That's correct.

22 Q. And do you recall whether or not you were willing to  
23 answer that question?

24 A. In Canada I would have been willing to answer the  
25 question, but the consent order did not allow them to ask



1 that question. So I was instructed by my lawyer not to  
2 answer it because the consent order didn't cover it.

3 Q. What's your understanding of a consent order in Canada?

4 A. Well, I don't have a lot of understanding, but I was  
5 told by Stephen, the lawyer, that they can't ask these  
6 questions. They can only have a certain scope of questions  
7 they can ask, and this was out of the scope.

8 Q. Is it your understanding that the parties, that NDS and  
9 your attorney made an agreement as to the consent order --

10 A. Correct.

11 Q. -- and what questions could be asked of you and what  
12 couldn't?

13 A. That's correct.

14 Q. And so your position was this was outside of the scope  
15 of the consent order?

16 A. That's correct.

17 Q. Were you willing to answer the question?

18 A. Yes. I pretty much did. The name was right there. It  
19 was everything but circled. But I just didn't answer the  
20 question directly because of the consent order.

21 Q. Now, for the jury, who did you get these CD's from,  
22 Mr. Ereiser?

23 A. Gilles Kaehlin.

24 THE COURT: Could you spell that? J-I-L-L?

25 THE WITNESS: No, it's actually G-I-L-L-E-S and

1 possibly K-A-E-H-L-I-N.

2 Am I right?

3 MR. NOLL: I believe so.

4 THE COURT: Spell the last name one more time.

5 THE WITNESS: K-A-E-H-L-I-N.

6 MR. NOLL: I believe that's correct.

7 THE COURT: Thank you.

8 THE WITNESS: I believe it is. I can't be  
9 positive.

10 BY MR. NOLL:

11 Q. As I understand you, Mr. Ereiser, you received these  
12 CD's from somebody named Gilles Kaehlin?

13 A. Correct.

14 Q. Who was Gilles Kaehlin?

15 A. Gilles Kaehlin, when I met him, he was the CEO for  
16 Canal+ in France.

17 Q. And did you have an understanding at that time whether  
18 or not Canal+ was investigating NDS for alleged satellite  
19 piracy?

20 A. Yes, I was under the understanding that they were  
21 investigating them for satellite piracy.

22 Q. And what time frame are we talking about when you  
23 received this information from Mr. Kaehlin?

24 A. When you say "received information," that they were --

25 Q. Received --

1 A. -- involved in satellite piracy?

2 Q. Sorry, bad question by me.

3 At what date did you receive these CD's from  
4 Mr. Kaehlin?

5 A. I can't honestly be certain of the date, but I know it  
6 would have been in probably early 2004 to mid-2004.

7 Q. And do you recall who you were working for at the time  
8 you received the CD's?

9 A. I was working for a company called Titus.

10 Q. And what does Titus do?

11 A. I can't say for sure, but they're a subsidiary somehow  
12 of Canal+. They work directly with Canal+.

13 Q. Okay. So your understanding was Titus was somehow  
14 connected with Canal+?

15 A. Absolutely.

16 Q. And at the time you received these CD's, did you have  
17 any discussion with Mr. Kaehlin as to whether or not Canal+  
18 had filed a lawsuit against NDS?

19 A. I don't know about -- I knew that they had filed a  
20 lawsuit against NDS, yes.

21 Q. And did you know anything about those claims?

22 A. I'm not sure that I follow the question there.

23 Q. Well, you understood that Canal+ was suing NDS.

24 THE WITNESS: Excuse me one second. Is there  
25 another glass here? This one's been used.

1 THE COURT: We'll get you one.

2 THE WITNESS: Sorry. Go ahead.

3 BY MR. NOLL:

4 Q. Did you understand that Canal+ was suing NDS for  
5 alleged acts of satellite piracy?

6 A. Yes, I was aware of that.

7 Q. Now, did Mr. Kaehlin tell you where he got these CD's?

8 A. No, he did not directly say. But what he had told me  
9 and my understanding was -- and I never asked any more  
10 questions -- is that he had a court order to download  
11 e-mails off the NDS server which had to do with the court  
12 case he was involved in. I just assumed that's where he got  
13 the e-mails from.

14 Q. Your assumption was Mr. Kaehlin got the e-mails from  
15 his court case against NDS --

16 A. Correct.

17 Q. -- is that right?

18 A. And it seemed logical. You know, why would I believe  
19 anything other, coming from a CEO from a big company like  
20 that.

21 Q. Now, what made you think to tell Mr. Gee and  
22 Mr. Guggenheim that you had these CD's?

23 A. Well, after having them for a while, looking through  
24 them, I seen it was -- mainly I was interested in the stuff  
25 in there for myself and for other friends from past history

1 and the troubles we had. So it was interesting searching  
2 through them and seeing what was done to us, aboveboard and  
3 what wasn't aboveboard, and eventually just seeing stuff in  
4 there that I thought probably would help EchoStar and Nagra  
5 in their lawsuit against NDS as well.

6 Q. Now, you saw something there in the CD's related to  
7 you?

8 A. Yes.

9 Q. What did you see?

10 A. Well, quite a few things. I have a few examples, but  
11 one that was a little disturbing to me was there was an  
12 e-mail from a Corporal or a Sergeant Struck (phonetic) out  
13 of --

14 MR. SNYDER: Objection. Hearsay.

15 THE COURT: Overruled. You can answer the  
16 question.

17 THE WITNESS: Sorry?

18 THE COURT: There was an e-mail from?

19 THE WITNESS: Corporal or a Sergeant Struck. I  
20 forget if it was a corporal or sergeant out of Manitoba, in  
21 Canada. And he had his own e-mail address on an NDS server,  
22 meaning he wasn't using his RCMP address. So I guess this  
23 was one way there was no paper trail for him.

24 And he was talking with John Norris in this e-mail  
25 about Ereiser has a couple other businesses he's involved in

1 and they, you know, should go raid them.

2 And one of the businesses -- or the businesses in  
3 question was one that I had run with my brother-in-law  
4 previously but had signed over to him. And, in fact, at the  
5 debriefing I had, my brother-in-law was sitting with John  
6 Norris and Larry Risler (phonetic) and said, "You know,  
7 there's piracy going on here, but we're converting over to  
8 the Canadian system; and if you just give me time, we'll do  
9 it."

10 And they were okay with it. Everything seemed all  
11 right. And over time everything would to be switched over  
12 to Canadian satellite systems as opposed to pirate satellite  
13 systems. And they seemed to be okay with it.

14 But anyways, along came this e-mail. And another  
15 friend that I helped out, I signed a lease agreement for him  
16 because he had gone -- he was a music promoter. He had gone  
17 bankrupt and his credit wasn't that good. So all I did was  
18 sign a lease agreement for him, to help him out. He was a  
19 friend of mine.

20 They raided both those businesses. And it also  
21 said that they found some information at one of 'em about  
22 Oliver Kommerling, some e-mails or something. And John  
23 instructed the police officer to get rid of that stuff  
24 before it went to court.

25 THE COURT: John who?

1 THE WITNESS: John Norris.

2 THE COURT: Okay.

3 THE WITNESS: He instructed 'em to get rid of the  
4 Oliver Kommerling documents before it went to court because,  
5 you know, for whatever reasons, I don't know. He did say  
6 something, but I can't say exactly. It would reflect bad on  
7 him.

8 And the police officer agreed, and on the next  
9 e-mail...

10 BY MR. NOLL:

11 Q. Now --

12 A. That was one of 'em.

13 Q. Okay.

14 A. And there was things like that that were just, you  
15 know, where they'd be talking of -- of, well, maybe not  
16 having enough evidence for a lawsuit, but shoot one out  
17 there anyway.

18 Q. Now, did you read every e-mail --

19 A. No.

20 Q. -- on this whole CD?

21 A. No. I was more interested in searching my own name and  
22 maybe some friends, things like that.

23 Q. What led you to believe --

24 THE COURT: Now, just a moment.

25 (To the jury:) This is a complicated ruling.

1           We don't have that e-mail, so it becomes a matter  
2 of recollection and/or credibility, whether you're being  
3 told the truth or not. And that's going to occur repeatedly  
4 with different witnesses.

5           And there's something called the hearsay rule.  
6 One of the problems is, if you don't have that document,  
7 there's no chance to verify the document.

8           So oftentimes -- and I think on this occasion,  
9 this is coming in to show the effect on this witness of that  
10 e-mail. But the truth of that e-mail is not in front of  
11 you. It's something that you can't verify, et cetera.

12           But I'll allow both counsel to get into that  
13 e-mail. It's really introduced, though, to show the effect  
14 on this particular witness, what his motivations, biases or  
15 sympathies are in this matter.

16           And I'll clarify that again in instructions at the  
17 end of the case.

18           Counsel, proceed.

19           MR. NOLL: Thank you, Your Honor.

20 BY MR. NOLL:

21 Q. And you said you would have given these CD's to Mr. Gee  
22 and Mr. Guggenheim because you thought there may be  
23 information that would help EchoStar in its case against  
24 NDS, right?

25 A. Correct.



1 Q. Can you recall any specific information that you found  
2 that would advance that goal?

3 A. I can't recall anything specific at the moment.

4 Q. Now, did you ever come to have an understanding as to  
5 what happened to those CD's? In other words, do you know  
6 whether those CD's were ever lodged with this Court?

7 A. Yes.

8 Q. And what did you do with all of your copies of those  
9 CD's as well as with the original?

10 A. I made a copy that was given to Alan Guggenheim and  
11 J.J. Gee. I was instructed by my lawyer in Canada that I  
12 need to give the originals to him, which I did. I had --  
13 they were copied to my hard drive on my laptop. They were  
14 erased off that. And that's the end of 'em.

15 Q. Is it true, sir, that today you don't possess those  
16 e-mails in any form, whether hard copy or electronic?

17 A. No, I don't possess them.

18 THE COURT: Do those e-mails exist someplace in  
19 hard copy form?

20 THE WITNESS: My lawyer has them.

21 THE COURT: Your lawyer has them?

22 THE WITNESS: In Canada.

23 THE COURT: In Canada?

24 THE WITNESS: In Canada. And they exist somewhere  
25 here, too.

1 THE COURT: On a copy provided to counsel?

2 MR. NOLL: To the Court, Your Honor. They were  
3 lodged with the Court early on in the litigation.

4 THE COURT: If we need to verify that, you can dig  
5 that out tonight.

6 BY MR. NOLL:

7 Q. Now, did NagraStar pay you any money to get these CD's?

8 A. No, they did not.

9 Q. Did Alan Guggenheim pay you any money to get these  
10 CD's?

11 A. No, they did not.

12 Q. Did J.J. Gee pay you any money to get these CD's?

13 A. No, they did not. I believe they paid for my trip from  
14 Victoria to Vancouver. I flew over.

15 Q. Did Mr. Gee or NagraStar make any promises to do  
16 anything in the future if you provided them these CDs?

17 A. No.

18 Q. Are you aware of anyone else who has copies of these  
19 CDs?

20 A. No. But there were some copied, some e-mails I printed  
21 out and gave to some people.

22 Q. Who did you give those to?

23 A. A fellow by the name of Gary Tocholke who I used to be  
24 involved with in '96, '97, '98. I gave him some copies of  
25 some of the e-mails and also Plamen Donev, who I worked with

1 in '97, '98. I made him some copies. And these are printed  
2 out copies of particular e-mails; not copies of the discs or  
3 anything like that. They're just particular e-mails,  
4 specific e-mails.

5 And I believe I might have sent a few to my  
6 brother-in-law and possibly his lawyer at the time because  
7 they were dealing with the raid that was on his store, and I  
8 thought it might be helpful for him to see the e-mail that I  
9 talked about earlier.

10 Q. Do you know if anyone at Titus has these CDs?

11 A. I'm sure they do. I can't be positive. Gilles Kaehlin  
12 has them. He runs Titus, he runs CK2, he runs Canal+. I'm  
13 sure there's lot of people there that have them.

14 Q. Was there anything secretive about your presentation of  
15 these CDs to Alan Guggenheim and J.J. Gee?

16 A. What do you mean by "secretive"? I'm sorry.

17 Q. This happened at a normal airport?

18 A. Yeah. No Spy vs. Spy hats on. Nothing. Just sat down  
19 and talked about it.

20 Q. Did you partake in any action to steal these CDs,  
21 Mr. Ereiser?

22 A. Absolutely not.

23 Q. Have you ever had possession of any NDS computers or  
24 hard drives?

25 A. No.

1 Q. Did anyone from NagraStar ever ask you to steal CDs or  
2 to take information like this in an inappropriate way?

3 A. No.

4 Q. Do you have any understanding why NDS would allege that  
5 you had some involvement in the theft of these CDs?

6 A. Why they would allege it?

7 Q. Yeah. Why would NDS say that?

8 A. I suppose they have reasons. I -- I suppose they don't  
9 want anybody to see the CDs, number one. I suppose they  
10 don't want me to testify. I don't know. I -- I have  
11 nothing else to say about it. I don't know.

12 Q. And just to be clear -- I'm going to move off the  
13 topic -- the reason you gave these CDs to NagraStar and  
14 EchoStar is because you thought they would help EchoStar and  
15 NagraStar in their prosecution of NDS involving the present  
16 activities; is that right?

17 A. That's correct.

18 Q. Now, let's move to the second topic I want to speak to  
19 you about here, and that's a gentleman named  
20 Christopher Tarnovsky.

21 A. Sure.

22 Q. Through your piracy of DirecTV, did you come to know  
23 Mr. Tarnovsky?

24 A. Yes, I did.

25 Q. And how -- tell the jury how you specifically came to

1 know Mr. Tarnovsky?

2 A. It was in '96 when we were raided by the RCMP. Our  
3 head engineer at the time was a guy named Norman Dick who  
4 was from Victoria, British Columbia.

5 Q. Okay. You were saying that you came to know  
6 Mr. Tarnovsky after he -- after Norman Dick was raided by  
7 the RCMP.

8 Can you keep going with that?

9 A. Right. And Norman, for lack of a better word, was  
10 scared and didn't want to support the battery card anymore  
11 when there was electronic countermeasures. So we had to try  
12 to find somebody new that could do the coding to the card.

13 And searching on the Internet, I just found some  
14 website I believe that was in England, e-mailed the guy,  
15 told 'em what I was looking for, and he said he had a mate  
16 that was just moving back to the United States that was in  
17 the Army over there or something. And he had been working  
18 on the D2Mac, I believe it was, and could probably help me  
19 out. And he provided me an e-mail address which was  
20 Von@metro200.net. And that was Chris Tarnovsky, and that  
21 was the first time I got in touch with him.

22 Q. Now, did you understand that Mr. Tarnovsky used the  
23 alias "Von"?

24 A. Yes.

25 Q. Or Vonnie?

1 A. Von, VonRat, Vonnie, Von Neumann, Arthur Von Neumann.

2 Q. Artie?

3 A. Artie. Arthur, if I haven't said that one.

4 Q. Can you think of any others while you're sitting here  
5 today, sir?

6 A. One chat he used Coleman.

7 THE COURT: I'm sorry?

8 THE WITNESS: Coleman.

9 THE COURT: Spell it.

10 THE WITNESS: C-O-L-E-M-A-N.

11 THE COURT: Thank you.

12 THE WITNESS: Sure.

13 BY MR. NOLL:

14 Q. Now, what was your understanding how Mr. Tarnovsky  
15 would use these particular aliases -- IRC? E-mail?

16 A. Mostly IRC.

17 Q. And does "IRC" stand for Internet relay chat?

18 A. That's correct.

19 Q. And what are these? Are these chatrooms?

20 A. It's -- it's a chatroom, yes. And there was one that  
21 was on the EFnet server, E-F-N-E-T server, and the channel  
22 was pound -- pound sign, satellite. And that's where we  
23 used to meet.

24 Q. So as I understand you, when you first got in contact  
25 with Mr. Tarnovsky, he was working on the D2Mac system in

1 Europe; is that right?

2 A. Apparently. This is what the fellow from England had  
3 told me. I have nothing to support that. He just said his  
4 mate, as he said, had worked on the D2Mac and seemed to be a  
5 good coder and could possibly do what I needed done.

6 Q. Then you met Mr. Tarnovsky. Tell us what happened.

7 A. Yeah. Well, we exchanged e-mails, and I don't remember  
8 how much longer after we decided -- I sent him tickets for a  
9 flight to Calgary. I met him in Calgary. Him and his wife  
10 came up. I had a face-to-face meeting. I provided him with  
11 all the information I could, all the code I could,  
12 everything that I could to help him along to try to fix the  
13 situation we were in and get the cards back up and running.

14 And so I think it was roughly within about two weeks  
15 after he returned home, he says, "I got it."

16 He sent the file over, and sure enough, he had 'em up  
17 and running again.

18 THE COURT: When you say, "he had 'em up and  
19 running," what did you --

20 THE WITNESS: Sorry. He had the battery cards up  
21 and running again.

22 BY MR. NOLL:

23 Q. Let's back up just a second.

24 A. Sure.

25 Q. Mr. Tarnovsky would work on the software side of the

1 battery card; is that right?

2 A. That's correct.

3 Q. And as you -- is it correct to say that DirectTV would  
4 send an electronic countermeasure down to kill the battery  
5 cards?

6 A. That's correct.

7 Q. And then what Mr. Tarnovsky would do was come up with a  
8 software fix or a patch that would open back up the battery  
9 cards or pirate cards?

10 A. Absolutely.

11 Q. So you gave Mr. Tarnovsky all the codes that you had  
12 when you met with him, and he then went back to the  
13 United States, and in two weeks he had come up with a fix;  
14 is that right?

15 A. That's right. And when you say two weeks, I say  
16 roughly two weeks. I can't be exactly sure -- although  
17 shortly thereafter he had it running.

18 Q. How did you know that Mr. Tarnovsky was able to  
19 successfully provide a fix?

20 A. He e-mailed me the file. I loaded the file onto the  
21 battery card, and the battery card ran.

22 Q. And do you recall the date that this took place, where  
23 he e-mailed you this fix?

24 A. No, I don't recall a date. It would have been in '96  
25 sometime -- late '96 -- June, July, August, say.



1 THE COURT: When you say a "fix," is that the same  
2 as a hack?

3 THE WITNESS: No. A fix is correction, correction  
4 on an ECM.

5 THE COURT: I want to make sure the way you're  
6 using that word.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 THE WITNESS: My best estimate would have to be  
10 August because we were raided in June, and I remember the  
11 cards were down for roughly six to eight weeks.

12 So that would put us in around the August area.

13 BY MR. NOLL:

14 Q. And do you have an understanding as to whether or not  
15 providing a fix or drafting the fix software would be a  
16 legal act? Can you provide a fix? Isn't that the same  
17 thing as pirating the system?

18 A. Yeah. You are the fellow that is pirating the system  
19 by providing the fix.

20 Q. Now, did Mr. Tarnovsky ask you for any consideration in  
21 return for his services?

22 A. We had talked in Calgary, and his initial thoughts  
23 were, well, if I can -- you know, he said when he worked on  
24 the D2Mac, the people always promised him money in Europe,  
25 but he never really made any. I said, "There's a chance to

1 make some money here," and he said, "Well, if I can make  
2 \$20,000 on this, I'd be happy."

3 And that's how it started out. I think with donations  
4 from other -- you know, he got -- he quickly got onto the  
5 IRC channel. He got to be known as "biggun." Everybody,  
6 you know, praised him. People were sending him what he  
7 called donations. Money was coming in to him, and I think  
8 he finally reached that goal. And I believe I sent him some  
9 money directly, too.

10 Q. Now, "biggun" -- that was another one of  
11 Mr. Tarnovsky's aliases?

12 A. Yes. Yes. Kind of his main one when he was on the  
13 IRC.

14 Q. Did you send Mr. Tarnovsky the \$20,000?

15 A. Not all of the \$20,000 myself, no. Some of the  
16 donations, as they were called, were sent directly from  
17 other people where I just provided Chris's address and they  
18 sent directly to him. Some of the money I would have sent  
19 to him, yes.

20 Q. So did Mr. Tarnovsky ever -- did you ever come to  
21 understand that Mr. Tarnovsky found a backdoor way to hack  
22 into the DirecTV card so that you wouldn't have to use the  
23 battery cards anymore?

24 A. I think what a few people were doing, shortly after the  
25 battery card was out there, people were programming the

1 original plastic card.

2 Q. And when you say "programming the original plastic  
3 card," you mean taking the actual Smart Card that came with  
4 the DirecTV system and reprogramming that card?

5 A. That's -- you're right.

6 Q. All right. Did there ever come a point in time when  
7 Mr. Tarnovsky stopped working with you on the DirecTV  
8 system?

9 A. Yes. When we got into the -- that was the P.1 card or  
10 version one card, however you want to refer to it. I'll  
11 refer to it as P1; next one will be P2, period 1, period 2.

12 When we got into the P.2 card, we knew that, you know,  
13 we're going to have to find a different engineer for this.  
14 It would have to be cracked at a lab or something like that.  
15 So we asked for Chris's help to find somebody that would do  
16 that, and he said he had a contact by the name of Yon  
17 (phonetic) that could probably find somebody to do it.

18 Q. Do you recall, if anyone, who Mr. Tarnovsky referred to  
19 you to continue to work on the P.2?

20 A. Sorry?

21 Q. Do you recall if -- what engineer Mr. Tarnovsky would  
22 have referred to you to work on the .2 DirecTV card?

23 A. What ended up happening is Chris supplied an e-mail to  
24 me of a contact -- I don't know if he supplied it to me or  
25 actually supplied it to Herb Huddleston, but an e-mail was

1 supplied to us from Chris for the Bulgarians that we ended  
2 up using that hacked the P.2 card.

3 Q. Plamen Donev and Vesselin Nedeltchev?

4 A. Vesselin Nedeltchev, yeah.

5 Q. What date did Mr. Tarnovsky stop working with you on  
6 the DirectTV system?

7 A. Well, he never really did anything on the P.2 at the  
8 beginning. It was shortly after we had it cracked and  
9 working and were reprogramming original cards that I think  
10 we had -- we're -- had one ECM, fixed it. A second one came  
11 along, and Plamen in Bulgaria was not too reliable. You  
12 didn't know if you had an ECM if he was not going to answer  
13 the phone for three days or not, so we got pretty worried  
14 that we weren't able to keep the customers up.

15 And that's when we called Chris and said, "Would you  
16 help us support the card?"

17 He said, "Sure."

18 He met us in Calgary.

19 THE COURT: Was this the second trip?

20 THE WITNESS: Yes, it was.

21 THE COURT: You mentioned the first trip where  
22 yeah, the first trip was on the P.1 card. This is the  
23 second trip on the P.2 card.

24 Okay.

25 THE WITNESS: He came up, and an agreement was

1 struck that, you know, he'd offer support if Plamen was not  
2 able to give us support.

3 BY MR. NOLL:

4 Q. Was this in about the 1998 time frame?

5 A. Yes. That would be right. Sounds right.

6 And at that time, we gave him a dump of the card, and  
7 also he knew what he was working with. Again, I think he  
8 requested \$20,000, but I think we only gave him 10 because  
9 that was the limit he could go across the border with. And  
10 the rest of it was sent shortly thereafter to -- I think  
11 half of it to his mother and half to his father's address in  
12 Manassas.

13 Q. Did Chris tell you that he could only go across the  
14 border with \$10,000?

15 A. No, I think we told him that. He wanted more.

16 Q. How much did he want?

17 A. Well, the whole amount. We told him he's crazy, you  
18 know, he can't do that.

19 Q. So he took 10,000 cash with him across the border, as  
20 far as you know?

21 A. Yeah, it was a money order, I believe.

22 Q. And then you sent the other money -- you broke it up  
23 5,000 and 5,000?

24 A. Yes, which was sent out of Winnipeg by Gary Tacholke.  
25 And I think the other half was sent by Herb Huddleston out

1 of Grand Cayman.

2 Q. Now, you mentioned, Mr. Ereiser, that half was sent to  
3 Mr. Tarnovsky's mother and half was sent to his father. Was  
4 that a normal practice that Chris employed when he asked you  
5 to send money; that is, "Send some to my dad, send some to  
6 me, send some to my mother"?

7 A. Sometimes when you were to send money down for  
8 something. I remember in particular once I had to send two  
9 PlayStation games, and one was to his father, and one was to  
10 him, and they both had money inside them.

11 Q. Did you ever have an understanding whether  
12 Mr. Tarnovsky's father was going to keep that cash or was he  
13 going to provide it to Chris?

14 A. I never had the understanding either way.

15 Q. Now, did you ever come to know of a gentleman named  
16 Mr. Al Menard?

17 A. Yes, I did.

18 Q. Who is Al Menard?

19 A. Al Menard is a friend of Chris Tarnovsky's from  
20 Edmonton, Alberta, Canada.

21 Q. And did Mr. Tarnovsky ever indicate to you that he was  
22 busy working on another system, and he didn't have time to  
23 work on the DirecTV system anymore?

24 A. Well, things got a little rough on the P.2 card. They  
25 were doing good countermeasures and stuff like that, so it

1 was a little harder to keep up. And Chris seemed to be  
2 losing interest in trying to keep it up, you know, trying to  
3 support it of any kind or trying to raid software of any  
4 kind.

5 So the relationship kind of fell apart. And there was  
6 times he would say, you know, he's busy with other stuff,  
7 he's working on another system, and all this. I didn't know  
8 what it meant at the time or anything like that.

9 Q. Do you recall -- I believe you testified that  
10 Mr. Menard and Mr. Tarnovsky were friends. Do you recall  
11 anything more about their relationship than that?

12 A. Well, I think that Chris had actually corresponded with  
13 Menard before he met me, even, via e-mail -- even before he  
14 went back to the States that I think that he knew Al Menard.

15 Q. Do you recall if Mr. Tarnovsky ever asked you to send  
16 Mr. Menard blank Smart Cards or Smart Cards relating to  
17 EchoStar?

18 A. At one point -- it was right near the end of the P.2  
19 card where Chris had bought -- I believe it was 200 cards  
20 from Europe. I think it's the same cards that Oliver  
21 Kommerling had designed with a single Dalas chip on 'em.  
22 And he bought them real cheap, you know, and we were  
23 building battery cards for \$50. Chris had bought these  
24 for \$5. So he bought 200 of 'em.

25 So he sent them to me. He says, "Here, get these going

1 and sell 'em for the DirecTV stuff."

2 Well, there was like three weeks left, and the P.2 was  
3 switched off. They were no more good. They couldn't be  
4 used.

5 So when the EchoStar hack came out, the first hack that  
6 came out was one that could be used on a battery card. You  
7 could take any battery card that was used for the  
8 P.1 DirecTV stuff -- this is why we made the battery cards  
9 that you could load this EchoStar file on -- and they would  
10 work on an EchoStar now. So we had 200 of these cards, and  
11 he wanted me to send 'em to Al Menard.

12 Q. Can you recall what date he asked you to send these  
13 cards to Mr. Menard?

14 A. I'm sorry. I can't recall the exact date.

15 Q. Do you ever --

16 A. Some of this stuff is 10 years old. When you guys ask  
17 dates, it's so tough to pick dates. I just can't remember  
18 'em. I'm sorry. I would guess if you want a guess.

19 MR. SNYDER: Objection. Speculation.

20 THE COURT: Sustained.

21 THE WITNESS: I was waiting for the fireworks  
22 there.

23 BY MR. NOLL:

24 Q. Did you have an understanding that Mr. Menard operated  
25 a website called dr7?



1 A. Yes.

2 THE COURT: Counsel, why don't you pick a  
3 convenient place for lunch. Okay?

4 MR. NOLL: This is fine, Your Honor.

5 THE COURT: You sure?

6 MR. NOLL: Yes.

7 THE COURT: Okay. You choose it.

8 Then, ladies and gentlemen, why don't we see you  
9 at 1:00 o'clock.

10 You're admonished not to discuss this matter  
11 amongst yourselves nor to form or express any opinion  
12 concerning the case.

13 Thank you.

14 Okay. Counsel, have a nice lunch.

15 (Lunch recess held at 12:04 p.m.)

16 (Further proceedings reported by Jane Rule in  
17 Volume III.)

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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 22, 2008

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16 DEBBIE GALE, U.S. COURT REPORTER

17 CSR NO. 9472, RPR  
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