

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

- - - - -

ECHOSTAR SATELLITE)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-0950-DOC
)	
NDS GROUP PLC, et al.,)	
)	Day 11, Volume III
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Friday, April 25, 2008

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Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
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08-04-25 EchoStarD11V3

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I N D E X

EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
JACKSON, MARK				
By Mr. Stone			10	
KUDELSKI, HENRI				
By Mr. Eberhart	18			

EXHIBITS

Exhibit	Identification	Evidence
Defendants' No. 526-A		29
Defendants' No. 812		41
Defendants' No. 824		45
Defendants' No. 1185		51
Defendants' No. 1202		22
Defendants' No. 1260		30

1 SANTA ANA, CALIFORNIA, FRIDAY, APRIL 25, 2008

2 DAY 11 - VOLUME III

3 (1:06 p.m.)

4 (The following proceedings is taken outside
5 the presence of the jury.)

6 THE COURT: We are on the record outside the
7 presence of the jury.

8 Mr. Snyder?

9 MR. SNYDER: Thank you, your Honor.

10 We have listened to all of the Court's comments,
11 and under the circumstances, we are withdrawing Mr. Peluso
12 as a witness.

13 THE COURT: I'm leery of that statement, not of
14 you. Under all the circumstances, I don't want this record
15 to ever reflect that Mr. Peluso may have the option of
16 testifying.

17 MR. SNYDER: I understand that.

18 THE COURT: I want this record to strictly reflect
19 that I have to have that hearing as I offered last evening
20 and yesterday before he does testify, because this is such a
21 dangerous area in terms of character flowing over from both
22 sides. And frankly, the way this developed is each of the
23 parties have called persons who are truly adverse witnesses,
24 that then provided the vehicle, and each of you set what I
25 call a standard of goodness, you know, from family values,

1 from the number of children, et cetera, all of which is
2 irrelevant. I let that go, because neither one of you
3 objected, frankly.

4 Each of you coequally have gotten involved with
5 the agencies that they worked with, but you did that, not
6 only oftentimes at the beginning, but apparently with the
7 understanding that the other party was going to get into
8 that with their witnesses. So there must be some subtle
9 agreement between the two of you, if not overt, certainly
10 implied that that was going to be acceptable. Mr. Peluso is
11 welcome to testify, but after the last admonition from the
12 Court I don't know where that's going.

13 So I already said to Mr. Klein last evening
14 certain areas I have already acceded to, and he's more than
15 welcome to testify. But that huge lead-in, from my
16 perspective, really strikes, in a sense, more character
17 evidence, and that's my concern. So if you are withdrawing
18 him voluntarily, you choose not to present him, then I'm
19 going to strike his testimony, and then we'll move on. But
20 this record should never indicate that he is not welcome to
21 testify. He may be relevant. I just have to have a hearing
22 outside of the presence of the jury. And that -- of course,
23 that was something that apparently neither counsel really
24 pushed for last evening when I had everybody available. Do
25 you still want to withdraw him or not?

1 MR. SNYDER: Yes.

2 THE COURT: Okay. Then he is withdrawn.

3 All right. Then, number two, how do you each want
4 to handle this issue concerning statements for the
5 truthfulness or the non-truthfulness, et cetera, Mr. Hagan?

6 MR. HAGAN: Your Honor, Mr. Snyder and I spoke at
7 the break, and we have been able to reach an agreement that
8 neither side will request that the Court issue a specific
9 detailed instruction based on each statement and whether it
10 was offered for the truth of the matter.

11 THE COURT: Are you stipulating to that,
12 Mr. Hagan --

13 MR. HAGAN: We are.

14 THE COURT: -- on behalf of EchoStar and
15 NagraStar?

16 MR. HAGAN: On behalf of the plaintiffs, we are
17 stipulating, your Honor.

18 THE COURT: On behalf of NDS and the defendants?

19 MR. SNYDER: Reserving the objections that we
20 raised last night before the Court ruled, we are stipulating
21 to that, your Honor.

22 THE COURT: All right. Now, what happens in the
23 future with the unforeseen?

24 My greatest concern is one of you may think that
25 there is some unfairness if we get into this area again and

1 there isn't that stipulation. So I'm not requiring that. I
2 am just asking us to look ahead, because while that may be,
3 you know, wise on your parts with this last gentleman, what
4 happens if we go through that colloquy again? I don't want
5 to be inconsistent, in other words, in the rulings.

6 So let's do this. Let me protect both of you.
7 Let me just say at this point there is a stipulation, but
8 that does not permanently foreclose, depending upon how this
9 unwinds, you know, you bringing this to the Court's
10 attention again with a -- with a huge instruction at the
11 end. Because I'd hate to see a witness take the stand and
12 we go through that process again for either side, and the
13 other side then felt it was unfair, it seemed inconsistent
14 that particular juror was singled out -- I mean, that
15 particular witness was singled out.

16 So let's -- right now there is a stipulation, but
17 it doesn't close the door; fair enough?

18 MR. SNYDER: If I understand you correctly, and
19 may I sort of restate it, your Honor --

20 THE COURT: Just restate it.

21 MR. SNYDER: -- to make sure I've got it?

22 The Court had concerns that Mr. Gee was -- was
23 entering into hearsay testimony. We had a hearing outside
24 the presence of the jury last night at which you took an
25 offer of proof, objections were raised, and the Court made

1 certain rulings.

2 Mr. Gee then testified before the jury today, and
3 based on our review of that testimony, we have stipulated
4 with plaintiffs counsel that no limiting instruction need be
5 made.

6 Going forward, I believe that -- that the same
7 process is likely necessary, and if that's what the Court
8 intended by those comments, yes, we agree.

9 THE COURT: Okay. I -- I'm saying you don't have
10 to agree right now. Going forward, I am not asking either
11 one of you to do that.

12 MR. SNYDER: Thank you.

13 THE COURT: I just can't foresee what happens, and
14 my fear is that Witness Number 10 who's called, if we go
15 through the same process, one of you might not be willing to
16 enter into that stipulation, seeing it to your advantage.
17 That means that this whole area would be examined and
18 reexamined again, including Mr. Gee, because it wouldn't be
19 fair to give an admonition to the jury about one witness,
20 the truthfulness of such statements and then -- and then
21 come back and not give it concerning another witness. And
22 I'm unartfully stating that. I just want consistency by the
23 Court and somewhat consistency by you.

24 So right now there is a stipulation. It's off the
25 table. There's stipulation that no admonition will be given

1 to the jury. My reasons are documented. I've made written
2 findings concerning each of those four witnesses for circuit
3 review and what my rulings would have been, but -- well,
4 enough conversation on that, then.

5 Kristee, if you would get the jury.

6 (The following proceedings is taken in the
7 presence of the jury.)

8 THE COURT: The jury is present. All counsel are
9 present.

10 Counsel, thank you for your courtesy.

11 There was a witness briefly called. I don't want
12 you to draw any inference from the witness's testimony, that
13 witness's -- any inference as to why his testimony is being
14 stricken, but Mr. Peluso's testimony is stricken at this
15 time. You're to disregard it.

16 Counsel, if you'd be kind enough to ask the
17 witness to retake the stand, Mr. Jackson.

18 MARK JACKSON, DEFENDANTS' WITNESS, RESUMED

19 THE COURT: And Mr. Jackson, we were going to
20 start, once again, with Mr. Stone, who's beginning his
21 redirect examination of you.

22 MR. STONE: Thank you, your Honor.

23 THE COURT: Thank you, sir.

24

25

REDIRECT EXAMINATION

1
2 BY MR. STONE:

3 Q This is going to be anticlimactic, because it will be
4 short, Mr. Jackson.

5 A Okay. Great.

6 Q All right. Now, you testified you were haggling over
7 price at this second meeting with NDS; do you recall that?

8 A Yes.

9 Q And the issue was you thought NDS was too high of a
10 price, and you wanted them to come down; is that a fair
11 summary?

12 A I think I was trying to get to their price was part of
13 the issue, a lot of it, and -- and what is the price. And
14 yes, getting it down is always a course of haggling.

15 Q Now, you said you told Kudelski that you were
16 negotiating with NDS about NDS replacing Kudelski?

17 A No, I don't believe so.

18 Q I thought you testified that you informed Kudelski
19 about these negotiations to get a better price out of
20 Kudelski; did I mishear you?

21 A I believe you did. I said that's a typical tactic to
22 use, is to get your competitors' price point to work each
23 other against each other to get a lower price from both
24 parties.

25 Q Oh, did you work NDS against Kudelski?

1 A Well, I think we -- we kind of told them where our
2 price points were on the Kudelski side, and -- and vice
3 versa. We tried to work it, but you know, we'll have to
4 see.

5 Q Well, no, my question is, did you work NDS against
6 Kudelski? Did you go to Kudelski and say "Here's what NDS
7 is offering"?

8 A Not to my recollection, no.

9 THE COURT: Just a moment. "Not to my
10 recollection"?

11 THE WITNESS: No, sir.

12 THE COURT: Is that your answer, "no"?

13 THE WITNESS: That's correct, sir, my answer is
14 "no."

15 BY MR. STONE:

16 Q And when you invited the folks from NDS to come in and
17 talk, Dov Rubin was the representative for NDS, correct --

18 A Yes, sir.

19 Q -- at these meetings?

20 How many meetings did you have?

21 A Two that I recall, then we had some settlement
22 meetings.

23 Q All right. Without getting into the settlement
24 meetings, if I recall correctly, in the business
25 discussions, you were the first person to raise the issue of

1 the lawsuit?

2 A Yes, sir.

3 Q Not Mr. Rubin?

4 A Correct.

5 Q He was there to talk business about supplying
6 conditional access services to EchoStar, correct?

7 A Yes.

8 Q And were these discussions separate and apart from the
9 ones that Bell ExpressVu might have been having with NDS?

10 A I don't know.

11 Q Well, you weren't there to talk on behalf of Bell
12 ExpressVu, I take it?

13 A No.

14 Q And so there might have been discussions between your
15 largest customer and -- and NDS as well?

16 A Yes.

17 Q Now, what was the status of the ROM 3 card as reported
18 by Kudelski in 2001? Was it reported to you as secure,
19 compromised or something else?

20 A I don't know.

21 Q What was the status of the ROM 3 as reported by
22 Kudelski in 2002; secure, compromised or something else?

23 A I don't know.

24 Q What was the status of the ROM 3 as reported by
25 Kudelski in 2003; secure, compromised or something else?

1 A I don't know.

2 Q How many subscribers did EchoStar/DISH Network have at
3 the end of 2000?

4 A At this -- right now, at this second, I don't know. We
5 could look it up, though.

6 Q Okay. What about in 1999, do you have any sense of how
7 many subscribers there were in that time period?

8 A Not right this moment, no, sir.

9 Q Would it be fair to say significantly less than
10 20 million that existed in 2004?

11 A Again, I don't know. I -- I don't think we -- we have
12 20 million subscribers today.

13 Q Maybe I misheard you. Did you have about 3 million in
14 1999, roughly; does that sound right to you?

15 A I don't know without looking it up, I'm sorry.

16 Q Would you agree that if a card swap had begun in 1999
17 and been accomplished in early 2000, that would have
18 involved far fewer subscribers than in 2004?

19 A Yes.

20 Q Now, you were asked questions by your own counsel about
21 stolen documents, which I think you said you didn't know
22 about?

23 A Correct.

24 Q I take it you wouldn't condone purchasing stolen
25 documents of a competitor?

1 A Correct.

2 Q That would violate the business standards of EchoStar?

3 A Yes.

4 Q And I assume you also wouldn't condone obtaining
5 documents that had been stolen from a competitor?

6 A Correct.

7 MR. STONE: Thank you, sir.

8 No further questions.

9 MR. WELCH: We have no questions, no further
10 questions, your Honor.

11 THE COURT: Okay. We are going to -- are you in
12 the continental United States or outside the United States?

13 THE WITNESS: Currently, I'm a resident in the
14 continental United States.

15 THE COURT: Okay. I'm going to put you on 48
16 hours' notice. If you're needed, you will be expected to be
17 back in this court within 48 hours of the time counsel
18 informs you.

19 THE WITNESS: Yes, sir.

20 THE COURT: I've told everybody else June 15th up
21 to this time, but I believe that the case could conclude as
22 early as not next week, but early the following week. But
23 just to be certain, I don't want to hunt for you on vacation
24 or in another business meeting or anyplace else in the
25 world; understood?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Thank you very much. You may
3 step down.

4 Counsel, your next witness, please.

5 MR. EBERHART: David Eberhart on behalf of
6 defendants, your Honor. We call Henri Kudelski.

7 THE COURT: Thank you.

8 Is there an interpreter with the gentleman?

9 (No audible response.)

10 THE COURT: Thank you.

11 Would you ask Mr. Kudelski to stop at that
12 location.

13 Would you ask the gentleman to raise his right
14 hand, please.

15 HENRI KUDELSKI, DEFENDANTS' WITNESS, SWORN

16 THE WITNESS: Yes, I swear.

17 THE COURT: Thank you. If you'd please be seated
18 here in the witness box.

19 And once again, the interpreter is present.

20 Sir, would you state your name, as the
21 interpreter.

22 THE INTERPRETER: My name is Jean-Marie Fey, and I
23 will interpret French into --

24 THE COURT: A lot louder.

25 THE INTERPRETER: My name is Jean-Marie Fey, and I

1 will interpret French into English and English into French.

2 THE COURT: Okay. Now, we're going to need a
3 microphone if we are going to do that.

4 Would you hand the gentleman, Debbie, the
5 microphone, please.

6 Somebody has a cell phone out in the audience or
7 whatever. Turn it off.

8 (Interruption in the proceedings.)

9 THE COURT: And sir, would you state your full
10 name for the jury.

11 THE WITNESS: My --

12 THE COURT: Well, if you understand that, of
13 course you can say it.

14 (Laughter.)

15 THE WITNESS: Okay. My name is Henri Kudelski,
16 Henri Kudelski.

17 THE COURT: And would you spell your last name for
18 the jury.

19 THE WITNESS: K-u-d-e-l-s-k-i.

20 THE COURT: Thank you.

21 Do you speak some English?

22 THE WITNESS: Yes. Yes, I speak some English.

23 THE COURT: Okay. Do you speak English well
24 enough so that the attorneys can ask you questions in
25 English and you can respond in English?

1 THE WITNESS: I hope so.

2 THE COURT: Okay. Now, you have an interpreter
3 present, and if there is something that you do not
4 understand, simply turn to the interpreter, and he'll
5 interpret it for you; would that be acceptable to you, sir?

6 THE WITNESS: Yes, it will.

7 THE COURT: Now, if you'd like to rely upon
8 French, you may, but if you feel comfortable speaking in
9 English, you may. Which would you prefer to start with?

10 THE WITNESS: I will try to start in English.

11 THE COURT: All right. Now, we'll make the
12 attorneys slow down so the questions can be understood.

13 First, would you move your chair a little closer
14 to the microphone, or move the microphone a little closer to
15 your chair.

16 THE WITNESS: Okay.

17 THE COURT: Now, we've done both; that's
18 excellent.

19 All right. Counsel, this is Mr. --

20 MR. EBERHART: Direct examination by
21 Mr. Eberhart -- Mr. Eberhart.

22 THE COURT: Mr. Eberhart.

23 And Mr. Eberhart will ask you questions on behalf
24 of NDS on direct examination. Thank you, sir.

25

DIRECT EXAMINATION

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BY MR. EBERHART:

Q Good afternoon, Mr. Kudelski.

A Good afternoon.

Q How are you currently employed?

A Now, I'm principal security engineer in NagraVision,
NagraCard.

Q And NagraVision and NagraCard are two separate
companies, correct?

A Yes, it is.

Q And both NagraVision and NagraCard are part of the
Kudelski Group, correct?

A Yes, it is.

Q And your father founded the Kudelski Group, correct?

A Yes, my father found the -- the Kudelski company.

Q And your brother Andre is the CEO of the Kudelski Group
today, correct?

A Yes.

Q And you have worked for Kudelski Group companies since
at least 1996, correct?

A No. I begin to work for NagraVision in 1995.

Q And have you worked for NagraVision from 1995 up until
today?

A Yes.

Q And NagraStar is a customer of NagraVision and

1 NagraCard, correct?

2 A NagraStar, it's a joint company between EchoStar and
3 Nagra -- and I don't know if it's Kudelski Group or it's
4 NagraVision.

5 Q But NagraCard and NagraVision sell services and
6 products to NagraStar, correct?

7 A Is what I understand.

8 Q And you, specifically, you helped launch EchoStar's
9 conditional access system back in 1995 and '96, correct?

10 A Yes.

11 Q And following the launch of EchoStar's conditional
12 access system, you worked on maintaining the security of
13 that conditional access system, correct?

14 A In -- in -- no.

15 Q You never worked on maintaining the security of
16 EchoStar's security system --

17 THE COURT: Well, that's going to be a -- that's
18 going to be a double negative, almost. Just restate it.

19 MR. EBERHART: I'll restate it again, your Honor.

20 BY MR. EBERHART:

21 Q Did you ever make any effort or devote any of your
22 working time to maintaining the security of EchoStar's
23 conditional access system?

24 A Yes, I was working for the countermeasure part. My
25 position was to -- a team leader of the conditional

1 countermeasure part for EchoStar part.

2 Q And isn't it also true, sir, that you worked on
3 electronic countermeasures that helped protect EchoStar's
4 system from piracy?

5 A Yes, I work on that part.

6 Q And please, sir, explain to the jury what is an
7 electronic countermeasure.

8 A When you have a security issue, you find some devices
9 or some hacker devices. These devices, you need -- they can
10 watch television when you -- we don't want. They can do it.
11 To stop this device working -- continue to work with some
12 countermeasure over the air to disable these kind of
13 devices. That's the target of a countermeasure.

14 Q And the ECM, or electronic countermeasure, is something
15 that your company sends down through the satellite signal to
16 the set-top box and the -- and the Smart Card that is in
17 that set-top box, correct?

18 A Yes.

19 Q And at times, you supervised some of the teams that
20 were developing ECMs for the EchoStar system, correct?

21 A Yes, I did.

22 Q And you also reviewed information about what efforts
23 pirates were making to hack or break EchoStar's security
24 system, correct?

25 A I -- I saw what the pirate was talking about by the

1 forum part.

2 MR. EBERHART: Please show the witness
3 Exhibit 1202, Michael.

4 BY MR. EBERHART:

5 Q Mr. Kudelski, Exhibit 1202 is an e-mail dated
6 October 14th, 1999, from Alan Guggenheim to you and a number
7 of other individuals; is that correct?

8 A Yes, that correct.

9 Q And did you receive this during the course of your work
10 for NagraVision, NagraCard?

11 A I think so, but I'm not sure one other person. I
12 don't -- this one.

13 Q The sender of the e-mail is Alan Guggenheim. Do you
14 recognize that name?

15 A Yes.

16 Q Who is Alan Guggenheim?

17 A Alan Guggenheim is -- was a CEO of NagraStar. I don't
18 know if -- at that time, he was CEO of NagraStar, but he was
19 working for us before.

20 MR. EBERHART: Defendants offer Exhibit 1202, your
21 Honor.

22 THE COURT: Any objection?

23 MR. HAGAN: No objections, your Honor.

24 THE COURT: It's received.

25

1 (Defendants' Exhibit No. 1202 is received
2 into evidence.)

3 MR. EBERHART: Charlie, if you could bring up the
4 header of the e-mail.

5 BY MR. EBERHART:

6 Q Mr. Kudelski, this lists several additional individuals
7 as recipients of Mr. Guggenheim's e-mail of October --
8 October 14th, 1999, and I'm going to ask you who each one of
9 them is.

10 Who is Christophe Gaillard?

11 A Christophe Gaillard was a guy working in NagraStar for
12 the -- to maintain the system.

13 Q Okay. And at the time of this e-mail, who was
14 Christophe Nicolas?

15 A Christophe Nicolas -- I -- I don't know if it was my
16 boss at that time or -- but after that -- now, it's my boss.

17 Q And at the time of this e-mail, who was Jean-Daniel
18 Meynet (phonetic)?

19 A He was also a worker for NagraStar to maintain the
20 system.

21 Q And who was Marco Saselli at the time of this e-mail?

22 A He was a developer.

23 Q And who was Oliver Brique?

24 A He was a guy working on -- on the development of the
25 Smart Card.

1 Q Please turn to page 3 of Exhibit 1202, and I'd like to
2 focus your attention on the post by someone named StuntGuy
3 near the bottom of that page.

4 Do you see that it indicates StuntGuy made a post on
5 October 14th, 1999 at 7:54 a.m.?

6 A It's -- it's him on -- on this e-mail.

7 Q Okay. And that is -- that is one of the posts that
8 Mr. Guggenheim is forwarding to you on October 14th, 1999,
9 correct?

10 A Yes.

11 Q Turning to the last page of Exhibit 1202, looking at
12 the last full paragraph.

13 The e-mail indicates, quote, "Just to clear up any
14 possible confusion, the ROM images that have been released
15 on the net are mostly from a 288-01 cards ROM image (we
16 refer to this image as ROM 2). The notable exception, as
17 code mentioned, is a section that ranges from 7F00..7FEF,
18 which was released by Macro. This section came from a
19 288-02 ROM image, which we refer to as ROM 3."

20 Did I read that correctly, sir?

21 A I -- I need to just -- can I read that?

22 Q Yeah, absolutely.

23 A Yes.

24 Q And so by October of 1999, you had been advised that
25 portions of EchoStar's ROM 2 and ROM 3 code had been posted

1 on the internet, correct?

2 A No -- that I -- I don't have the code of the home code,
3 just the post saying it was done, but is not home code.

4 Q So you were told in October of 1999 that portions of
5 the ROM 2 and ROM 3 had been posted on the internet,
6 correct?

7 A It's a guy -- StuntGuy say that information.

8 Q Well, let's talk about StuntGuy for a minute.

9 Show the witness Exhibit 526, please, Michael.

10 Charlie, Exhibit 526 is already in evidence, so you
11 can --

12 BY MR. EBERHART:

13 Q I'd like you to focus on the header of Exhibit 526,
14 which is an e-mail from Suzanne Guggenheim to you and
15 several other individuals; is that correct?

16 A Yes, that correct.

17 Q And in this e-mail, Mrs. Guggenheim is forwarding to
18 you DISH Network ROM information, correct?

19 A Yes, that correct.

20 Q And near the bottom of the first page of Exhibit 526,
21 it states "ES ROM 2.zip, publicly available, EchoStar ROM
22 dump and commented disassembly, note, work in progress"; did
23 I read that correctly? It's at the bottom of the first page
24 of the exhibit, sir.

25 A Is what the -- the post say.

1 Q Okay.

2 Mike, would you please show the witness Exhibit 526-B.

3 BY MR. EBERHART:

4 Q Now, Mr. Kudelski, Exhibit 526-B is what EchoStar and
5 NagraStar's counsel represented to us to be the attachment
6 to Exhibit 526.

7 And your Honor, we would offer Exhibit 526-B at this
8 time.

9 THE COURT: Is there any objection?

10 MR. HAGAN: I'd like to -- let's see if the
11 witness has seen it before, and if he has, then there's no
12 objection, your Honor.

13 MR. EBERHART: Your Honor, he's testified that
14 it's an e-mail he received.

15 THE COURT: With an attachment.

16 MR. EBERHART: Correct, your Honor. The
17 attachment shown on the e-mail.

18 MR. HAGAN: We have no objection.

19 THE COURT: Received.

20 (Defendants' Exhibit 526-B is received into
21 evidence.)

22 THE WITNESS: I cannot confirm that, but I believe
23 it is.

24 MR. EBERHART: Charlie, would you display the
25 first page of Exhibit 526-B.

1 BY MR. EBERHART:

2 Q If you could look at the very top of the first page of
3 Exhibit 526-B, it indicates that this is a zip file, and the
4 name of the zip file is ESROM2.zip, correct?

5 A Yes.

6 Q And that is the name of the file that was attached to
7 Exhibit 526, correct?

8 A Yes.

9 Q Okay. And the first page of Exhibit 526-B indicates
10 that the files contained in that zip file were dated in
11 October of 1999, correct?

12 A Yes.

13 Q I'd like you to turn to the third -- excuse me, fourth
14 page of Exhibit 526-B.

15 And the first text at the top of that page, sir, is
16 "New data query"; are you with me?

17 A Yeah, I saw that.

18 Q Looking down at the first section that's set off by
19 large I's with accents on them, it states "This file is
20 generated by the interactive disassembler, IDA, licensed to
21 the EROM guys"; did I read that correctly?

22 A Yeah, it's what you say.

23 Q Okay. And a few lines down it reads "disassembly of
24 EchoStar 288-01 CAM"; did I read that correctly?

25 A Yes, is what is written.

1 Q Okay. And an EchoStar 288-01 CAM, that's what we would
2 call a ROM 2 card, correct?

3 A That -- I -- I don't have the -- between that part, if
4 it says that.

5 Q And looking at the next sentence on that page, it says
6 "Lots of assumptions and guesses in here due to spotty
7 availability of ROM dumps," correct?

8 A Yes, that was --

9 Q So this document, which is from October of 1999,
10 directly indicates that ROM dumps were available and were
11 being disassembled from the EchoStar system in 1999,
12 correct?

13 A No, that -- that just said that document say was
14 available, and this -- this document said it is that, but
15 that doesn't mean it is --

16 Q Now, you received this document on or about June 25th
17 of 2000, correct?

18 A 25th of June, 2000, yes.

19 Q Okay. Did you do anything to confirm whether or not
20 the pirates really had acquired ROM dumps from an EchoStar
21 card?

22 A I didn't do nothing myself, because I was not in
23 charge of the development part. I transmit that, or I
24 doesn't do nothing because it was directly Christophe
25 Nicolas and that -- Olivier Brique (phonetic) do that job.

1 Q And what did they determine, was this really taken from
2 EchoStar ROM dumps?

3 A I -- I don't remember that, because I -- it was not my
4 part.

5 MR. EBERHART: Please hand the witness Exhibit
6 526-A, Michael.

7 THE COURT: Ladies and gentlemen, let me just
8 inquire. Because of the language barriers, are you
9 understanding his answers? And if you're having any
10 difficulty, then I'd prefer we go back to the interpreter
11 just to make certain that his answers are understandable.

12 THE JUROR: I'm having trouble understanding him.

13 THE COURT: A couple jurors are having trouble, so
14 let's use the interpreter, then, with counsel's permission.

15 We are going to use the interpreter just to make
16 certain that the jury fully understands your answers.

17 THE WITNESS: Okay.

18 THE COURT: Counsel?

19 BY MR. EBERHART:

20 Q Mr. Guggenheim, we've handed you -- I'm sorry,
21 Mr. Kudelski, we've handed you what's been marked as
22 Exhibit 526-A, and this is another document that counsel for
23 EchoStar and NagraStar represented to us as being the
24 attachment to Exhibit 526, which has, as you can see on the
25 face of the document, multiple attachments.

1 And your Honor, we would offer Exhibit 526-A.

2 THE COURT: This is one of the attachments,
3 Counsel?

4 Any -- any objection?

5 MR. HAGAN: No, sir, your Honor.

6 THE COURT: Received.

7 (Defendants' Exhibit No. 526-A is received
8 into evidence.)

9 MR. EBERHART: Would you publish that, Charlie.
10 Thank you.

11 BY MR. EBERHART:

12 Q Now, Mr. Kudelski, this Exhibit 526-A is a cartoon that
13 was attached to Suzanne Guggenheim's e-mail to you, and it
14 says "StuntGuy, if we can decrypt these, we'll have the E*
15 procedure for sure"; is that correct?

16 A Yes, it's what's -- it's put on that document.

17 Q And so -- and in this diagram or this -- this cartoon,
18 StuntGuy is being portrayed as an Indiana Jones-type or an
19 explorer looking for how to hack the EchoStar system,
20 correct?

21 A Yes, that's correct.

22 THE COURT: Just a moment.

23 Kristee, could you get the microphone to work?
24 Thank you very much. The interpreter has it. For some
25 reason, maybe he hasn't turned it on.

1 THE INTERPRETER: It's working now.

2 THE COURT: Tap the microphone.

3 It's working.

4 Thank you, Kristee.

5 BY MR. EBERHART:

6 Q Sir, are you aware that NDS found StuntGuy during the
7 course of this litigation?

8 A No.

9 MR. EBERHART: Michael, please hand the witness
10 Exhibit 1260.

11 BY MR. EBERHART:

12 Q Mr. Kudelski, Exhibit 1260 is an e-mail from Joel Conus
13 to JJ Gee, you, Alan Guggenheim and Cedric Groux dated
14 August 31st, 2001, correct?

15 A Yes.

16 Q And did you receive this during your work for
17 NagraVision, NagraCard?

18 A Yes, I think so. I'm on the list.

19 MR. EBERHART: Defendants offer Exhibit 1260,
20 your Honor.

21 THE COURT: Any objection?

22 MR. HAGAN: No objections, your Honor.

23 THE COURT: Received.

24 (Defendants' Exhibit No. 1260 is received
25 into evidence.)

1 BY MR. EBERHART:

2 Q On the first page of Exhibit 1260, Joel Conus writes
3 "Here is the list of ECMs we've made for E*"; did I read
4 that correctly?

5 A Yes.

6 Q And so Joel Conus was e-mailing Mr. Gee a list of the
7 electronic countermeasures that your company had prepared
8 for EchoStar, correct?

9 A It seems so.

10 Q And we established before that EchoStar was one of your
11 customers, correct?

12 A Yes, that's correct.

13 Q And you wanted this information that you were sending
14 your customer to be accurate, didn't you?

15 A Yes.

16 Q Please look at page 2 of Exhibit 1260.

17 Looking at the top of page 2, it indicates "ECM
18 Number 4, November 2000"; do you see that, sir?

19 A Yes.

20 Q And it says that the target of that ECM was all of the
21 pirate commercial DNASP-003 cards, correct?

22 A Yes.

23 Q And those are the ROM 3 cards, correct, sir?

24 A Yes.

25 Q And it says that "The effect of that ECM was to loop

1 the card," correct?

2 A Yes.

3 Q And looping the card means that it is not usable for
4 pirating EchoStar's signal, correct?

5 A It was to deactivate the card.

6 Q And the assessment, the internal assessment that you
7 share with your customer, EchoStar, was that this was,
8 quote, "very successful, gave a hard time to Koinvizion,
9 biggest dealer at the time," correct?

10 A Yes.

11 Q So you had a very successful ECM in November 2000.

12 Now, jumping down a couple of places, we have ECM
13 Number 6 from January 2001; do you see that, sir?

14 A Yes.

15 Q And that says "The target is the Koinvizion, E3M, V3,
16 DNASP-003 cards and the E3M fix 2 and 3 cards from the New
17 Group," correct?

18 A Yes.

19 Q And that the effect of that ECM was to loop the card
20 and kill the cryptoprocessor, correct?

21 A Yes.

22 Q And that meant that the effect of this ECM was to make
23 the card unusable, and also to kill off the portion of the
24 card that performed the cryptography functions necessary for
25 obtaining television, correct?

1 A It was -- the purpose was to deactivate it.

2 Q And Nagra's assessment of that ECM is that it was,
3 quote, "a successful ECM, put Koinvizion and the New Group
4 out of business soon after," correct?

5 A Yes.

6 Q So in your ECM history that you sent to your customer,
7 you wrote that "The January 2001 ECM put Koinvizion and the
8 New Group out of business," correct?

9 A That's what is written.

10 Q Now, you also talk about ECM Number 7, which is dated
11 April 1st, 2001. For that ECM, "The target was all of the
12 IRDs, that's set-top boxes, containing any card that blocks
13 the run EMMs or that are behind a blocker device"; did I
14 read that correctly?

15 A Yes.

16 Q And what is a blocker device, sir?

17 A It is an element that you can put between the decoder
18 and the microchip.

19 THE COURT: Well, something happened to that.

20 THE INTERPRETER: It's out of battery.

21 THE COURT: Is it? Let me see it.

22 (Interruption in the proceedings.)

23 THE COURT: Well, it's temperamental.

24 (Interruption in the proceedings.)

25 THE COURT: Do you want to reask the question,

1 Counsel?

2 BY MR. EBERHART:

3 Q What is a blocker device, sir?

4 A There are two different terms for blocker. It can be
5 an element that you plug between the set-top box and the
6 card in order to filter certain commands.

7 Another version of the blocker would be to modify the
8 card itself in order for it to block those commands.

9 Q And so this ECM Number 7 was specifically designed to
10 fight blocker devices, correct?

11 A Yes.

12 Q And the effect of this ECM was to tag and kill the
13 set-top box or IRD, correct?

14 A Yes.

15 Q And when you assessed this ECM, your company wrote
16 "Successful ECM, first ECM targeting the IRDs," correct?

17 A Yes.

18 Q So following that successful April 2001 ECM, you sent
19 another ECM in May of 2001, that's ECM Number 8, and this
20 document indicates that "The target was all of the IRDs with
21 an AVR 3 blocker inside, especially with the MCG3.05
22 software," correct?

23 A Yes.

24 Q So this was another ECM designed to fight the blockers,
25 correct?

1 A It was an ECM that was designed to attack certain
2 specific blockers.

3 Q And the effect of this ECM was to tag and kill the IRD
4 or set-top box, correct?

5 A Yes.

6 Q And the assessment that Nagra made of that ECM was,
7 quote, "Successful ECM, a new software MCG3.06 was soon
8 released by the pirates to fix the problem," so the pirates
9 fought back, correct?

10 A Yes.

11 Q And then you fought back again on July 25th, 2001,
12 correct?

13 A Yes.

14 Q So on July 25th, 2001, you issued ECM Number 10. That
15 ECM "targeted all the DNASP-II and DNASP-III cards that have
16 illegal rights, sub and/or IPPV and the do-not-block-the-run
17 EMMs"; did I read that correctly?

18 A Yes.

19 Q And by illegal rights, those are illegal subscription
20 rights or illegal pay-per-view rights, correct?

21 A Yes, but it targeted only certain types of illegal
22 rights.

23 Q And were the illegal rights that it was targeting what
24 we refer to as 3M or Three-Musketeers cards?

25 A Those were the rights we had on the devices that we

1 observed.

2 Q So this ECM Number 10 was designed to fight 3M or
3 E3M-type devices for EchoStar piracy, correct?

4 A It targeted certain types of E3M devices that we had in
5 the field.

6 Q And you were only targeting certain types of E3Ms and
7 blockers, because you had already stopped the other kinds of
8 E3M and blockers, hadn't you?

9 A No, I don't think so.

10 Q Let's talk -- let's see what the document says about
11 the effect of ECM Number 10. It says "It was designed to
12 randomize the IRD key, loop the card and kill the
13 cryptoprocessor," correct?

14 A Yes.

15 Q So, again, this was designed to make the card unusable
16 for additional piracy, correct?

17 A Yes.

18 Q And the assessment that Nagra wrote of ECM Number 10
19 was, quote, "Very successful ECM. Many people had illegal
20 rights in locked cards or had a blocker code that was badly
21 applied to their card"; did I read that correctly?

22 A Yes.

23 Q So this July 25th, 2001 ECM was very successful in
24 Nagra's words?

25 A Yes.

1 Q Now, this was a document that Nagra -- either
2 NagraVision or NagraCard prepared for EchoStar, correct?

3 A Yes.

4 Q But this document was produced by NagraVision and
5 NagraCard in this litigation. If you look at the bottom,
6 you can see the NVNC Bates number on it, correct?

7 A Yes.

8 Q Do you have any idea why this document was not produced
9 to us by plaintiffs?

10 A No.

11 MR. EBERHART: Please show the witness

12 Exhibit 1184.

13 BY MR. EBERHART:

14 Q Now, Mr. Kudelski, in addition to using ECMs to fight
15 piracy during the year 2001, isn't it also true that
16 NagraVision and NagraCard issued patches to the ROM 3 cards
17 to try to fight piracy?

18 A Yes.

19 Q Are you familiar with a vulnerability in the ROM 3 card
20 called "the buffer overflow vulnerability"?

21 A I've seen the recipe that was published in December and
22 that made it possible to attack the cards.

23 Q And it's your understanding that that recipe, as you
24 call it, used the buffer overflow vulnerability, correct?

25 A That I would not know, because it's the development

1 team that deals with developing the microchip card.

2 Q Okay. So you -- you don't know anything about a buffer
3 overflow vulnerability in the EchoStar ROM 3 card?

4 A No, I heard the name, but I -- I'm not aware of how it
5 works.

6 Q Let's take a look at Exhibit 1184, sir.

7 It's already been admitted, Charlie, so we can put that
8 up on the screen.

9 BY MR. EBERHART:

10 Q I'd like to focus your attention about halfway down the
11 first page of Exhibit 1184, and this is an e-mail that you
12 wrote to Alan Guggenheim and several other people on
13 April 17th, 2001, correct?

14 A No.

15 Q You did not write this e-mail?

16 A No, this is the answer of Alan Guggenheim to my e-mail.

17 Q Sir, I'm -- I'm directing you to halfway down the page
18 where there is a header that says "Original message from
19 Henri Kudelski, sent Tuesday, April 17, 2001, 6:14 a.m."; do
20 you see that, sir?

21 A Yes.

22 Q And so the text below that is text that you wrote,
23 correct?

24 A In -- there is a portion of the text that I wrote, but
25 there is other things in between.

1 Q Well, maybe we can parse that out for the jury, sir.

2 Let's take a look at the -- the first sentence. It
3 reads, "Hi, Alan. The last post gives you the answer." Did
4 you write that language?

5 A Yes.

6 Q It goes on to state "I haven't analyzed the Feb.
7 update, yet, but if it does check to make sure the packet
8 size is under 64 byte, then there is no way to send a packet
9 to wrap around and overwrite the stack"; did you write that?

10 A No, I write the first sentence.

11 Q Okay. Who wrote that, sir?

12 A It's in the post.

13 Q Okay.

14 A If you go to the second -- second page of the e-mail,
15 the -- the fourth line from the bottom, which starts with "I
16 haven't analyzed the Feb."

17 Q Okay. So you copied some text that was from a posting,
18 and you inserted that into your e-mail, correct?

19 A Yes.

20 Q And you prefaced that text with the language "The last
21 post gives you the answer," correct?

22 A Yes.

23 Q Okay. So you were telling Mr. Guggenheim that the
24 language you quoted gave the answer to the question of
25 whether the buffer overflow was fixed, right?

1 A That's -- that was the preface that I wrote.

2 Q But listen to my question carefully, sir.

3 Mr. Guggenheim asked you, "Did the February update to
4 the ROM 3 cards fix the buffer overflow vulnerability?"

5 And you responded, "The last post gives the answer,"
6 which is "It has been fixed," correct?

7 A That is the -- that is how I prefaced my e-mail,
8 because the development told me that it was fixed.

9 Q So the developers told you that the buffer overflow
10 vulnerability in the ROM 3 card had been fixed by
11 April 17th, 2001, correct?

12 A That is what I was told at that particular date.

13 Q And those were the developers for NagraVision and
14 NagraCard, correct, the developers who told you that
15 information?

16 A Yes.

17 MR. EBERHART: Show the witness Exhibit 812,
18 please, Michael.

19 BY MR. EBERHART:

20 Q Exhibit 812 is an e-mail that was sent to you and
21 several other people by Alan Guggenheim on February 1st,
22 2001, correct?

23 A Yes.

24 Q And this is an e-mail that you received during the
25 course of your work for NagraVision and NagraCard, correct?

1 A Yes.

2 MR. EBERHART: Defendants offer Exhibit 812,
3 your Honor.

4 THE COURT: Any objection?

5 MR. HAGAN: No objections, your Honor.

6 THE COURT: Received.

7 (Defendants' Exhibit No. 812 is received into
8 evidence.)

9 BY MR. EBERHART:

10 Q Mr. Guggenheim is forwarding to you an e-mail from
11 Mike Dugan, correct?

12 A Yes.

13 Q And Mr. Guggenheim is writing to you the following:
14 Quote, "We need help from you guys"; did I read that
15 correctly?

16 A Yes.

17 Q At the time Mr. Dugan's e-mail was written, which is
18 January 31, 2001, what was Mr. Dugan's position with
19 EchoStar?

20 A I do not recall what his exact -- his exact position
21 was, but he was working for EchoStar at that time.

22 Q Let's take a look at the bottom of page 1 of
23 Exhibit 812. It indicates "Michael T. Dugan, president and
24 COO, EchoStar Corporation." Does that refresh your
25 recollection as to Mr. Dugan's role on January 31, 2001?

1 A Yes.

2 Q Okay. So the president and COO of EchoStar Corporation
3 wrote the following to NagraStar on January 31, 2001: "My
4 direction is as follows: DISH Network is to have two key
5 changes a day during the week and one key change on
6 Saturday. I want this done immediately."

7 Did I read that correctly?

8 A Yes.

9 Q And what he was saying, sir, was that he wanted the
10 keys for encryption for the conditional access system to be
11 changed twice a day in order to fight piracy, correct?

12 A Yes.

13 Q Was that done?

14 A I don't remember.

15 Q He goes on to say, "I want a set-top box changed from
16 the service that will kill these SOBs that are now going to
17 lock their Tsops. You have many options here."

18 What's a Tsop, sir?

19 A I don't know. I don't recall.

20 Q Mr. Dugan has indicated that he wants some change to
21 the set-top boxes in order to fight piracy, correct?

22 A Yes.

23 Q Let's look at the next part of the e-mail.

24 Mr. Dugan writes, "I do not want the card patch
25 released due to the security leak. We know this was not

1 EchoStar, since none of us even know of this strategy" --
2 sorry -- "knew of this strategy"; did I read that correctly,
3 sir?

4 A Yes.

5 Q And Mr. Dugan is writing about a patch to the EchoStar
6 Smart Cards, correct?

7 A Yes, that's what he wrote.

8 Q Okay. What was the security leak that he was
9 referencing in this e-mail?

10 A I have no idea.

11 Q What did you do to investigate that security leak?

12 A I work in the countermeasure section or department, and
13 this was not part of my functions.

14 Q Were you ever told that someone investigated the
15 security leak?

16 A I don't recall. I don't know who would have done that.

17 Q Did you ever find the source of the leak?

18 A No, I -- I couldn't say, because I don't know what we
19 are talking about.

20 Q Let's look at the next sentence, or next paragraph,
21 rather.

22 Mr. Dugan writes, "We need 100 percent focus on this
23 stuff. We have made great progress. We have destroyed the
24 commercial aspect of stealing. We have made it clear this
25 is not commercial and driven back to the hobbyist."

1 Did I read that correctly?

2 A Yes.

3 Q And Mr. Dugan is saying that you have destroyed the
4 commercial aspect of satellite piracy, correct?

5 A That's what's written.

6 Q And that's because through your ECMS, you had put the
7 dealers of the EchoStar 3M technology out of business; isn't
8 that correct?

9 A No, I don't think so.

10 Q Let's go on to see what Mr. Dugan says next.

11 I apologize for some rough language, your Honor.

12 THE COURT: That's fine, Counsel. Just read it
13 just like it is.

14 BY MR. EBERHART:

15 Q "I don't want to let up. I want to hammer, hammer and
16 hammer these pricks. We had all the damn answers and cards
17 to play on these guys. We should be ready to blow our their
18 brains. I want focus, please."

19 Did I read that correctly, Mr. Kudelski?

20 A That is what is written.

21 Q And he's saying that he wants to take these actions in
22 order to hammer the pirates, correct?

23 A Yes.

24 Q And he's saying that EchoStar and NagraStar had all of
25 the damn answers and cards to play against the pirates,

1 correct?

2 A That was his vision.

3 Q Okay. Now, Mr. Kudelski, this is another document that
4 was produced to us by your company, NagraVision, NagraCard,
5 correct? You can look at the bottom and see the NVNC on it.

6 A Yes.

7 Q Is that correct, sir?

8 A Yes.

9 Q Do you know why this document was not produced to us by
10 EchoStar or NagraStar?

11 A No.

12 MR. EBERHART: Please show the witness
13 Exhibit 824, please, Michael.

14 BY MR. EBERHART:

15 Q Sir, Exhibit 824 is an e-mail that was sent to you by
16 Joel Conus on January 11th, 2001, correct?

17 A Yes.

18 Q And you are Mr. Conus's supervisor around that time,
19 weren't you?

20 A Yes.

21 Q And you received this document as part of your work for
22 NagraVision and NagraCard, correct?

23 A Yes.

24 MR. EBERHART: Defendants move Exhibit 824,
25 your Honor.

1 THE COURT: Any objection?

2 MR. HAGAN: No, sir, your Honor.

3 THE COURT: Received.

4 (Defendants' Exhibit No. 824 is received into
5 evidence.)

6 BY MR. EBERHART:

7 Q Looking about two-thirds of the way down the first page
8 on Exhibit 824, sir. Let's back up for a minute.

9 You testified a minute ago that Mr. Conus was someone
10 you supervised, correct?

11 A I was a supervisor, yes.

12 Q And one of Mr. Conus's jobs, at least at the time of
13 this e-mail, was to prepare summaries of the status of
14 piracy against the EchoStar system, correct?

15 A Yes.

16 Q And Exhibit 824 is an example of one of those summaries
17 of piracy against the EchoStar system, correct?

18 A Yes.

19 Q And those summaries were intended to give a truthful
20 assessment of where piracy stood against the EchoStar system
21 when those summaries were written, correct?

22 A No. They merely give a vision of what was on the
23 internet.

24 Q So there is no information in Exhibit 824 that comes
25 from Nagra?

1 A Yes, the summary is written by our team.

2 Q Well, let's look at page 2 of Exhibit 824. And at the
3 top of page 2, there is a listing of different ROMs and
4 different pirate devices and software, correct?

5 A Yes.

6 Q Who wrote that text?

7 A That is my team.

8 Q Okay. So this text that begins with "DNASP-002" is
9 text that your team wrote summarizing their assessment of
10 the status of different ROM cards and piracy devices,
11 correct?

12 A Yes.

13 Q And so on January 11th, 2001, your team wrote that the
14 DNASP-003 cards -- those are the ROM 3 cards, correct?

15 A Yes.

16 Q Your team wrote that the ROM 3 cards were compromised
17 EEPROM read/write open, correct?

18 A Yes.

19 Q That status changed over time, didn't it, sir?

20 A It changed every time there was new information.

21 Q And we're going to look at some of those changes, sir,
22 but before we do that, I'd like you to turn back to page 1
23 of Exhibit 824.

24 Now, two-thirds of the way down the page, it states "A
25 fully-commented disassembly of the DNASP-003 ROM code and

1 its EEPROM has been published early this week. The comments
2 are from StuntGuy. Johnny Asic notes that there is no way
3 that StuntGuy has been able to comment the whole code since
4 its release right before Christmas. It seems obvious that
5 StuntGuy already had the code before it was released."

6 Did I read that correctly, sir?

7 A Uh-huh.

8 Q And so that was Mr. Conus's assessment that it was
9 obvious that StuntGuy had the ROM 3 code before it was
10 released in Christmas of 2000, correct?

11 THE INTERPRETER: I'm going to translate this for
12 him.

13 THE WITNESS: Would it be possible to get the
14 attachment and the attachment?

15 MR. EBERHART: Absolutely.

16 May I approach, your Honor?

17 THE WITNESS: What is in this e-mail is the
18 summary of what the hackers were saying.

19 BY MR. EBERHART:

20 Q And you've now looked at the -- the reference that's
21 being summarized by Mr. Conus. Does that reference in
22 anywhere say, quote, "It seems obvious that StuntGuy already
23 had the code before it was released"?

24 A I cannot say if this is a comment by the person who
25 wrote the report or if it is a comment by a hacker.

1 Q Okay. I'm asking you, sir, you have the reference in
2 front of you that Mr. Conus refers to in Exhibit 824, and
3 does that reference say, as Mr. Conus, I believe wrote, "It
4 seems obvious that StuntGuy already had the code before it
5 was released"?

6 A I do not have the ability to say whether -- where it
7 comes from and whether it comes from somewhere else or from
8 here.

9 Q But it's not in the attachment?

10 A It -- it is not in the attachment, but you need to know
11 that the attachment is a cut and paste from posts.

12 Q So it could come from Mr. Conus, or it could come from
13 a post that he didn't bother to attach to his e-mail; that's
14 what you are saying, sir?

15 A Yes.

16 Q Let's turn to page 2, again, of Exhibit 824.

17 We talked for a moment about the text your team wrote
18 about the DNASP-002 and DNASP-003 cards. Now, the DNASP-002
19 is ROM 2, correct?

20 A Yes.

21 Q And that, like the DNASP-003, also says "Compromised,
22 EEPROM read/write open," correct?

23 A That's what's written.

24 Q And by "compromised," you meant that the pirates were
25 able to access or hack the card, correct?

1 A The pirates were able to use the recipe to access the
2 card.

3 Q And was that for both the ROM 2 and ROM 3 card as of
4 the time Exhibit 824 was written?

5 A Yes, that's what's written in the report.

6 Q So it's your claim that pirates in January of 2001
7 could use the so-called Nipper recipe to access ROM 2 cards?

8 A That's my understanding, yeah.

9 Q So if Christophe Nicolas testified that the recipe
10 could not be used against ROM 2, he was wrong about that?

11 A Maybe I made a wrong assumption. As far as I'm
12 concerned, it was compromised, and I imagine it was because
13 of the recipe.

14 Q Okay. And are you aware that the plaintiffs have
15 stipulated that they are not trying to hold NDS responsible
16 for piracy of ROM 2?

17 A No.

18 MR. EBERHART: Hand the witness Exhibit 1185,
19 please.

20 BY MR. EBERHART:

21 Q Now, Exhibit 1185 is another e-mail sent to you by
22 Joel Conus, this one on February 22nd, 2001, correct?

23 A Yes.

24 Q And this is another e-mail that you received during the
25 course of your work for NagraVision and NagraCard, correct?

1 A Yes.

2 MR. EBERHART: Defendants offer Exhibit 1185,
3 your Honor.

4 THE COURT: Any objection?

5 MR. HAGAN: No objections, your Honor.

6 THE COURT: Received.

7 (Defendants' Exhibit No. 1185 is received
8 into evidence.)

9 BY MR. EBERHART:

10 Q Taking a look about -- withdrawn.

11 Now, this is another report on piracy that Joel Conus
12 provided to you, correct?

13 A Yes.

14 Q And looking about -- looking about two-thirds of the
15 way down the page, Mr. Conus lists the following status for
16 the ROM 3 or DNASP-003 card, quote, "Secured VIP rights in
17 some cards block cards not affected by the update"; did I
18 read that correctly?

19 A Yes.

20 Q And this e-mail on February 22nd, 2001, was sent after
21 EchoStar and NagraStar issued their patch to close the
22 buffer overflow vulnerability, correct?

23 A I think.

24 Q And you were in charge of ECMs, correct?

25 A Yes.

1 Q Looking up above that status section of the report. It
2 indicates "The update that has been made on the DNASP-003
3 didn't generate much feedback. There is no feedback at all
4 on the forums, and there are a couple of people on the IRC
5 who had issues getting their cards to dump. It's not a bad
6 thing, since this update was supposed to be as stealth as
7 possible."

8 Did I read that correctly?

9 A Yes.

10 Q Was this effort at stealth something you did in
11 response to Mr. Dugan's complaint about the security leak?

12 A What leak are you talking about?

13 Q Let's take a look at Exhibit 812 again, please.

14 And it's at the middle of the e-mail that Mr. Dugan
15 wrote -- on January 31, 2001, he writes, "I do not want the
16 card patch released due to the security leak."

17 A No, I do not see any relationship between the two.

18 Q Okay. So Mr. Dugan wrote to you on January 31st, 2001,
19 about a security leak and a concern that he did not want the
20 card patch released at that time, and when you released the
21 card patch some 20 days later, it was supposed to be as
22 stealth as possible, but you don't think there's any
23 connection; is that your testimony?

24 A It is a fact that when you send out patches, you want
25 them to be as discrete as possible.

1 MR. EBERHART: Show the witness Exhibit 1186,
2 Michael.

3 BY MR. EBERHART:

4 Q Why do you want the patches to be as stealthy as
5 possible, Mr. Kudelski?

6 A So that the hackers cannot see that we are releasing a
7 patch.

8 Q And so at least as of the time of Exhibit 1185,
9 EchoStar and NagraStar were still able to release patches
10 without the hackers being able to realize that it was
11 happening?

12 A No, we tried as best as possible to hide the patches or
13 to -- to be as discrete as possible when releasing the
14 patches, but that is not always possible.

15 Q But Exhibit 1185 indicates that it was possible at the
16 time of this patch, correct?

17 A Which part?

18 Q 1185 makes reference to an update to the DNASP-003,
19 correct?

20 A I cannot see where the reference is made.

21 Q It's Exhibit 1185. It is right about the middle of the
22 page. It begins "The update that has been made on the
23 DNASP-003."

24 A It says that on the forums, they did not see the
25 patches.

1 Q And those are the pirate forums, sir, correct?

2 A That is -- that is -- we -- what we observed when we
3 monitored the party. That does not mean that they did not
4 see it.

5 Q And you were in charge of ECMs and patches in
6 February 2001, correct?

7 A No, I was only in charge of ECMs, not patches.

8 Q Who was in charge of patches, sir?

9 A That is the development team.

10 Q Who on the development team?

11 A That was Oliver Brique.

12 MR. EBERHART: Turn to Exhibit 1186, please.

13 THE COURT: And Counsel, why don't you find a
14 convenient place to finish for today.

15 MR. EBERHART: This is fine, your Honor.

16 THE COURT: Is this a good place?

17 MR. EBERHART: This is fine.

18 THE COURT: All right.

19 Ladies and gentlemen, I think it's time to send
20 you home. It's a little earlier than I expected, but maybe
21 we could look at some of these documents outside your
22 presence, and that way the witness will be more familiar
23 with them. We'll get all counsel together and see if we can
24 reach an agreement. This will speed this along.

25 Would you join me again on Tuesday at 8:00,

1 please?

2 THE JURORS: Sure.

3 THE COURT: Okay. Let's please not talk about
4 this case. By the way, has anybody spoken to anybody so I
5 can start the case all over again?

6 (Laughter.)

7 THE COURT: It's just a general way to remind you.
8 So please don't discuss this case, nor form or express any
9 opinion.

10 Thank you very much. Please drive safely.

11 And Counsel, if you'd have a seat for just a
12 moment.

13 If you'd remain, sir, for just a minute.

14 (The following proceedings is taken outside
15 the presence of the jury.)

16 THE COURT: And Counsel, if you'd like to have a
17 seat for just a moment.

18 All right, sir. Thank you very much. We'll see
19 you on Tuesday morning at 8:00. Thank you for your
20 courtesy.

21 Concerning Graham James, you had said that there
22 would be a letter or something forthcoming from some agency
23 or from some solicitor. Could I see that letter, please?

24 MR. NOLL: Christine is getting it, Judge.

25 THE COURT: Pardon me?

1 MR. NOLL: Christine is getting it.

2 THE COURT: Okay. Is that a copy or the original?

3 MS. WILLETS: It was e-mailed to us, so it's a
4 copy.

5 THE COURT: So it's a copy. This was e-mailed to
6 you with its --

7 MS. WILLETS: Yes.

8 THE COURT: "Embassy of the United States of
9 America."

10 "Dear applicant, we are unable to issue you a visa
11 because you have been found ineligible for admission to the
12 United States under the following sections of the
13 Immigration Nationality Act. The items marked with an 'X'
14 pertain to your case. Please disregard the unmarked items.

15 "The item that is marked is Section
16 212A(2)(a)(i)(1), crime involving moral turpitude and
17 212A(2)(b), multiple criminal convictions when sentenced to
18 confinement for five or more years."

19 It has a date of April 23rd, 2008, which would be
20 two days ago, and the reference number is 035 -- and I
21 believe that that's a backslash -- 114.

22 Now, apparently the applicant's name is not used
23 on the document, a number is used by the embassy; is that
24 your understanding?

25 MR. HAGAN: I haven't yet seen the letter,

1 your Honor.

2 THE COURT: Have we received -- did this gentleman
3 allegedly appear with a solicitor or barrister of some type?

4 MR. HAGAN: He did, your Honor.

5 THE COURT: What was that barrister or solicitor's
6 name?

7 MR. HAGAN: It was an attorney from DLA Piper.
8 Let me get the name.

9 THE COURT: Okay. Where's DLA Piper; who's here
10 from DLA Piper?

11 MR. NOLL: We've got several lawyers here,
12 your Honor.

13 THE COURT: Are you gentlemen the gentlemen who
14 appeared in London?

15 MR. HAGAN: No.

16 UNIDENTIFIED SPEAKER: We are not.

17 MR. HAGAN: These are lawyers from DLA, but they
18 don't -- they weren't the ones that appeared in London. It
19 is an attorney from their London law firm.

20 THE COURT: I see.

21 MR. HAGAN: I think maybe to clear this up -- and
22 I -- I see your point, there is no name, there's a reference
23 number -- we could get a declaration from the solicitor that
24 attended with Mr. James to confirm this or to provide -- if
25 the Court needs additional information or additional

1 evidence.

2 THE COURT: Well, I'm not -- I'm not placing
3 myself in the position that I disbelieve the document. I am
4 placing myself in a position to have a record, you know, for
5 appellate purposes, if you're successful with liability,
6 that the Circuit and I can both understand, you know, that
7 has a nexus to Mr. James.

8 One of the things I need to wrestle with this
9 weekend is the following. After the -- hearing the evidence
10 about the long-term relationship between NDS and
11 Allen Menard in which, I believe, Menard was paid over
12 \$300,000 --

13 MR. HAGAN: \$380,000, your Honor.

14 THE COURT: -- and then declined to renew his
15 contract just prior to the trial, there is obviously a
16 strong nexus between NDS and Menard. And I've put EchoStar
17 many times in the position of, you know, producing witnesses
18 and NDS in terms of producing witnesses.

19 At the beginning of the case, this Court had taken
20 a position that each of the parties would be required to
21 bring witnesses to trial so that the jury could judge
22 credibility and they could be subjected to the adversarial
23 system. I've threatened adverse inferences against either
24 of the parties and against many of the pirates and other
25 witnesses that this Court felt each party had some nexus to.

1 One of these persons is Graham James, who is now
2 apparently employed by EchoStar, but was previously employed
3 by NDS. Mr. James has a felony conviction for child
4 molestation in the United Kingdom, apparently has his point
5 of egress. And the United States Embassy, if this document
6 is further authenticated, appears to have decided not to let
7 Mr. James travel outside of the United Kingdom due to his
8 probationary status or to allow him -- I'm sorry, a better
9 way of putting that is allowing -- to allow him to enter
10 into the United States because of his crime of moral
11 turpitude.

12 I'm concerned after understanding the full alleged
13 intertwining of Menard and NDS on prior occasions and trying
14 to balance that with Menard's unavailability to both of you
15 how it's equitable on this Court's part to allow the video
16 deposition of Menard and place James in this position of
17 requiring appearance or continuing to threaten you with an
18 adverse inference. Obviously, if this document is further
19 authenticated, the adverse inference is not going to be
20 given. That's the easy decision. The more consequential
21 decision for the Court is trying to balance the equity
22 between the parties and deciding how you would be allowed to
23 present James's testimony.

24 Now, on every occasion when we can get testimony
25 from the person subject to the adversarial process, this

1 Court has a great preference for it, and so does the
2 adversarial system, because the information that you have at
3 this time is much more -- is much better than you certainly
4 had even a month ago.

5 So I need at some point this -- in the next three
6 or four days to decide, you know, how James is going to
7 appear. And previously I'd offered the opportunity if this
8 document is authenticated the idea of a -- of a satellite
9 hookup between the United Kingdom and the United States
10 through this courtroom, and I've done that as far away as
11 Japan before and as close as Indiana.

12 Perhaps Monday morning we could meet with Millie
13 for a moment and bring her up and see if this is even a
14 possibility. If it's not, then I may take the fallback
15 position and go by deposition, but I want to work down the
16 line, because if this is no fault of Mr. James, even with
17 the late start, this is a witness that shouldn't be
18 precluded if he's being denied entry and is now making, even
19 at this late state, the attempt -- stage, the attempt to do
20 so. So I'm not making a ruling. I'm just trying to think
21 through where this leads the Court in the next few days.

22 I'm going to put that aside for the time being and
23 ask each of you how you'd like to spend your weekend.

24 No, I'm going to retrace that.

25 (Laughter.)

1 THE COURT: You'll be spending the weekend with
2 me, but the time, hours.

3 It doesn't make much sense to have you, you know,
4 come in and sit around and not be able to minimally
5 accomplish the drafting of your special verdicts. I'll
6 raise a couple issues with you. I'm no longer in the
7 position of giving an instruction concerning the status of
8 the law in Canada. After hearing this testimony, the
9 provinces were in disarray. I don't know the number of
10 provinces. I am not certain which persons were in which
11 provinces at which time, fully, and apparently it took the
12 Canadian Supreme Court to sort this out by 2002.

13 So the honest explanation to the jury would be
14 that the law was in flux. That's a poor legal world, but
15 the law was in flux in -- up to 2002 when the Canadian
16 Supreme Court apparently handed down a decision that
17 obviously generated an active pirate community in Canada,
18 because the law was apparently influx. But I'm not willing
19 to categorically state that the law in Canada allowed this
20 conduct, in fact, it did not. By the same token, the law of
21 Canada was so unclear that people presumed apparently,
22 depending upon what province you were in, you could operate
23 with impunity in its state of confusion.

24 So the present instruction concerning Canada is
25 going to be rejected as submitted by NDS, but the door is

1 wide open to the drafting of another instruction, as long as
2 it's a balanced instruction. If I can't get that from the
3 parties or something from NDS and/or EchoStar, if I have any
4 concern, I'll simply leave the state of the -- of the
5 testimony as it is. I won't pinpoint an instruction. I
6 won't point to this area and let each of you argue it.

7 The scope of the California Penal Code Section
8 that you're seeking is still being thought through by the
9 Court. So I'd like to hear what instructions, you know,
10 given the Court's tentative instructions, and of course,
11 subject to argument by each counsel about why the Court may
12 have created error so you have a full record.

13 What instructions are being sought other than the
14 discussion we've had thus far? It doesn't mean you're
15 acceding to my, you know, tentative thoughts on this. It
16 just means are there new instructions that you are going to
17 produce, other instructions that you've contemplated since
18 our last meeting on Saturday.

19 Mr. Hagan?

20 MR. HAGAN: From our standpoint, your Honor, and
21 I'll have to go back, and -- and this weekend I'll look at
22 them again --

23 THE COURT: Well, today you're going to look at
24 them, believe it or not.

25 MR. HAGAN: Yeah, today.

1 There is one instruction that I know that I don't
2 think that I've seen, yet, and that we're going to be
3 requesting, and that is an instruction on the tolling
4 theories that the Court allowed plaintiffs to go forward on
5 at the 12(b)(6) stage. In other words, your Honor, we would
6 like to be able to argue in closing that based on some of
7 the evidence that has been admitted thus far and that may be
8 admitted through the course of the trial, EchoStar is able
9 to establish on the one hand that the defendants engaged in
10 efforts to actively conceal their wrongdoing, that the
11 posting and that the distribution of cards were part of an
12 overriding conspiracy such that the last overt action would
13 toll the statute of limitations, which would allow us to
14 reach back into the 1998, 1999 time frame.

15 THE COURT: You draft it for me and have it ready
16 for me by this evening.

17 MR. HAGAN: Thank you, your Honor.

18 THE COURT: Now, one of the things I don't know
19 that I'm satisfied, yet, is -- is trying to get the concept
20 across to the jury that there is a limitation about the
21 evidence that they can consider, and it really is focused on
22 ROM 3, not ROM 2, not ROM 10, 11, et al. But by the same
23 token, it has to be worded in such a way that the jury
24 understands that if there is an irreparable hole in ROM 3
25 that later can't be cured by ECMs or patches, that

1 eventually leads to the collapse of the DNASP-II system.
2 Then you are allowed to argue for the swap-out costs, but
3 there you've got this incredible causation argument to go
4 through, which is what Mr. Eberhart is so ably attacking and
5 you so ably have presented. That's just a key instruction,
6 and it's going to require, I think, a lot more work on -- on
7 the Court's part.

8 Let me turn to NDS, Mr. Snyder, or who was with me
9 last week? Well, are you going to take the lead this
10 weekend or --

11 MR. SNYDER: I'll be here, your Honor.

12 THE COURT: Okay. What additional -- not the
13 instructions that we've gone over, those are going to be
14 subject to argument, and you are going to, of course, tell
15 the Court why it should be modified, changed or whatever,
16 and I haven't made a ruling, of course, yet, on RICO. Well,
17 I made a ruling for this -- at the close of the plaintiffs'
18 case, but I'm opening the door again to you at the end of
19 your case. What additional instructions would I expect to
20 have submitted this weekend?

21 MR. SNYDER: I can't think of any right now,
22 your Honor. All the ones that I believe are really in flux
23 are about issues that we've already discussed, such as the
24 multiple ROM versions and FTA.

25 THE COURT: Okay.

1 MR. SNYDER: And of course, we've heard your
2 comments about the state of Canadian law.

3 THE COURT: How long do each of you need to draft
4 special verdicts, and how long do we need to go over the
5 evidence for next week? In other words, there is no reason
6 for me to bring you back at 5:00 or 7:00 or 9:00 this
7 evening if you can't get that work done. That's silly. In
8 fact, I want you to have a little bit of rest. By the same
9 token, I'd like to see what those are tomorrow, but I don't
10 want to bring you in here at 8:00 if that time is well
11 spent, you know, just getting a little bit of time off this
12 evening for yourselves, and then being able to draft those
13 and give them to me.

14 So one of my thoughts was that we ought to meet in
15 the afternoon tomorrow, and you should give me Sunday
16 morning as well so we have a block of time, so what I'm not
17 doing to you is bringing you in, you know, all day Saturday
18 or half a day Saturday, sending you home. Because in a
19 perfect world, I'd see you Saturday afternoon. Saturday
20 night you need to reserve for me, also, just in case.
21 Sunday morning, and then I'm letting you go home so you have
22 a block of time on a Sunday afternoon just to catch up and
23 rest. Otherwise, I'm -- I'm really splitting your days so
24 you're always here.

25 If you have a better suggestion, that's terrific,

1 but I think that would give you tonight to relax a little
2 bit. It would give you tonight or tomorrow to draft your
3 specials. It would give us a working afternoon or evening
4 and a working morning on Sunday, and then if I need to, I've
5 got you Sunday afternoon, but I -- I think we could get it
6 done, and that way it's kind of a day sandwiched between the
7 two. But what are your thoughts?

8 MR. SNYDER: That schedule would work for us,
9 your Honor.

10 THE COURT: Would it work for you?

11 MR. HAGAN: That would work for us as well,
12 your Honor.

13 THE COURT: Okay. So then I'm going to release
14 you today in a few moments and not bring you back tonight.
15 I want to go over the witnesses for next week for just a
16 moment.

17 I've been trying to figure out the following. I
18 am going to run through something I'm hearing that I think I
19 understand but I may be naive about. I just want to take
20 swap-out costs for a moment and not deal with lost profits
21 in this off the top of my head discussion.

22 Ergen and EchoStar hope for 90 or 91 million.
23 NagraStar hopes and prays for about a million, but EchoStar
24 has, in my naive mind, about a half ownership of NagraStar.
25 And so if recovery came in, Kudelski in a sense, would -- in

1 theory, the corporation, would split about a million
2 dollars. And I'd be very interested if it was -- if it was
3 the opposite way around, but it seems that he would split
4 about a million dollars, but Charlie Ergen and EchoStar
5 never splits the 90, in theory, to start with.

6 But from my memory, from the motion work we did,
7 the first swap has allegedly cost Mr. Ergen and EchoStar
8 \$90 million, but there is a provision in there, and I think
9 Mr. Eberhart is going to be getting to that. There is a
10 provision that the second swap, if it has to occur, is free.
11 And behind the scenes, I think NDS's position is going to
12 be, and has -- I think I've been alerted to this -- there's
13 a backroom deal being made.

14 What's really happening is Mr. Andre Kudelski, not
15 Henri, because Andre apparently runs the corporation,
16 allegedly, is sitting there for over a year's period of time
17 doing something in this negotiation. And if this money
18 comes in, this, you know, 90 million that EchoStar gets,
19 there is the potentiality of a backroom deal getting cut.
20 And by that time, the case is out of this court, you know,
21 the tragedy is it occurs a year from now, and you have --
22 you have no rights. I mean, you basically can't get back to
23 that, I mean, if the jury believes that.

24 The difficulty is that Andre Kudelski will not
25 submit himself to the jurisdiction of this Court, so you

1 never have the opportunity from NDS's perspective of getting
2 Mr. Kudelski on the stand, you know, making those
3 inferences, asking those questions, and having him look the
4 jury in the eye and say "yes" or "no." Now, they can judge
5 demeanor, but it's hard for an argument to be made,
6 unfortunately, without that person present, because you
7 don't have that body sitting there. But I'm not precluding
8 it, in fact, you may have a very valid point.

9 So where is the attorney for Mr. Kudelski, out
10 with DLA Piper in the side room?

11 UNIDENTIFIED SPEAKER: I think he left.

12 THE COURT: Did he leave?

13 UNIDENTIFIED SPEAKER: At 3:00.

14 THE COURT: He left at 3:00?

15 UNIDENTIFIED SPEAKER: Let me see if I can catch
16 him.

17 THE COURT: Now, by the same token, I could put
18 such pressure on Mr. Andre Kudelski, quite frankly, through
19 comments to the jury. I could -- I could force
20 Andre Kudelski in here very quickly. You don't believe it,
21 but I can. The problem with that is if I do that, then it
22 has to be co-balanced. In other words, they have the same
23 right to make the insinuation to Rupert Murdoch about this
24 DirectTV -- you know, all of a sudden, NDS gets purchased,
25 and DirectTV suddenly doesn't have any piracy. It's

1 called -- it's a great legal principle, what's good for the
2 goose is good for the gander.

3 And I don't want to take any more of a role than
4 I've already taken in terms of my dissatisfaction about the
5 main players not being here, with the exception of Mr. Ergen
6 so far, and maybe Mr. Peled will be here. So I'm just
7 pointing out to you the difficulty of that.

8 With Andre Kudelski sitting in that chair, your
9 theory may be absolutely valid, but I'm not going to enter
10 into this -- this fight and apply pressure to both sides,
11 although I think it's rather extraordinary that all four
12 players aren't here. They can hide behind the
13 jurisdictional limit, but Andre Kudelski has a tremendous
14 amount of profit, you know, to be made, potentially, from
15 NDS's standpoint if this is a backroom deal, and Mr. Murdoch
16 has some explaining to do, also, to the jury.

17 MR. SNYDER: May I be heard on that, your Honor?

18 THE COURT: No.

19 So do you want to make a bargain and we get them
20 all here, or do you want to just leave them in their present
21 position, and I -- I won't go any farther with this and
22 leave you to your own devices?

23 MR. SNYDER: Dr. Peled, the CEO and chairman of
24 NDS Group, I believe will be here next week.

25 THE COURT: That will balance out Mr. Ergen,

1 potentially. That still leaves the two main players and
2 what I discern the dispute may be about, not appearing,
3 Mr. Murdoch, potentially, and Mr. Andre Kudelski, who
4 probably has his feelings hurt that his chip got hacked.

5 MR. SNYDER: News Corp is not a party to this
6 case. Mr. Murdoch does not have a role with any of the
7 parties in this case, and Mr. Murdoch, I do not believe,
8 will attend the trial.

9 THE COURT: Okay. That makes it very simple. I'm
10 not going to put any pressure on the parties, just leave it
11 status quo. That's why I've had the conversation. And
12 under those circumstances, there's not reason for the Court,
13 you know, to attempt to apply pressure to drive
14 Andre Kudelski in here. But everybody is forewarned about
15 final argument.

16 Okay. Now, if we have the following people next
17 week, the order seems to be as good as we can get it under
18 the circumstance, but now we have Henri Kudelski on the
19 witness stand. And Anthony Maldonado was not able to attend
20 this week, but he'll be here next week.

21 MR. HAGAN: Correct, your Honor.

22 THE COURT: Suzanne Guggenheim is here today. We
23 just didn't get to her, because we're trying to get through
24 Andre Kudelski. But the benefit is her attorney wasn't able
25 to attend, and he'll be here next Tuesday.

1 MR. EBERHART: To be clear, your Honor,
2 Mr. Maldonado can only be here on Thursday next week.

3 THE COURT: So we are going to finish
4 Henri Kudelski. Are we then going to move to
5 Suzanne Kudelski (sic)?

6 MR. SNYDER: The -- if you recall, your Honor, you
7 asked Judge Smith to attend on Tuesday the 29th, because he
8 has the source code and the computer, so we wanted to do
9 Nigel Jones on that day.

10 THE COURT: Nigel Jones?

11 MR. SNYDER: Yes.

12 Mr. Alan Guggenheim's attorney has indicated that
13 Mr. Guggenheim is available late on the 29th and on the
14 30th, but is not available on May 1st, so we'd like to put
15 Mr. -- Mr. Guggenheim on the stand to make sure that he is
16 done by Wednesday.

17 THE COURT: And what day? You're going to put him
18 on --

19 MR. SNYDER: That would be -- that would be after
20 Mr. Jones. He would go on Tuesday, and it may extend into
21 Wednesday.

22 THE COURT: Okay. And after Alan Guggenheim --
23 you can change these over the weekend. I mean, just
24 generally speaking.

25 MR. SNYDER: Chris Dala.

1 THE COURT: Chris Dala, okay.

2 MR. SNYDER: Otherwise known as "StuntGuy."

3 THE COURT: StuntGuy. Probably Wednesday?

4 MR. SNYDER: I believe so.

5 THE COURT: Okay.

6 MR. SNYDER: Mr. Hasak.

7 THE COURT: Rubin Hasak, okay. Maybe Wednesday.

8 MR. SNYDER: If that completes the day on
9 Wednesday, we would then go to Anthony Maldonado.

10 THE COURT: Okay. On Thursday, so you can get him
11 back on the plane, for sure. And after that, I'm not too
12 concerned. I mean, I -- Suzanne Guggenheim.

13 MR. SNYDER: We'll -- we'll work with Mr. and
14 Mrs. Guggenheim's attorney. They had asked if there'd be
15 some space between them. If that's still the case, we will
16 try and accommodate them. If it's not, and they want them
17 together, we'll try and accommodate them on that scheduling
18 as well, and we will, of course, let the Court and
19 plaintiffs' counsel know.

20 THE COURT: Now, Suzanne Guggenheim -- after
21 Suzanne Guggenheim, on my list, as far as we've gotten were
22 three videos, Kuykendall, Nance, and Osborne. About 30
23 minutes for Kuykendall; Nance, 45; Osborne, 45.

24 MR. SNYDER: Those are the defendants'
25 designations. We totaled everybody's up, your Honor. Those

1 three videos, all together, are just over two hours. Now,
2 I'm not suggesting that they necessarily need to be played
3 together, of course, but the three of them together, for
4 planning purposes, are about three hours -- I'm sorry, two
5 hours.

6 THE COURT: Right now, is there somebody else that
7 you may be calling next week?

8 MR. SNYDER: Mr. Kummer.

9 THE COURT: Okay.

10 MR. SNYDER: Mr. Emerson.

11 THE COURT: Thank you.

12 MR. SNYDER: Mr. Peled, next week.

13 THE COURT: Dr. Peled.

14 MR. SNYDER: Dr. Peled, yes. Thank you.

15 THE COURT: That will be the following week, then.

16 MR. SNYDER: We will try and get him in this week,
17 your Honor.

18 THE COURT: Okay.

19 MR. SNYDER: And perhaps Ray Kahn.

20 THE COURT: I don't need to go any farther.

21 MR. SNYDER: No, I appreciate that. We were also,
22 as the Court had suggested, taking a close look at our
23 witness list to see if there are other witnesses that we'll
24 withdraw. I understand that the Court has not pressured us
25 to do that, but we are examining that list, and some of the

1 additional videos that we had discussed earlier also fit
2 into that category, Mr. Sergei, Mr. Bruce, and Mr. Quinn.

3 THE COURT: So, in other words, you won't finish
4 next week. It looks realistically like you'll finish the
5 week after.

6 MR. SNYDER: I expect that we'll need one or two
7 days the following week would be my best guess. Also,
8 your Honor, let me -- just so everybody is on notice, we may
9 need to call Mr. Barr next week, Mike Barr, but we need to
10 check on his availability, and we'll let everyone know.

11 THE COURT: I've forgotten, who is Mr. Barr?

12 MR. SNYDER: Mr. Barr is an expert who will
13 testify regarding the availability of various hacks and
14 piracy devices and dumps on the internet.

15 THE COURT: All right. Now, what time would you
16 like to meet tomorrow; 2:00, 3:00, what? 2:30 is a
17 compromise.

18 MR. SNYDER: 2:00 would be fine, your Honor.

19 THE COURT: All right. Why don't we meet at 2:00,
20 and when you first come into court, instead of me coming
21 back and forth, why don't you take that table again and put
22 the evidentiary items. I'd like to see those items again.
23 I'd like to start right back -- even though we've covered
24 some of them with the items for Nigel Jones and Chris Dala,
25 who are going to come pretty quickly, I'd like to take a

1 -oOo-

2 CERTIFICATE

3
4 I hereby certify that pursuant to Section 753,
5 Title 28, United States Code, the foregoing is a true and
6 correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter and that the
8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10
11 Date: April 26, 2008

12
13
14 _____
15 JANE C.S. RULE, U.S. COURT REPORTER

16 CSR NO. 9316
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