UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE DAVID O. CARTER, JUDGE PRESIDING

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ECHOSTAR SATELLITE CORP., et   )
al.,   )
)
        Plaintiffs,   )
)
    vs.   ) No. SACV 03-950 DOC
)   Day 14, Volume I
NDS GROUP PLC, et al.,   )
)
        Defendants.   )
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Thursday, May 1, 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 2008-05-01 D14V1

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1   I N D E X

2

3   WITNESSES   DIRECT CROSS REDIRECT RECROSS

4   HASAK, Reuven

    By Mr. Snyder   4

5

    By Mr. Hagan   60

6

7

8   EXHIBIT NO.   IDENTIFICATION   IN EVIDENCE

9   189   9/26/97 report to   78

              Mr. Hasak

10

    477   Memo   54

11

    478   11/24/97 memo, Gutman   30

12   to Hasak

13 602   12/1/97 memo, Gutman   27

              to Hasak

14

    610   October 1999 e-mail   62

15   exchange between

              Gutman and Adams

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1   SANTA ANA, CALIFORNIA, THURSDAY, MAY 1, 2008

2   Day 14, Volume I

3   (8:05 a.m.)

4   (In the presence of the jury.)

5   THE COURT: The jury's present. All counsel are

6   present. The parties are present. The witness is present.

7   Thank you for your courtesy. If you would please

8   be seated.

9   REUVEN HASAK, DEFENSE WITNESS, PREVIOUSLY SWORN

10   RESUMED THE STAND

11   THE COURT: Mr. Snyder, if you'd like to continue

12   with your direct examination on behalf of NDS of

13   Reuven Hasak.

14   MR. SNYDER: Thank you, Your Honor.

15   DIRECT EXAMINATION (Continued)

16   BY MR. SNYDER:

17   Q.   Good morning, Mr. Hasak.

18   A.   Good morning.

19   Q.   When we left yesterday, you were telling us about some

20   of the work that you do in fighting piracy worldwide.

21   Does NDS ever work with its competitors to fight

22   satellite piracy?

23   A.   Yes.

24   Q.   Can you give us some examples or give us an example of

25   what you did with one of NDS's competitors to help fight

1 piracy?

2 A.   Couple of years ago, we had -- we came across

3 information regarding the company, Irdeto.

4 Q.   That's Irdeto, I-R-D-E-T-O?

5 A.   Yes. Irdeto. And we came across information that

6 hackers -- that pirates are trying to hack into the system.

7 We got some very good, relevant information. We notified

8 Irdeto. Just now I don't remember the name of the person we

9 called, the head of security. And we offer them to join the

10 operation, and it was in Thailand because the pirate -- his

11 nickname was "Mad Max" -- he was going to Thailand to run a

12 hack against Irdeto, and we gave them all the information.

13 We stayed in the shadow, and they worked together with

14 agencies in Thailand, and they jailed Mad Max for one, two,

15 three years -- I don't remember. It was an example.

16 Q.   Mr. Hasak, has NDS ever worked to fight piracy of a

17 Nagra system?

18 A.   Fight piracy? Yeah. Even currently in the UK, we

19 fight the cable piracy, which is -- belongs to ABA, BSkyB,

20 but are using Nagra system in the UK.

21   And when -- when John Norris was going to approach

22 Mr. Ergen regarding the hack of EchoStar in the States, I

23 told John that when he had the communication with Ergen that

24 he should offer to run joint operations against the piracy

25 in the States, but he never got back to him, so nothing came

1 out of it.

2 Q. Mr. Ergen never got back to Mr. Norris?

3 A. To the best of my knowledge, never, yeah.

4 Q. Now, Mr. Hasak, who do you report to at NDS?

5 A. Dr. Abe Peled.

6 Q. And how do you report to Dr. Peled?

7 A. Most of the time it will be verbally in Hebrew.

8 Q. Okay. What kinds of things do you report to Dr. Peled?

9 A. At the beginning, when I just started to work, I used

10 to call him quite frequently and to tell him about my work

11 just to make him more acquainted with my modus operandi, and

12 he like the way -- he like the war stories.

13   Later on, I started reporting to him only either

14 important things or things that I needed his approval, or

15 sometimes, you know, interesting things.

16 Q. Now, Mr. Hasak, at some point, did you receive some

17 information that NDS was accused of being involved in

18 EchoStar piracy?

19 A. Please say it again.

20 Q. Sure. At some point, did you receive some information

21 that NDS was accused of being involved in EchoStar piracy?

22 A. What do you mean by "information"?

23 Q. Any information at all.

24 A. I would say there were rumors on the Internet, which,

25 for me, it's not information. The first time I got real

1 information was this lawsuit.

2 Q.   Okay. Let's go back for a moment to those rumors that

3 you're referring to.

4   Approximately when did you first see rumors on the

5 Internet that NDS was involved in EchoStar piracy?

6 A.   I don't remember when.

7 Q.   Was it before the lawsuit?

8 A.   Yes.

9 Q.   Did you report that information to Dr. Peled?

10 A.   No.

11 Q.   Why not?

12 A.   Because it was just rumors and a daily thing on the

13 Internet that you find all kind of stories of no importance.

14 Q.   When was the first time that you took seriously an

15 allegation that NDS was involved in some way in EchoStar

16 piracy?

17 A.   In -- when this lawsuit began.

18 Q.   Okay. And that was the first time?

19 A.   Yeah.

20 Q.   And what did you do after the lawsuit was filed?

21 A.   I was communicating with my lawyers. I was asked

22 question by my lawyers, and that's it.

23 Q.   Now, Mr. Hasak, at some point were you also told of an

24 allegation that NDS was involved in posting code from the

25 Canal+ system?

1   A.   Say it again. Allegations?

2   Q.   Sure. The allegation that NDS was involved in some way

3   in posting code from the Canal+ system?

4   A.   Excuse me. Allegations means formal --

5   Q.   No.

6   A.   Just rumors or what?

7   Q.   Anything at all, Mr. Hasak.

8   A.   Anything at all. So I would say that there were again

9   rumors on the Internet all the time, but they just rumors.

10   I don't pay attention to it. But the first time somebody

11   told me about it was when Mr. Kommerling called me on the

12   phone and said something about it, yes.

13   Q.   When did Mr. Kommerling call you on the phone?

14   A.   I don't remember. One of my weak points is I don't

15   remember. Sorry.

16   Q.   Okay. Do you recall that the posting of the Canal+

17   code was in March of 1999?

18   A.   If you say so, I take it, yeah.

19   Q.   Did Mr. Kommerling call you shortly after the code was

20   posted on the Internet?

21   A.   No. He called me and told me that it's on the

22   Internet. I didn't see it before.

23   Q.   And what else did Mr. Kommerling tell you?

24   A.   His issue on the phone was the code, the ROM that he

25   extracted in Haifa was published on the net, and now he's

1 going to be exposed to the pirates that he works for NDS.

2 And he mentioned also a time stamp.

3 Q.   Okay. When Mr. Kommerling told you that he was going

4 to be exposed, what did you understand that he meant?

5 A.   That people or pirates or people in the pirate

6 community will understand that he works for NDS, that this

7 was his main concern.

8 Q.   Was this something that worried him?

9 A.   Yes.

10 Q.   Why?

11 A.   Because he was undercover, and it could be risky for

12 him.

13 Q.   Why could it be risky for an undercover -- someone

14 working undercover for NDS to be exposed?

15 A.   You have to understand that the world of piracy is not

16 ideal world. It's world with lots of money, violence,

17 weapon, things -- ugly things. So sometimes people can be

18 under severe risk if they -- if pirates or people knew the

19 pirates doesn't like them. And we have a few examples.

20 Q.   Was Mr. Kommerling worried about being exposed?

21 A.   Yes.

22 Q.   After Mr. Kommerling -- did Mr. Kommerling tell you

23 anything else in that conversation?

24 A.   No.

25 Q.   What did you tell him?

1   A.   That I have to look into it because, you know, you are

2   very excited and -- excited, and I told him, "Calm down, I'm

3   going to look into it, and I'll call you back."

4   Q.   What did you do, Mr. Hasak?

5   A.   I called somebody of our technical department. I asked

6   him, and I asked him what is a time stamp. And he explain

7   me. And then I asked him -- where there's a time stamp, if

8   something a hundred percent proof. And he told me it's a

9   proof, but not hundred percent.

10   And then I asked our research people to find out if the

11   code of the ROM is really there. I got this information --

12   it was middle of day or two I guess -- and I called back

13   Kommerling on the phone, and I told him that I'm going to

14   look into it -- and that's it. But then he was much calmer,

15   so it was not a big issue for him anymore, at least.

16   Q.   Okay. Did you do any further investigation?

17   A.   Yes.

18   Q.   Why did you do a further investigation?

19   A.   Because it was a potential leak from Haifa Institute to

20   the Internet. So there is a potential leak.

21   Q.   And you understood that potential leak because of what

22   Mr. Kommerling had said?

23   A.   Yes.

24   Q.   Okay. So what investigation did you do?

25   A.   I asked one of my partners, Mr. Melca (phonetic), to

1   run a thorough investigation in Haifa to try and find out

2   what are the loopholes in the security system in Haifa.

3   And they -- he check the system. He talk to all the

4   employees. He check the guarding company. He talk to

5   people who worked in the same floor. He checked all the

6   access control -- I mentioned it. And they -- he checked

7   the access to the computers, and it took about four weeks or

8   three or four weeks.

9   Q.   What were the results of those investigations?

10 A.   That in general the security system is okay, but there

11 are loopholes that should be improved.

12 Q.   What did you do as a result of that investigation?

13 A.   I close the loopholes and to make sure that the system

14 is improved. And it was a trigger to have a full-time data

15 security officer on our team. By then, we had only a

16 consultant. And we took him as a full employee and on a

17 full-time job.

18 Q.   During that investigation, did they find any evidence

19 that someone at NDS was involved in posting that Canal+ code

20 on the Internet?

21 A.   No.

22 Q.   Did you report that investigation to Dr. Peled?

23 A.   After I finished the investigation, I reported to

24 Dr. Peled. I called Dr. Peled, and I told him about the

25 investigation, yes.

1   Q.   Okay. Did you do anything to test NDS's security after

2   the investigation?

3   A.   To do what?

4   Q.   Did you do anything to test NDS security after the

5   investigation?

6   A.   Yes. We --

7   Q.   What did you do?

8   A.   We ran penetration tests in Haifa.

9   Q.   Could you describe for the jury what you mean by a

10   "penetration test"?

11   A.   Penetration test is when you take somebody else and you

12   tell 'em, "Now you asked to penetrate into the premises."

13   And nobody knows -- nobody else knows about it. I mean, the

14   people in the premises, they don't know about it. Only we

15   and him. And he's trying his best to go into premises. His

16   target was to get to Dr. Peled's office -- was in Haifa --

17   and to bug it. This was the test.

18   Q.   Was the penetration test successful?

19   A.   No, he failed. I mean, we were successful. He failed,

20   the hacker failed, yeah, which means that we were

21   successful.

22   Q.   Now, after you reported the results of the

23   investigation to Dr. Peled, did you have any other

24   conversations with Dr. Peled about the accusation that NDS

25   was somehow involved in Canal+ piracy?

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1   A.   After year, maybe more, I don't remember, he called me,

2   and he told me that Mr. Kommerling told him that NDS was

3   behind the posting of the ROM -- or I think the ROM or the

4   code -- I don't remember, yeah.

5   Q.   What else did Mr. Peled tell you?

6   A.   Not that I remember anything else. This was the

7   subject.

8   Q.   And what did you tell Dr. Peled?

9   A.   I told him two things as far as I recall. I told him

10   that this was the reason we run investigations at Haifa that

11   I told you before -- I mean, to you, to Dr. Peled -- not to

12   you, Mr. Snyder -- to you, to Dr. Peled -- and that he

13   should not take seriously rumors on the Internet. And I

14   have my doubts regarding where from Kommerling takes his

15   accusations.

16   Q.   Why did you have your doubts about Mr. Kommerling's

17   allegations?

18   A.   Because you have to understand that this world of

19   piracy is full of violence, is full of egos. And they are

20   fighting each other. They are -- they are accusing each

21   other. They put information and dirt on each other.

22   And it was a good example that I think couple of months

23   earlier we had a meeting in Tel Aviv, what we called "the

24   dream" -- "the dream team meeting" when we worked together,

25   Kommerling and Tarnovsky and Norris and Adams and other

1   people, to a meeting which, to tell the truth, I didn't like

2   it before, but it's my responsibility.

3   So we had this meeting, and this meeting everybody was

4   drunk, everybody was fighting, everybody was talking

5   nonsense, which was a big, big mistake to run this meeting.

6   So I went to the site. So I told Dr. Peled, "Don't

7   take it too seriously."

8   Q.   Now, you mentioned Chris Tarnovsky, Mr. Hasak, and

9   we've had a lot of testimony about Mr. Tarnovsky, so I'd

10   like to ask you several questions about him, all right?

11   A.   Yes.

12   Q.   Was Chris Tarnovsky someone that NDS recruited?

13   A.   Say it again, please.

14   Q.   Was Chris Tarnovsky someone that NDS recruited?

15   A.   He was recruited, yes.

16   Q.   Okay. He was recruited to work for NDS?

17   A.   Yes.

18   Q.   When NDS recruited Mr. Tarnovsky, was he involved in

19   piracy?

20   A.   Yes.

21   Q.   What kind of piracy? What systems?

22   A.   BSkyB, supplying British soldiers in Germany the

23   capability to watch football or soccer from England.

24   Q.   Okay. Any other piracy?

25   A.   That's what I remember now.

1 Q.   Okay. Was Chris Tarnovsky involved in DirecTV piracy?

2 A.   No.

3 Q.   When did NDS first recruit Chris Tarnovsky?

4 A.   Late '90s, maybe '96, '97 -- no, not '96 for sure --

5 '97, I guess, '98. I don't know. I don't remember.

6   THE COURT: Well, just a moment.

7   I want you to take your time.

8   THE WITNESS: Okay.

9   THE COURT: Okay. Think about it. "I don't

10 remember" --

11   THE WITNESS: It's okay.

12   THE COURT: -- it's okay. But if you don't

13 remember, that's fine. But that's an easy way to answer a

14 question.

15   THE WITNESS: Okay, sir.

16   THE COURT: You're an intelligence expert. You

17 know the date. Think about it. When did you recruit

18 Mr. Tarnovsky?

19   THE WITNESS: 1997 or 1998.

20 BY MR. SNYDER:

21 Q.   How did Chris Tarnovsky first come to NDS's attention?

22 A.   Chris Tarnovsky made a kind of approach to Perry Smith,

23 who is the head of our R&D, who was a kind of a guru among

24 the pirate because is he was a genius in encryption.

25   Prior to it, his name surfaced in our Internet

1   research. His name a very capable pirate. So it was

2   parallel. I mean, the same period.

3   Q.   And this was while Mr. Tarnovsky was living in Europe?

4   A.   Yes. He was a soldier in the American Army in Europe,

5   yes.

6   Q.   Did you later learn that Mr. Tarnovsky moved to the

7   United States?

8   A.   Later on we heard it from him that he's moving to the

9   United States -- back home to the United States.

10 Q.   Okay. And while Mr. Tarnovsky was in the

11 United States, did you learn that he became involved in

12 DirecTV piracy?

13 A.   I don't remember what happened after he moved to the

14 United States. He was recommended by us, and I don't

15 remember if he was involved in pirate activity or not. I

16 don't remember.

17 Q.   Did you learn that he was involved with someone named

18 Ron Ereiser?

19 A.   Sure.

20 Q.   Okay.

21 A.   I do remember.

22 Q.   Okay. And do you recall what his involvement was? Did

23 you know that Ron Ereiser was a pirate, satellite pirate?

24 A.   Yes.

25 Q.   And do you recall what systems Mr. Ereiser and

1   Mr. Tarnovsky were involved in pirating?

2   A.   DirecTV. Ron Ereiser, you mean?

3   Q.   Yes.

4   A.   DirecTV.

5   Q.   And was Mr. Tarnovsky working with Ron Ereiser?

6   A.   Yes. But I don't remember if before recruited him

7   already worked with him, or only after he was recruited. I

8   don't remember. But in any case, absolutely after he was an

9   agent of ours, he was working undercover with Ron Ereiser.

10   Q.   Now, before we get to that, Mr. Hasak, why did NDS

11   recruit Chris Tarnovsky as an agent?

12   A.   I think we talked about it yesterday, that we are

13   looking for intelligence. One of the best ways to get

14   intelligence is to get the capable pirate who could supply

15   us with information about piracy modus operandi and about

16   the technical approaches that pirates takes -- the pirates

17   take to take our systems and other systems.

18   Q.   Were you concerned when you recruited Mr. Tarnovsky

19   that he might continue to be involved in piracy?

20   A.   Say it again, because when you ask this question, I

21   remember. Yeah.

22   To answer your previous question, yes, Chris Tarnovsky

23   was involved in pirating DirecTV with Ron Ereiser.

24   Q.   When you recruited Mr. Tarnovsky as an agent, were you

25   concerned that he might continue being involved in piracy?

 1 A.   When you recruit an agent, you always have to take into

 2 consideration that there is a risk. But one of the

 3 consideration if to recruit him or not is to see if you can

 4 eliminate or diminish or minimize this risk. So if you see

 5 that you can minimize, diminish this risk so no risk. But

 6 you have to run the control accordingly in order not to have

 7 this risk.

 8 Q.   Did NDS take steps to diminish or minimize the risk

 9 that Chris Tarnovsky could continue participating in piracy?

10 A.   Yes.

11 Q.   What did NDS do?

12 A.   There are many layers, ways to control an agent, which

13 we implemented on Chris Tarnovsky. Getting very close to

14 him, establishing very close relationships, monitoring his

15 activity, getting all his aliases on the net, briefing him

16 regarding past and current piracy activities, reminding him

17 day and night to keep those -- to forget about his being a

18 pirate in the past, to investigate him -- to investigate him

19 and to tell him that we can run this investigation more and

20 more, to offer him a fair contract to show him that he's

21 going to lose benefits if he goes back to his old days,

22 close relationship with the family, did I mention

23 cross-reference of information that he gave us. And I could

24 miss one thing or two. I don't...

25 Q.   Let me ask you about a couple of the things you

1   mentioned, Mr. Hasak.

2   You said one of the things you did was to get close to

3   Mr. Tarnovsky?

4   A.   Yes.

5   Q.   Did you require that Mr. Tarnovsky relocate?

6   A.   Ah, yes. He was living -- I don't remember where, in

7   Virginia, I don't remember where -- and we asked him to move

8   to California to be closer to our office, to John Norris,

9   and to in a way not to be -- not to live in a place which is

10   known to the pirates.

11   Q.   Now, you also mentioned that Mr. Tarnovsky was reminded

12   frequently to keep the rules?

13   A.   Yes.

14   Q.   What do you mean by that?

15   A.   To work -- to work according to NDS rules, to work

16   according to the law within NDS.

17   Q.   What kind of rules did you tell Mr. Tarnovsky he had to

18   follow?

19   A.   He's not a pirate anymore. First thing, forget about

20   being a pirate. You are now in a respectful company. You

21   have to keep the rules of the company, which, you know,

22   decent, and you don't -- you cannot do anything on your own.

23   Everything should be done only with us. You have to work

24   close with Perry Smith who's the head of our R&D, and you

25   have to supply each information you get. You cannot go back

1   to your old days.

2   Q.   Did you personally tell Mr. Tarnovsky that he had to

3   stop being a pirate?

4   A.   Me also. Not only me, yes.

5   Q.   Okay. Did you personally tell Mr. Tarnovsky that he

6   couldn't do anything illegal?

7   A.   Absolutely, yes.

8   Q.   When did you tell Mr. Tarnovsky that for the first

9   time?

10   A.   Well, the first time when I met him in Israel when he

11   came for briefing, the briefing. And I met him two or three

12   long meetings in Tel Aviv, and I was lecturing him. After I

13   heard him, I was lecturing him about the way he behave. I

14   told him about my experience with running agents, so I

15   wanted him to -- to remember that he's not talking to

16   somebody who knows nothing about it. And I repeated it

17   later on when he was recruited. I met him two, three, four

18   times a year, and several occasions it was mentioned.

19   Q.   Was one of the things that you told Mr. Tarnovsky not

20   to be involved with other companies' conditional access

21   systems?

22   A.   Yes.

23   Q.   Did you tell him that he was prohibited from being

24   involved in piracy of other companies' conditional access

25   systems?

1 A.   I told him that he's not a pirate anymore. He can't do

2 anything, anything which he used to do before. I mean, he's

3 not a pirate. He's an employee of NDS, and that's it.

4 Q.   You did also introduce Mr. Tarnovsky to law

5 enforcement?

6 A.   Yes.

7 Q.   Okay. When did you introduce Mr. Tarnovsky to law

8 enforcement?

9 A.   The first -- I wouldn't say introduction, but after we

10 met him -- not we -- I mean, Norris and Segoly met him in

11 England. Norris sent a note either to the Secret Service or

12 to the Customs -- I don't remember -- about Tarnovsky, of

13 the details of Tarnovsky.

14   Later on, we -- after he was recruited, we introduced

15 him to your agencies to help them, to support them, to

16 educate them about piracy. And I mean by this, it was

17 Customs and Secret Service in the States.

18 Q.   Now, after Mr. Tarnovsky relocated to California to

19 work for NDS, where was his office?

20 A.   I don't remember the name of the city, but it was not

21 far from here.

22 Q.   Okay. Did he work out of his home?

23 A.   Yes.

24 Q.   Why did Mr. Tarnovsky work out of his home?

25 A.   Because he works abnormal hours: nights, Sundays, you

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 1    know, and where regular office is closed.  So it would be

 2    more efficient to work from home than from the office.

 3    Q.   Did you install any monitoring or other security

 4    equipment in Mr. Tarnovsky's home?

 5    A.   We had his own secure -- what do you mean by

 6    "monitoring"?

 7    Q.   What did you do to Mr. Tarnovsky's home after he became

 8    an employee?

 9    A.   He -- his laboratory was alarm -- how do you say --

10    alarmed.  Windows, doors, et cetera, all kind of alarms in

11    order to avoid burglars from coming in.  It was lot of

12    equipment.

13    Q.   Okay.  Did you install any equipment to monitor what

14    Mr. Tarnovsky was doing?

15    A.   No, we did not.

16    Q.   Why not?

17    A.   It's against my policy to do such things.

18    Q.   Why is it against your policy to do something like

19    that?

20    A.   Because I don't believe in it.  I think it's a matter

21    of invading the privacy of the employee.  And if you do it

22    with acknowledge -- if you do it but beforehand you

23    acknowledge the employee, he knows it.  If you do it without

24    him knowing it, if he finds it, you are ruining your

25    relations with him.  So I don't think it's a good system.  I
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1   never do it.

2   Q.   Did you believe that the other measures that you were

3   taking to control Mr. Tarnovsky would be effective?

4   A.   Yes.

5   Q.   Why did you think that they would be more effective

6   than including monitoring equipment in his house?

7   A.   Because I just told you. Monitoring in his house, I

8   think it's not a good system, and it's invading his privacy.

9   I never did it in all my career.

10   My own employees. I'm not talking about enemies --

11   to -- how do you say -- enemies, yeah. I mean, I never did

12   it with employees.

13   Q.   Now, Mr. Hasak, when Chris Tarnovsky was recruited, was

14   it to be -- what did NDS want him to do?

15   A.   Mainly two things: to give information about other

16   pirates, I mean, who are they, what are they doing, and what

17   are the technical methods; and secondly, to help us

18   bettering or improving our systems by checking our systems

19   and by telling -- and by helping us step into the shoes of a

20   pirate when looking at our Smart Cards.

21   Q.   Was there also a long-term plan for what Chris

22   Tarnovsky would do with NDS?

23   A.   To invent or to develop new things and to -- and to

24   find ways how to improve the chip, the future chip that

25   we'll be using. But this was done with technical people,

1 with R&D, not with me.

2 Q.   When Chris Tarnovsky started working with NDS in 1997,

3 did you believe that it put Mr. Tarnovsky at risk?

4 A.   Yes.

5 Q.   Why?

6 A.   Because, as I mentioned to you before, I mean, the

7 piracy world is a violent world. And it's not what people

8 tend to think, that it's a white-collar crime. It's not

9 white; sometime it's very black.

10   And -- and we know of examples where people were

11 threatened. We know that pirates were caught with weapon.

12 And we know that -- we knew that if Mr. Tarnovsky will be

13 exposed, he might be -- no -- he will be under potential

14 risk.

15 Q.   Did NDS do anything to help protect Mr. Tarnovsky when

16 he started working for NDS?

17 A.   Yes. As mentioned before, we located him from

18 Virginia, or wherever he lived, to California. So they

19 don't know where is he.

20   He was not under the payroll of us. I didn't want him

21 to be on NDS payroll. And we found another company from

22 News Corp., which is nothing to do with -- the pirates don't

23 have any interest in it. I think it was a booking --

24 publishing -- a book publishing -- publisher.

25   We kept his aliases. We kept compartmentalization in

1   NDS not to let other people know of his existence. And we

2   used -- inside the company among ourselves we used nickname

3   or cover name.

4   Q.   What was Mr. Tarnovsky's nickname or cover name within

5   NDS?

6   A.   Once it was, I think, "George," then it was "Mike,"

7   then it was "the kid."

8   THE COURT: "The kid"?

9   THE WITNESS: Kid, yeah.

10   THE COURT: Kid.

11   THE WITNESS: Kid, K-I-D, yeah.

12   And he called John and me "uncle" -- no, John was

13   "uncle." I was "great uncle."

14   BY MR. SNYDER:

15   Q.   Why did you use a nickname or cover name even inside

16   NDS for Mr. Tarnovsky?

17   A.   Though I'm -- where is my translator?

18   I'm very, very religious in compartmentalization. I

19   believe it. I believe that compartmentalization is needed

20   in a company which deals with secured systems. Still it's

21   better to use nickname because you never know who's walking

22   the corridor, et cetera. So that's the reason.

23   Q.   You were --

24   A.   And it's part of the game, you know, also, to use

25   nicknames. It gives also -- no, really. I'm coming -- my

1 previous school I've mentioned before is in the intelligence

2 organization. So in order to give the sense of keeping

3 secrets to people, you have to show them, for example, use a

4 nickname, for example --

5 Q.   And --

6 A.   -- to give them the atmosphere of -- of keeping

7 security because it's a hi-tech company; it's not

8 intelligence service.

9 Q.   Did Mr. Tarnovsky, after he was recruited, help provide

10 NDS with intelligence?

11 A.   Say it again, please.

12 Q.   Sure. After he was recruited, did Mr. Tarnovsky

13 provide NDS with intelligence?

14 A.   Yes.

15 Q.   Okay. What kind of information did he provide?

16 A.   He provided names and he provided plans, future plans,

17 or current plans of other pirates.

18 Q.   Did Mr. Tarnovsky participate in any undercover

19 operations?

20 A.   Yes.

21 Q.   Okay. Was one of those operations called Operation

22 Johnny Walker?

23 A.   Yes.

24   MR. SNYDER: Okay. Could you show the witness,

25 please, Exhibit 602.

1   THE WITNESS: Yes, I see.

2   BY MR. SNYDER:

3   Q.   Mr. Hasak, have you seen Exhibit 602 before today?

4   A.   Yes.

5   Q.   Is this a memo that was sent to you on or about

6   December 1st, 1997?

7   A.   Yes.

8   Q.   And is this a memo that was sent to you by Ms. Avigail

9   Gutman?

10   A.   Yes.

11   Q.   Who -- in December of 1997, what did Ms. Gutman do?

12   A.   She was running the team in Jerusalem. She was --

13   yeah, she was running the team in Jerusalem. She was my

14   right-hand person in Jerusalem.

15   Q.   Was she part of operational security?

16   A.   Yes, sure.

17   Q.   And is this a memo that Ms. Gutman sent to you as part

18   of the operational security group?

19   A.   Yes.

20   MR. SNYDER: Your Honor, I move Exhibit 602.

21   THE COURT: Any objection?

22   MR. HAGAN: No, sir, Your Honor.

23   THE COURT: It will be received.

24   (Exhibit No. 602 received in evidence.)

25   (Document displayed.)

1   BY MR. SNYDER:

2   Q.   If you could look, please, at the first paragraph at

3   the bottom of the page under the heading "The Active

4   Personnel and Update."

5   A.   It's here also?

6   Q.   You can look either on the screen or on the page,

7   Mr. Hasak.

8   A.   I see it, yes.

9   Q.   Okay.   There's a heading that says "DSS Ron Ereiser's

10 Group"?

11 A.   Yes.

12 Q.   And the first sentence says, "Ron Ereiser's group hired

13 Chris Tarnovsky to Calgary and tasked him to pick up where

14 Pavel Donev, their in-house Bulgarian hacker, left off."

15   Do you see that?

16 A.   Yes.

17 Q.   And then looking at the next paragraph, it says,

18 "Tarnovsky was tasked with creating four secure programmer

19 boxes."

20   Do you see that?

21 A.   Yes.

22 Q.   What does that refer to?

23 A.   This the operation you mentioned before, Johnny Walker,

24 as far as I recall.

25   And you want me to explain what's written here?

1   Q.   Please.

2   A.   To elaborate?

3   Q.   Please.

4   A.   Yeah. They were the hacker. His name was Donev,

5 Plamen Donev, from Bulgaria. He was a hacker. And they

6 wanted to replace him by Chris Tarnovsky, who in their

7 opinion was a better --

8   Q.   When you say "they," Mr. Hasak --

9   A.   I mean -- sorry.

10 Q.   -- who are you referring to?

11 A.   I mean Ron Ereiser and his team. I would say "gang."

12 And they wanted to recruit Tarnovsky to work with them and

13 to develop pirate devices to attack DirecTV.

14 Q.   Okay. Did NDS develop an undercover operation to take

15 advantage of Mr. Ereiser's request to Chris Tarnovsky?

16 A.   Yes.

17   MR. SNYDER: Could you show the witness, please,

18 Exhibit 478.

19 BY MR. SNYDER:

20 Q.   Mr. Hasak, have you seen Exhibit 478 before today?

21 A.   Yes, I did.

22 Q.   Is this a memo describing Operation Johnny Walker?

23 A.   Yes.

24 Q.   And were you sent this memo on or about November 24th,

25 1997?

1   A.   Yes.

2   Q.   And this is a memo from Ms. Gutman to you and several

3   others at NDS?

4   A.   Yes.

5   Q.   Did you receive this memo as part of your work in

6   operational security?

7   A.   Say it again, please.

8   Q.   Did you receive this memo as part of your work in

9   charge of NDS's operational security?

10 A.   You mean if I received it?

11 Q.   Yes, sir.

12 A.   Yes.   The answer is yes.

13   MR. SNYDER: Your Honor, I move Exhibit 478.

14   THE COURT: Any objection?

15   MR. HAGAN: No objections, Your Honor.

16   THE COURT: Received.

17   (Exhibit No. 478 received in evidence.)

18   (Document displayed.)

19 BY MR. SNYDER:

20 Q.   So the jury can see it, at the top, Mr. Hasak, it says

21 "Secret. Restricted Distribution, Operation Johnny Walker,

22 Preparatory Meeting."

23 A.   Yes.

24 Q.   Let's go down to the first paragraph that says

25 "Background."

1   "Having visited with the Canadian group and gained

2   their confidence, Chris has been hired to produce four

3   secure programmer devices which will enable P2 cards to

4   receive all services and PPV's."

5   PPV's is pay per views?

6   A.   Yes.

7   Q.   What was the plan in Operation Johnny Walker?

8   A.   To gain Ron Ereiser's team confident in Chris Tarnovsky

9   and to feed them with false information, disinformation.

10   Remember, we talked yesterday about disinformation.

11   Q.   What information or material was Mr. Tarnovsky going to

12   give Ron Ereiser?

13   A.   Please, again.

14   Q.   What information or material was Chris Tarnovsky going

15   to give Ron Ereiser and his group?

16   A.   The software for these programs.

17   Q.   When you say "the software for these programs," what do

18   you mean?

19   A.   I mean software -- excuse me -- software for the

20   devices that Ron Ereiser and his team asked him to get for

21   them.

22   Q.   Okay. If you look down on the first page, there's a

23   heading called "Securing the Product."

24   Actually, let's go up one paragraph so we can put it

25   all in context.

1   There's a paragraph on the first page that's headed

2   "The Product"?

3   A.   "The Product," you mean? Yeah.

4   Q.   And, then, it says, "Due to post-ECM anxiety of the

5   Canadians and Jerusalem's time constraints, Chris will

6   initially produce the software" -- S/W stands for

7   "software"?

8   A.   Yes.

9   Q.   -- "without a box. The software will be an enabler

10   that will contain some other features such as the

11   possibility for remote update, control of rating, et cetera.

12   The software can be killed. And its content has been

13   approved by Perry and Jordan. It will remain unaffected by

14   the recent ECM for as long as we deem necessary."

15   Do you see that?

16   A.   Yes, I see.

17   Q.   And was that the description of the software you were

18   talking about?

19   A.   Yes.

20   Q.   This refers to Perry. Who is Perry?

21   A.   Perry Smith is the head of -- sorry. He is the head of

22   SDU department, security devices unit.

23   Q.   Is SDU the name for the group that develops NDS's

24   chips?

25   A.   Yes, yes.

1 Q.   Did NDS -- let me take a step back. Was Operation

2 Johnny Walker giving software to Ron Ereiser that could be

3 used for DirecTV piracy?

4 A.   To a certain extent, because it was limited in date and

5 in capability and it was up to us when to kill it.

6 Q.   You had the ability to kill the software?

7 A.   Whenever we wanted, yes.

8 Q.   Did NDS inform DirecTV about the operation?

9 A.   Inform is not the right word. We asked for approval.

10 Q.   You asked for DirecTV's approval?

11 A.   Yes.

12 Q.   Did DirecTV give you that approval?

13 A.   Yeah, sure. I remember in this operation we had to

14 delay it because we didn't get the approval in time because

15 of some technical reasons.

16 Q.   Okay. But eventually NDS obtained DirecTV's approval

17 for the operation?

18 A.   Yes.

19 Q.   Was the operation a success?

20 A.   Yes.

21 Q.   How?

22 A.   They got the device. The device was killed. We got

23 information. They -- they took Chris very seriously. He

24 was a prominent member. He became as if he was a prominent

25 member of the team.

1   Q.   So Mr. Tarnovsky successfully remained undercover?

2   A.   Yes.

3   Q.   And you obtained information from Mr. Ereiser and his

4   group?

5   A.   And I what?

6   Q.   You obtained information about Mr. Ereiser and his

7   group?

8   A.   Yes.

9   Q.   Did you use that information to bring lawsuits against

10   Mr. Ereiser?

11   A.   Against Mr. Ereiser?

12   Q.   Yes.

13   A.   Yes.

14   Q.   Did you inform Dr. Peled about this operation?

15   A.   Yes.

16   Q.   This was one of the things that you reported to him?

17   A.   Yes.

18   Q.   Now, as part of the operation, Mr. Hasak, did

19   Mr. Tarnovsky receive any money?

20   A.   Please repeat the question.

21   Q.   As part of the operation, or his work with Ron

22   Ereiser's group, did Chris Tarnovsky receive any money?

23   A.   Yes.

24   Q.   Okay. What money did Mr. Tarnovsky receive?

25   A.   Money from Ron Ereiser and his team for doing whatever

1   he did.

2   Q.   How was it sent to Mr. Tarnovsky?

3   A.   It was sent secretly. They hide it in all kind of

4   tools to send it to him.

5   Q.   When you say it was hidden inside of tools, do you mean

6   inside of electronic devices?

7   A.   Yeah, electronic devices, yeah.

8   Q.   When Mr. Tarnovsky received that money, did he report

9   it?

10   A.   Yes.

11   Q.   Were you advised that he had received that money?

12   A.   John Norris told me.

13   Q.   Okay. And did you believe that there was anything

14   wrong with Mr. Tarnovsky receiving that money as part of

15   this undercover operation?

16   A.   On the contrary, it was very good.

17   Q.   Okay. Why was it very good?

18   A.   Because it showed that they pay him, they believe in

19   him, and he became a member of the team. It was part of the

20   object.

21   Q.   What -- did you instruct Mr. Norris or Mr. Tarnovsky

22   what should be done with that money?

23   A.   I talked to John Norris. I don't remember talking to

24   Tarnovsky about it, but to Norris. And Norris told me that

25   the way to keep it would be to put it in the bank and not to

1 use it.

2   And I told him it's a good idea because -- we should

3 not use it because, maybe in the future, if ask him where is

4 the money, he could tell it's in the bank. But if he spend

5 it or if he give it to us, he might be embarrassed. He had

6 to lie to Ron Ereiser. So it's the best thing to keep it in

7 the bank.

8 Q.   Now, later Mr. Tarnovsky stopped being an undercover

9 agent; isn't that right?

10 A.   Yes.

11 Q.   After Mr. Tarnovsky stopped being an undercover agent,

12 did you tell him or anyone else at NDS what should be done

13 with that money?

14 A.   No.

15 Q.   Okay. Why not?

16 A.   Because, to the best of my knowledge, the money was

17 still in the bank, so...

18 Q.   Now, after Mr. Tarnovsky stopped being an undercover

19 agent, did he continue working for NDS?

20 A.   Yes.

21 Q.   What kinds of things did he do for NDS?

22 A.   95 percent of his employment was to work with SDU,

23 Perry Smith.

24 Q.   The secure device unit?

25 A.   Yeah, yeah. Research and developing chips and things

1   like this.

2   Q.   Okay. Was Mr. Tarnovsky ever rewarded for his work

3   with the secure device unit?

4   A.   I think he was rewarded several times.

5   Q.   Okay. Did he ever receive any bonuses from the secure

6   device unit?

7   A.   No. He got it from me. There was one or two or three

8   cases that he got extra bonus from me upon recommendation of

9   the SDU.

10 Q.   And this was the recommendation of Mr. Smith, Perry

11 Smith, who was the head of SDU?

12 A.   Yeah. But could be from somebody else in the SDU.

13 Q.   Can you give the -- let me start again, Mr. Hasak.

14   Did Mr. Tarnovsky's work also include developing

15 antipiracy devices?

16 A.   Yes.

17 Q.   Can you give the jury an example of the kind of

18 antipiracy device that Mr. Tarnovsky developed?

19 A.   One of the most prominent thing that he developed, and

20 it is patented worldwide, is what we call CAMID, C-A-M-I-D.

21 I don't remember what is the abbreviation, but CAMID, which

22 was small tool like a small calculator. You put the Smart

23 Card in and then you can tell whether the Smart Card is a

24 hack or genuine, legitimate card.

25   And after it was well-developed, we gave these CAMID's

1 to many of the law agencies in the States and also abroad.

2 Q.   Why did NDS provide that CAMID to law enforcement

3 agencies?

4 A.   To support fight against piracy. It's a very good

5 tool.

6 Q.   What --

7 A.   For example, when they run a raid, they find cards,

8 they can -- on the spot they can decide if it's hack or not

9 hack.

10 Q.   So, Mr. Hasak, did you later learn or were you later

11 told of some accusation involving Ron Ereiser that Chris

12 Tarnovsky was somehow involved in EchoStar piracy?

13 A.   You have to repeat your question. It's a long

14 question.

15 Q.   It was. Let me try and break it down. Actually, let

16 me try and take this in small parts.

17   Do you know someone name Gilles Kaehlin?

18 A.   Yes, I do.

19 Q.   Who is Gilles Kaehlin?

20 A.   Gilles Kaehlin is a Frenchman. He used to work for

21 Canal+. And he used to work with Oliver Kommerling.

22   He had relations with Nagra. I don't know exactly

23 which ones. He was an ex-member of the French Security

24 Service, DST -- I'm not sure about it.

25 Q.   Did Mr. Kaehlin ever contact you about Ron Ereiser?

1   A.   Yes.

2   Q.   What did Mr. Kaehlin say to you about Ron Ereiser?

3   A.   The first time I met him, he told me that Ron Ereiser

4   is on his payroll and that Ron Ereiser accusing NDS of

5   pirating its -- of pirating other systems. And if I tell

6   Ron Ereiser -- if I give money to Ron Ereiser through Gilles

7   Kaehlin, he might stop him from -- stop Ron Ereiser from

8   distributing this information, this source.

9   Q.   When did Mr. Kaehlin tell you this?

10 A.   I don't remember the year, but the first time it was in

11 Rome.

12 Q.   What did you tell Mr. Kaehlin?

13   MR. HAGAN: Objection. Hearsay.

14   THE COURT: Well, just a moment.

15   MR. SNYDER: It's not for the truth, Your Honor.

16 We also had the conversation.

17   THE COURT: You've gone so far with this gentleman

18 in terms of allegedly qualifying as an expert that it's

19 opened up a whole set of issues that were formally in

20 contention, such as 626 and 613, with the breadth of his

21 testimony.

22   (To the jury:) I'm going to allow you to hear

23 about the conversation between Kaehlin and Mr. Hasak. In

24 doing so -- there's something called the hearsay rule, and

25 if we tried to explain it to you, it would probably take a

1   year because of all the exceptions. And I don't intend to

2   turn you into lawyers as jurors.

3   You're admonished that what you're about to hear

4   is not for the truth of what is being said but to show the

5   activities, actions and response to that conversation.

6   Now, that's a very difficult ruling, the Court

7   understands, for a jury to follow, because you're about to

8   hear this alleged conversation. But, of course, Mr. Kaehlin

9   isn't here. Mr. Hasak's here. So you get one part of that

10   conversation.

11   And while the hearsay rule technically applies to

12   it, the Court is allowed to use its discretion and to find

13   that it's not hearsay, it's not offered for the truth of

14   what's being said. So I then am required to instruct you

15   that this conversation's not for the truth.

16   You're so instructed.

17   Counsel.

18   Now, if anybody can think of a better admonition

19   in that regard, for either side, I'd be glad to give it.

20   MR. SNYDER: Thank you, Your Honor. No.

21   THE COURT: I'm wide open to it.

22   Counsel.

23   MR. HAGAN: I think that was perfect.

24   THE COURT: Okay. This opens up a whole set of

25   previously discussed areas. And I'm going to open this up

1   for further direct examination and further

2   cross-examination. Not without limitation, but -- all

3   right.

4   Counsel.

5   BY MR. SNYDER:

6   Q.   Mr. Hasak, what did you tell Mr. Kaehlin?

7   A.   What did I tell him?

8   Q.   Yes, sir.

9   A.   In the response of what he offered to me?

10 Q.   Yes.

11 A.   I told him, "You better do -- if you don't believe

12 Ron Ereiser, if you don't meet him, and I suggest don't pay

13 him any money: I'm not going to pay anything for it because

14 he's a liar. He's a criminal."

15 Q.   You thought Mr. Ereiser is a liar -- you thought

16 Mr. Ereiser was a liar and a criminal?

17 A.   Yes.

18 Q.   And you were unwilling to pay him any money?

19 A.   Any money. And I told -- what's-his-name --

20 Gilles Kaehlin, that I don't like to be blackmailed. I'm

21 not the type to be blackmailed.

22 Q.   For you, Mr. Hasak, at some point did you learn that

23 Mr. Tarnovsky had been sent money inside electronic devices

24 to a mailbox in Texas?

25 A.   You refer to the money that we talk before that was put

1   in the bank?

2   Q.   No, sir. Did you at some point learn of money that had

3   been sent to Mr. Tarnovsky to a mailbox in Texas?

4   A.   You said Ron Ereiser. You mean, money -- you don't

5   mean by Ron Ereiser?

6   Q.   No, sir.

7   A.   Okay. Yeah, I'm aware. I was aware, yeah.

8   Q.   When did you first learn about that?

9   A.   I got a call. I remember it was Friday night. I was

10   busy with family dinner, and I got a call from John Norris

11   that there was a problem in California because

12   Chris Tarnovsky is accused by official people of pirating

13   DirecTV. So I flew to California together with the

14   investigator. And then I heard the story of the money in --

15   that you just mentioned.

16   Q.   And who did you hear that story from?

17   A.   John Norris and Chris Tarnovsky.

18   Q.   Okay. What did you do after you arrived in California?

19   A.   I ran an investigation on Chris Tarnovsky and -- and

20   John Norris.

21   Q.   You take the allegations against Mr. Tarnovsky

22   seriously?

23   A.   Yes.

24   Q.   Why did you take them seriously?

25   A.   Because I understood that it was done by former people

1   from the law agencies and not just from the Internet.

2   Q.   Okay. What were the results of your investigation?

3   A.   That Chris Tarnovsky was not involved in pirating

4   DirecTV.

5   Q.   Okay. What caused you to reach that conclusion?

6   A.   (No audible response.)

7   Q.   What caused you to reach that conclusion?

8   A.   My sole investigation.

9   Q.   At any point in that investigation, was Mr. Tarnovsky

10   accused of being involved in EchoStar piracy?

11   A.   No.

12   Q.   Did you report this to Dr. Peled?

13   A.   After I finish the investigation, I called Dr. Peled

14   and told him about it.

15   Q.   Did you discipline, did you reprimand Mr. Tarnovsky in

16   any way?

17   A.   "Discipline" means to punish?

18   Q.   Yes, sir.

19   A.   The answer is no.

20   Q.   Why didn't you punish or reprimand Mr. Tarnovsky?

21   A.   Because the accusation were -- were wrong. He did not

22   do anything wrong. He didn't pirate DirecTV.

23   Q.   Now, did you later learn information about those

24   shipments to the Texas mailbox?

25   A.   Yes.

1   Q.   What did you later learn?

2   A.   That he got once or twice sums of money hidden in

3   electronic devices --

4   Q.   Okay.

5   A.   -- to this mailbox.

6   Q.   And did you later learn additional information about

7   what was found inside those devices?

8   A.   Yeah. It was about $30,000 that I recall.

9   Q.   Did you later learn about -- did you later learn

10   information about a fingerprint inside those boxes?

11   A.   Yes. Years later.

12   Q.   Years later?

13   A.   Years later. We got information from EchoStar lawyers

14   who got information from RCMP or the American agencies, I

15   don't remember, that there were a fingerprint on one of the

16   packages.

17   Q.   And what was that fingerprint?

18   A.   From -- it was -- it belonged to a fellow by the name

19   of Marv. I think Marv is first name or his nickname. I

20   don't know. I don't remember.

21   Q.   Was that the first time you had received that

22   information?

23   A.   Yes.

24   Q.   What did you do?

25   A.   I -- I -- what did I do? What I got -- I got it from

1   my lawyers. And I didn't do nothing because they told me

2   it's in the legal process now.

3   Q.   Okay. Did you do anything regarding Mr. Tarnovsky?

4   A.   Did I do what?

5   Q.   Did you do anything regarding Mr. Tarnovsky?

6   A.   Not when I learn about the fingerprint. I couldn't do

7   anything about it because I was instructed by you lawyers

8   not to do anything because it's under legal procedure.

9   Q.   Did you ultimately terminate -- did you fire

10   Mr. Tarnovsky?

11   A.   So the answer is yes, but this was only after I got a

12   call that Mr. Tarnovsky was confronted with his fingerprints

13   and he denied knowing it. Only then I fired him, not when I

14   heard about the fingerprints. I fired him only after he was

15   confronted with it.

16   Q.   Okay. And why did you fire Mr. Tarnovsky?

17   A.   Because I found out that in this case he was not

18   candid -- you say, "candid" -- with me, you know, frank. He

19   didn't tell the truth because he should have known this

20   Mr. Marv.

21   Q.   Were you the person who ultimately made the decision to

22   terminate Mr. Tarnovsky, to fire him?

23   A.   Yes.

24   Q.   Was that a difficult decision?

25   A.   Very difficult, yeah.

1   Q.   Why?

2   A.   First of all, I was under pressure of time. When I got

3   this call, I was in England in a very important meeting with

4   BSkyB. I had to get out of the room, and I have to think --

5   I had to think about it.

6   Secondly, I like Mr. Tarnovsky personally.

7   Thirdly, he was a big asset to NDS.

8   And fourthly, they've come, you know -- when you have

9   the authority, it comes to a point where you are the only

10   one to take a decision because it's my responsibility. So I

11   took this decision, I notified John Norris, and that's it.

12   Q.   Do you believe that was the right decision?

13   A.   Yes.

14   Q.   Now, Mr. Hasak, are you also familiar with someone --

15   well, let me go back a moment.

16   Have you spoken to Mr. Tarnovsky since he was fired?

17   A.   No.

18   Q.   Are you also familiar with someone named Allen Menard?

19   A.   Yes.

20   Q.   How did you first learn about Allen Menard?

21   A.   I heard the name because he was running a website,

22   dr7, which we tried to close several times. We had steps

23   taken against dr7, so I knew the name Allen Menard from the

24   Internet research. I saw it in our reports.

25   Q.   So you first learned about Allen Menard in the context

1 of trying to shut him down -- shut down dr7?

2 A.   No.   Before, I heard him in our report.   I heard about

3 him later on when we started trying to close his -- his Web,

4 I heard his name again, yeah.

5 Q.   Now, did NDS later recruit Al Menard?

6 A.   It would be a mistake to say recruit.   I'm using the

7 "recruit" when you recruit an agent.   Al Menard was not an

8 agent.   Al Menard was hired.

9 Q.   Okay.   At some point, did Al Menard start working with

10 NDS?

11 A.   As a consultant, yes.

12 Q.   Okay.   And how did it come about that Al Menard became

13 a consultant for NDS?

14 A.   There was a big leakage of documents which belonged to

15 DirecTV and to us which were -- of the lawyer, I don't

16 remember his name -- and it was leaked into the Net.   And I

17 think we could not find it or what, I don't remember, but we

18 got the call or a note from Al Menard that he was able to --

19 to trace it and to find it.   And he offered us to -- his

20 support how to get it.

21   So we realize that he has high capabilities of tracing

22 forms and information on the Internet.

23 Q.   Okay.   And after Mr. Menard was retained as -- well,

24 let me go back.

25   Did you approve of Mr. Menard's hiring as a consultant?

1 A.   Yes.

2 Q.   Was that your decision?

3 A.   No.   It would not be my decision, but because it was,

4 you know, some legal procedures or John Norris consulted me,

5 kept me in the loop -- I don't know how to say -- but I was

6 part of the decision.   It was my -- it was me, too.   It was

7 Norris and me together.

8 Q.   You and Mr. Norris?

9 A.   (No audible response.)

10 Q.   You and Mr. Norris?

11 A.   Yeah.   And our lawyer.

12 Q.   Okay.   Did you agree with the decision to use

13 Mr. Menard as a consultant?

14 A.   Oh, yes.

15 Q.   Did he provide NDS with valuable information?

16 A.   Absolutely, yes.

17 Q.   Did you use any methods, or did you do anything to make

18 sure that Mr. Menard would not be involved in piracy?

19 A.   He was instructed, but not by me.   I never met him.   He

20 was instructed that he could not do any piracy or be

21 involved.   He was not a pirate.

22 Q.   Did NDS do anything to monitor Mr. Menard's activities

23 on the Internet?

24 A.   Monitoring -- don't forget he was not a pirate.   He was

25 not active.   He was just running the Web.   So it was not a

1   problem. We didn't share any secrets with Al Menard, not

2   like with Chris Tarnovsky. Al Menard was not share -- was

3   not a secret holder, what we call, of NDS.

4   Q.   Did Mr. -- who did Mr. Menard work with at NDS?

5   A.   His name is Ted Rose.

6   Q.   And who is Mr. Ted Rose?

7   A.   Ted Rose is our chief Internet researcher.

8   Q.   And how did Mr. Rose and Mr. Menard work together?

9   A.   They were communicating. I think Ted Rose visited him

10   once or twice. Al Menard visited him, regular ways.

11   Q.   Now, Mr. Hasak, you mentioned that Mr. Menard provided

12   valuable information to NDS?

13   A.   Yes.

14   Q.   How did NDS use that information?

15   A.   To trace and to follow pirate forums and to use legal

16   actions against them.

17   Q.   And was NDS successful in shutting down pirate websites

18   and forums based on the information that Mr. Menard

19   provided?

20   A.   Yes.

21   Q.   At some point did NDS end its relationship with

22   Mr. Menard?

23   A.   Yes.

24   Q.   Why?

25   A.   His contract was -- it came to -- how do you say --

1   THE INTERPRETER: Expired.

2   THE WITNESS: Thank you.

3   THE INTERPRETER: His contract expired.

4   THE WITNESS: The contract expired, and we decided

5 not to renew it.

6 BY MR. SNYDER:

7 Q.   Okay. And was that on almost exactly the same day that

8 Mr. Tarnovsky was fired?

9 A.   There are coincidence in life.

10   (Laughter.)

11 Q.   Are there those coincidences, Mr. Hasak?

12 A.   Yeah. Because it was first of April that his contract

13 expired, so what can I do.

14 Q.   Did NDS decide not to renew Mr. Menard's contract

15 because of the fingerprint that was disclosed by EchoStar's

16 counsel?

17 A.   Yes.

18 Q.   So the timing was a coincidence, but the reason was

19 not?

20 A.   I was talking about the timing. I mention first of

21 April. The timing, not the reason, no.

22 Q.   And could you explain to the jury why you decided not

23 to renew Mr. Menard's contract?

24 A.   Because in a way he is involved in all this story, and

25 because it was under legal procedures, and we thought it was

1   better that we keep him away and not deal with him anymore.

2   Q.   Now, are you aware, Mr. Hasak, that NagraStar has

3   obtained several thousand pages of NDS documents?

4   A.   Yes. When you say "NagraStar," you mean --

5   Q.   Mr. Gee or Mr. Guggenheim in particular.

6   A.   Yes.

7   Q.   And are you aware that at some point a hard drive

8   containing NDS materials disappeared from NDS?

9   A.   Yes.

10   Q.   Okay. How did that hard drive disappear?

11   A.   When Ray Adams, who used to be the head of our UK team,

12   retired or resigned, I asked Len Withall, who replaced him,

13   to get from him all the equipment belonged to NDS,

14   especially laptop, cell phone, et cetera. So Len went and

15   called Ray Adams and told him that he needs it, and Ray told

16   him to -- sorry -- to come to his home in Windsor, England

17   and to pick it up.

18   Q.   What did Mr. Withall do?

19   A.   He went to Windsor, he visited Ray Adams in his home,

20   he got the laptop, and he went back to the office in

21   Maidenhead.

22   Q.   What did NDS discover when it examined the laptop?

23   A.   Andy Coulthurst, C-O-U-L-T-H-U-R-S-T, was the

24   technician. Andy got this laptop, and he told Ray that

25   something is wrong here because the hard drive inside is

1   either corrupted or deleted, erased.

2   Q.   Did NDS follow up with Mr. Adams?

3   A.   Yes. At the same day or same moment, even, Len called

4   Ray Adams and told him that "You are fooling me."

5   And Ray said, "Yeah, because I wanted to keep the other

6   hard drive because I had some family pictures there. So

7   come by, and I'll give you the original hard drive."

8   Q.   Okay. What did Mr. Withall do then?

9   A.   The next morning Mr. Withall then went back to Windsor.

10   Q.   Was he able to get the hard drive?

11   A.   No. Because, surprisingly, Mr. Adams told him that the

12   last night the hard drive was stolen from him. He said that

13   he kept the hard drive in the car, in his wife's car. And,

14   surprisingly, last night the car was broken in -- burglared,

15   and they stole a couple of things from the car including the

16   hard drive. He found other things in the neighborhood, but

17   he did not find the hard drive.

18   Q.   So Mr. Withall wasn't able to get the hard drive?

19   A.   He was not able, and he told Ray that he's a liar.

20   Q.   Mr. Withall told Ray Adams he was a liar?

21   A.   Yes.

22   Q.   Did NDS do anything to follow up on the disappearance

23   of that hard drive?

24   A.   We are looking, and we distributed the information that

25   the hard drive is missing to see if it will surface in the

1 pirate community. And we were hoping that the police will

2 do something. But because the complaint was submitted to

3 the police by Ray --

4 Q.   Who submitted a complaint to the police?

5 A.   Ray, Ray Adams.

6 Q.   Did NDS submit a complaint to the police?

7 A.   No.

8 Q.   Why not?

9 A.   Because according to the rule in the UK -- I checked it

10 then -- and they said, "The rules in our country, you cannot

11 submit two complaints." If we have a problem, for example,

12 in Israel that the laptop is stolen from an employee, he

13 should submit the complaint, not us. He should submit the

14 complaint because the laptop, for an example, was under his

15 responsibility. So he should prepare the complaint.

16 Q.   Did NDS check to determine whether or not Mr. Adams had

17 filed a complaint with the police?

18 A.   No. I asked Len to check it, and he said he cannot.

19 The police will not respond to him if he would check about

20 other complaints.

21 Q.   Does Mr. Withall have experience with law enforcement

22 in the UK?

23 A.   Correct.

24 Q.   What kind of experience does Mr. Withall have?

25 A.   I think for 30 years he was an officer with the police.

1   Q.   Now, at some point, Mr. Hasak, did you learn that

2   documents from that hard drive were provided to

3   Mr. Guggenheim and Mr. Gee?

4   A.   I saw part of the documents here during the lawsuit.

5   MR. SNYDER: Could you show the witness, please,

6   Exhibit 477?

7   BY MR. SNYDER:

8   Q.   Mr. Hasak, have you seen this document before?

9   A.   Yes.

10   Q.   Is this a memo that was sent to you on or about

11   December 28th, 1997?

12   A.   Yes.

13   Q.   And is it a memo that was also sent to you by

14   Ms. Gutman?

15   A.   The same Ms. Gutman, yes.

16   Q.   And this was sent to you as part of your work as head

17   of operational security for NDS?

18   A.   Yes.

19   MR. SNYDER: Your Honor, I move Exhibit 477.

20   THE COURT: Any objection?

21   MR. HAGAN: No, objections, Your Honor.

22   THE COURT: Received.

23   (Exhibit No. 477 received in evidence.)

24   (Document displayed.)

25

1   BY MR. SNYDER:

2   Q.   Mr. Hasak, if you look at the very bottom right-hand

3   corner of this document, it has a number, "ESC," which

4   indicates that it was produced in this litigation by

5   EchoStar.

6   A.   Okay.

7   Q.   Could you describe very generally for the jury the

8   kinds of information that are included -- let me take a step

9   back.

10   What is this document?

11 A.   It's part of our communication, of our report.

12 Q.   Okay.

13 A.   It's an example of reports.

14 Q.   And is this --

15 A.   Communication, written communication.

16 Q.   Is this a report designed to provide information on the

17 status of NDS investigations?

18 A.   Yeah. We used to call it "global review." And it was

19 relevant to operation security only, yes.

20 Q.   Okay. Would it be harmful to NDS if the information in

21 this document, Exhibit 477, were in the hands of pirates?

22 A.   We could expose -- we could expose Chris Tarnovsky. We

23 could -- it could expose Chris Tarnovsky. It could expose

24 our plans to attack Ron Ereiser's team. It would expose our

25 other targets. It would expose the information we have and

1   the information we are going to have or trying to get,

2   targets I mention before.

3   And some of our technical capability. For example, if

4   you see "P12 racket" on Page -- I don't know what page --

5   the table.

6   Q.   On the fourth page of the document about halfway down

7   under the heading "operations"?

8   A.   Yes, yes.

9   Q.   Is that --

10   A.   We were preparing fake P12 cards, which will be a big

11   disaster if it will come out from operational point of view.

12   So there are many subjects here which will cause a big

13   damage to NDS, yes.

14   Q.   Does this document also mention some of the people

15   working with NDS, such as Mr. Tarnovsky?

16   A.   Yes. I mentioned before Chris Tarnovsky, yes.

17   Q.   Could it be dangerous to Mr. Tarnovsky if this

18   information got out?

19   A.   As mentioned before, pirate community is a violent

20   community, and it would be a big risk, yeah.

21   Q.   Now, Mr. Hasak, you understand that in this litigation

22   NDS is accused of posting code for the EchoStar system on

23   the Internet?

24   A.   Yes.

25   Q.   Have you ever received any code from an EchoStar card

1   or system?

2   A.   Never.

3   Q.   Are you aware of anyone in operational security

4   receiving code for the EchoStar system?

5   A.   No.

6   Q.   Mr. Hasak, if NDS were going to have an operation or --

7   if NDS were going to be involved in the piracy of a

8   competitor's system, would you know about that?

9   A.   Very -- very theoretical question. The answer is yes.

10 Q.   Would you have to approve that?

11 A.   Yes.

12 Q.   Has anyone ever suggested to you that NDS should

13 participate in the piracy of a competitor's system?

14 A.   No.

15 Q.   Have you ever approved an operation involving piracy of

16 a competitor's system?

17 A.   No.

18 Q.   Are you aware of any participation by NDS in the piracy

19 of a competitor's system?

20 A.   No.

21 Q.   Mr. Hasak, if NDS were going to participate in the

22 piracy of a competitor's system, would you have to notify

23 Dr. Peled?

24 A.   Yes.

25 Q.   Have you ever suggested any kind of operation involving

1   the piracy of a competitor's system to Dr. Peled?

2   A.   No.

3   Q.   That has never happened?

4   A.   Never happened.

5   MR. SNYDER: Thank you, Mr. Hasak. No more

6   questions.

7   THE COURT: Why don't we take a recess at this

8   time.

9   You're admonished not to discuss this matter

10   amongst yourselves nor form or express any opinion

11   concerning this case.

12   Have a nice recess.

13   (Jury recesses at 9:28 a.m..)

14   THE COURT: (To the witness:) Thank you, sir. If

15   you'll step down, and we'll take 20 minutes, please.

16   (Witness steps down.)

17   MR. SNYDER: I want to speak to counsel for just a

18   moment. Thank you very much, sir. If you would like to

19   step outside.

20   (Witness complies.)

21   THE COURT: Counsel, if you would please be

22   seated.

23   (Outside the presence of the jury.)

24   THE COURT: Previously during the Saturday or

25   Sunday session, there was a disagreement between the two of

1 you informally that you were kind enough to alert the Court

2 to concerning Exhibit Nos. 613 and 626. And the breadth of

3 that included not only the desire by NDS to get in the

4 burglary of Mr. Adams' automobile, but also information in

5 the same documents concerning the murder or suicide of the

6 gentleman in West Germany.

7   It appears to this Court, because of the scope of

8 the direct examination, that previously I was inclined to

9 preclude much of this information from either party if there

10 was an objection. But now I think it's almost become

11 ridiculous. This gentleman's qualified as a security

12 expert, maybe one of the world's foremost experts. He's

13 certainly going to be aware of the murder in West Germany or

14 the suicide.

15   He's going to be aware of Ray Adams and the

16 relationship with Mr. Withall. His expertise now extends to

17 almost all security arrangements.

18   But I wanted to pay the courtesy of NDS making it

19 outside the presence of the jury. You can have a continuing

20 objection if you would like.

21   MR. SNYDER: So the question, Your Honor, is to

22 Exhibit 613 and 626?

23   THE COURT: 613 and 626 of the murder in

24 West Germany.

25   MR. SNYDER: We do not object, Your Honor.

1   THE COURT: I think that takes that off the table,

2   and now EchoStar doesn't need to fear violating any of the

3   Court's concerns in that matter.

4   Now, are there any other issues before

5   cross-examination?

6   MR. HAGAN: No, Your Honor.

7   MR. SNYDER: No, Your Honor.

8   THE COURT: Okay. Thank you very much. Have a

9   nice recess.

10   (Recess held at 9:30 a.m.)

11   (Proceedings resumed at 9:53 a.m.)

12   (In the presence of the jury.)

13   THE COURT: All right. The jury's present all

14   counsel, all the parties.

15   If you would please be seated. Thank you for your

16   courtesy. This is cross-examination, Mr. Hagan, on behalf

17   of EchoStar.

18   MR. HAGAN: Thank you, Your Honor.

19   CROSS-EXAMINATION

20   BY MR. HAGAN:

21   Q.   Good morning, Mr. Hasak.

22   A.   Good morning, Mr. Hagan.

23   Q.   Now, during your direct examination you spent quite a

24   bit of time trying to get the point across that hacking a

25   competitor is bad, and NDS would not have engaged in that

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1 conduct.

2   Do you recall that testimony?

3 A. Yes.

4 Q. You're familiar with a company called Seca, are you

5 not?

6 A. Yes.

7 Q. Who is Seca?

8 A. An affiliate of Canal+.

9 Q. And that was -- during the '96 to '99 time frame, that

10 was a competitor of NDS, correct?

11 A. I don't remember.

12 Q. Now, during that time frame did Seca use the NDS

13 technology?

14 A. Not to the best of my knowledge, no.

15 Q. Now, isn't it true, Mr. Hasak, that NDS was, in fact,

16 responsible for leaking pirate information into the

17 community about the Seca system or the Canal system?

18 A. Please repeat your question.

19 Q. Isn't it true, Mr. Hasak, that NDS was responsible for

20 leaking information into the pirate community about the Seca

21 system or Canal system?

22 A. You asked about Seca system?

23 Q. Yes, sir.

24 A. The answer is no.

25 Q. Let's take a look at Exhibit 610.

1   This is an e-mail exchange, Mr. Hasak, between Avigail

2   Gutman and Ray Adams. On the subject line it says "ASTRO."

3   You understand that to mean ASTRO MEASAT, correct?

4   A.   I don't remember ASTRO MEASAT.

5   Q.   We'll look at the text of the document in a minute, and

6   maybe it will come back to you.

7   Avigail Gutman and Ray Adams in October of '99 were

8   both NDS employees, correct?

9   A.   Yes.

10   MR. HAGAN: Your Honor, I would offer Exhibit 610

11   into evidence.

12   THE COURT: Any objection?

13   MR. SNYDER: No objection.

14   THE COURT: Received.

15   MR. HAGAN: And, Clint, if you could, let's blow

16   up the bottom portion of Exhibit 610.

17   (Exhibit No. 610 received in evidence.)

18   (Document displayed.)

19   BY MR. HAGAN:

20   Q.   Mr. Hasak, what was Avigail Gutman's role at NDS in

21   October of 1999?

22   A.   She was with the Jerusalem team, as far as I recall.

23   Q.   And what was her job responsibilities?

24   A.   She was running the team.

25   Q.   Now, if you'll look at the bottom e-mail from

1   Ms. Gutman, she writes to Ray Adams as follows: "I would

2   like to use it to divert their attention away from our

3   system, but before I do, I want to make sure with you that

4   there is nothing about the box or card that can be traced

5   back to us...question, is there"?

6   A.   Yeah.

7   Q.   Did you understand Ms. Adams (sic) to be referring to a

8   pirate device for the Seca or Canal system?

9   A.   It's difficult for me to read here. I mean, it's

10   deleted, you see? And so also, I have to reread it. Okay?

11   Q.   Certainly. And I'll read it with you.

12   A.   Okay.

13   Q.   It says, "Hi. Remember, you sent me the analysis ASTRO

14   (Seca system)? Well, the Haifa team have finally decided

15   they are not interested in my logging it...I would like to

16   use it to divert their attention away from our system, but

17   before I do, I want to make sure with you that there is

18   nothing about the box or card that can be traced back to

19   us."

20   Do you understand Ms. Gutman to be referring to a

21   pirate box, reprogramming box, for the Seca or Canal+

22   system?

23   A.   It's a pirate device, I guess, yeah.

24   Q.   And part of NDS's antipiracy strategies was to filter

25   information into the market about pirating NDS's competitors

1   to try to hope the pirates would focus their attention there

2   and not on your technology --

3   A.   No.

4   Q.   -- is that correct, sir?

5   A.   No. You are wrong.

6   Q.   Did you understand in this e-mail Ms. Gutman is trying

7   to determine from a technical standpoint whether or not

8   there is anything about the box or the card that can be

9   traced back to NDS?

10   A.   Yes, I see it.

11   Q.   Now, Mr. Hasak, isn't it also true that NDS engaged in

12   an almost identical plan for spreading misinformation into

13   the pirate community about EchoStar's system?

14   A.   No. This is not an example. And EchoStar's the same.

15   We didn't do it.

16   Q.   Let's take a look at exhibit --

17   A.   Sorry.

18   Q.   I'm sorry, I didn't mean to cut you off.

19   A.   I wanted to tell you that maybe -- I just wanted to say

20   that maybe it was initiative of Ms. Gutman. It was never

21   approved.

22   Q.   Now, let's take a look at Exhibit 1568.

23   MR. HAGAN: Your Honor, this has already been

24   admitted into evidence.

25   (Document displayed.)

1   BY MR. HAGAN:

2   Q.   Now, Mr. Hasak, I'll represent to you that this was a

3   document produced by NDS's lawyers in this case, which is a

4   text file of an e-mail exchange between Chaim Shen-Orr and

5   John Norris. And there's metadata attached to the back of

6   it to authenticate that exchange.

7   Who is Chaim Shen-Orr?

8   A.   Chaim Shen-Orr is a technician in Israel. Regretfully,

9   now he's very sick with cancer.

10   Q.   Chaim Shen-Orr was the boss of David Mordinson and Zvi

11   Shkedy at the time they developed a hack for EchoStar's

12   system; is that correct?

13   A.   Wrong, because they didn't develop a hack of EchoStar.

14   So don't say -- I didn't say it. But he -- at some times he

15   was the boss in Haifa, yes.

16   Q.   If Mr. Mordinson testified that he did, in fact,

17   develop a hack for EchoStar's security system and write that

18   hack in a Headend Report, do you believe that his testimony

19   is inaccurate?

20   A.   To my -- to my best understanding, I call it -- I call

21   it technical research. So don't put in me things that I

22   don't know.

23   Q.   Now, let's look down at what Mr. Shen-Orr is asking of

24   John Norris.

25   MR. HAGAN: Clint, if we can blow up the paragraph

1   that starts with "They need to be absolutely certain."

2   That's it right there.

3   BY MR. HAGAN:

4   Q.   Now, in 1998 David Mordinson and Zvi Shkedy's boss is

5   writing to Mr. Norris, who is Chris Tarnovsky's boss, and

6   he's asking him as follows: "Hi. The field told our

7   contact of their requirement for a second image of the code

8   for comparison reasons."

9   THE COURT: Just a moment. Just a second.

10   Which portion are you reading from? There's a

11   portion outlined in red that doesn't --

12   MR. HAGAN: Scroll up just a little bit.

13   THE COURT: It doesn't appear to be what you're

14   reading from.

15   MR. HAGAN: Starting with "Chaim."

16   BY MR. HAGAN:

17   Q.   Mr. Shen-Orr writes to Mr. Norris: "Chaim, the field

18   told our contact of their requirement for a second image of

19   the code for comparison reasons."

20   And then if you'll look down just a little bit, there's

21   a paragraph that starts with "they need to be absolutely

22   certain." Do you see that, Mr. Hasak?

23   A.   Yes.

24   Q.   And here Mr. Shen-Orr -- I'm sorry, Mr. Norris states

25   as follows: "They need to be absolutely certain there is

1   not the hidden possibility of identifying the ID of the

2   EchoStar card that their code comes from, some kind of a

3   fingerprint or a receiver's serial number, if a card has

4   been paired, in the code that is developed. They can do

5   this if they have code from a second card."

6   Now, you would agree with me, Mr. Hasak, that that is

7   very similar language to what Ms. Gutman is using in

8   Exhibit 610, where she says, "I want to make sure with you

9   that there is nothing about the box or the card that can be

10 traced back to us"?

11 A.   So what the question?

12 Q.   You would agree that the language being used in both of

13 those e-mails is similar?

14 A.   I don't think so. This looks to me more technical.

15 Avigail Gutman is not a technician.

16 Q.   Now, there's a reference to a gentleman named

17 Mr. Strong at the top of Exhibit 1568. Who is Mr. Strong?

18 A.   I don't know.

19 Q.   There's also a reference to "the field and our

20 contact." Who do those refer to?

21 A.   I don't know.

22 Q.   Mr. Rubin testified earlier in the trial that they

23 relied upon Chris Tarnovsky's estimate of a hundred thousand

24 pirated EchoStar cards. And in that document they refer to

25 the person providing that information as the field contact.

1   Do you believe, knowing that information, that the

2   field and "our contact" reference in Exhibit 1568 is to

3   Christopher Tarnovsky?

4   A.   I can't say it. I don't know. I don't know what

5   document you are talking about from Mr. Rubin, so I don't

6   know.

7   Q.   Let's take a look at page 3 of Exhibit 1568.

8   MR. HAGAN: It's page 2 of the actual document,

9   Clint, but there's two cover pages.

10   That's it. Would you blow up the version 2,

11   version 3 chip.

12   (Document displayed.)

13   BY MR. HAGAN:

14   Q.   Mr. Hasak, there is -- there are two entries on the top

15   of this page for a version 2 chip and version 3 chip. It's

16   got an IRD number and a card number.

17   A.   Yes.

18   Q.   Would it surprise you, sir, if one of those numbers was

19   traced back to the EchoStar account of Christopher Tarnovsky

20   that the defendants were paying for?

21   A.   I really don't understand your question. I'm sorry.

22   Q.   Knowing that information, do you believe that the

23   reference to the field contact on page 1 of Exhibit 1568 is

24   to Christopher Tarnovsky?

25   A.   I cannot get into this conclusion, no.

1   Q.   Who would know the answer to that conclusion?

2   A.   Maybe Shen-Orr. I don't know.

3   Q.   And you understand that Mr. Shen-Orr has not been made

4   available for us to depose him in this case, correct?

5   A.   I know that he is very sick, yes.

6   Q.   Now, during the latter part of your testimony, I

7   believe you said it was just a coincidence that Chris

8   Tarnovsky and Al Menard were terminated from NDS just three

9   days before their court-ordered deposition. That was a

10   coincidence, correct?

11   A.   No. I said that the two -- the two things happened

12   coincidentally in the same time. What I mean is the date,

13   not the reasons. I mean, the fact was that his contract

14   expired on 1st of April. That's it.

15   Q.   Now, let's talk about some other events relevant to

16   this case, and let's see if we can determine whether or not

17   they are just a coincidence.

18   You're aware, sir, that the Haifa team

19   reverse-engineered the Canal+ system, which was one of NDS's

20   competitors, correct?

21   A.   Internet research, also technical research.

22   Q.   And you're aware that the code extracted from Haifa was

23   posted on Allen Menard's dr7 website, correct?

24   A.   Correct.

25   Q.   And you're aware that the date and time stamp from that

1   code on Mr. Menard's website was the same date and time

2   stamp as the code that the defendants extracted in their

3   Haifa facility, correct?

4   A.   No.   What is correct, Oliver Kommerling told me that it

5   is the same time stamp.

6   Q.   Okay.   So NDS reverse -- let's use your words.   NDS did

7   technical research on their competitor, Canal+.

8   A.   Yes.

9   Q.   And they pulled code out of that card, and that code

10   ended up on Mr. Menard's dr7 website.   Is that, in your

11   opinion, a coincidence?

12   A.   I don't know if it was the same code, but it was on the

13   Net, yes.

14   Q.   Do you believe that was just a coincidence?

15   A.   No.   The fact that it was on the Net, I'm not saying if

16   it was a coincidence or not.   I cannot say about what

17   happened between NDS and the Net.

18   Q.   Now, you're also aware that NDS hacked -- performed

19   technical research on EchoStar's security system in the

20   Haifa facility, correct?

21   A.   Yes.

22   Q.   And extracted codes -- we heard from David Mordinson

23   that they extracted codes and developed a method to hack

24   EchoStar's security system.   That method was posted on Al

25   Menard's dr7 website.   Do you believe that is just a

1   coincidence?

2   A.   I'm not aware of this method being published.

3   Q.   If I -- we've seen it as Exhibit 998, but if I put a

4   document in front of you that has codes and technical

5   information, you would not understand that, right?

6   A.   I would not understand it, no.

7   Q.   Now, you testified that Christopher Tarnovsky received

8   money concealed inside electronic equipment from Canada

9   through a mail account in Manassas, Virginia, correct?

10   A.   What's correct? What's the question?

11   Q.   You testified that you knew -- you had knowledge that

12   Chris Tarnovsky received money concealed inside electronic

13   equipment from Canada through a mail account NDS paid for in

14   Manassas, Virginia, correct?

15   A.   Yes. Yes.

16   Q.   And you're also aware, because it was one of the

17   reasons underlying the termination of Chris Tarnovsky, that

18   packages with money concealed inside electronic equipment

19   were intercepted by government officials through

20   Mr. Tarnovsky's mail account in San Marcos, Texas, correct?

21   A.   You're -- your question is so long. You have to cut it

22   into pieces. I'm sorry. Or you want it to be translated?

23   Q.   Sure. Let me see if I can break it down.

24   A.   Okay.

25   Q.   You are aware that two packages were intercepted at

1   Chris Tarnovsky's mail account in San Marcos, Texas,

2   correct?

3   A.   Correct.

4   Q.   And they were intercepted by government officials,

5   correct?

6   A.   Correct.

7   Q.   And when they analyzed those packages, they found over

8    $40,000 concealed inside electronic equipment, correct?

9   A.   Correct.

10   Q.   Now, knowing that Chris Tarnovsky admitted to receiving

11   money in the same way, through the NDS mail account in

12   Virginia, do you believe it's just a coincidence that those

13   packages were intercepted at the mail account in Texas?

14   A.   I don't understand. What do you mean by "coincident"?

15   Q.   You testified at your deposition that you asked Chris

16   Tarnovsky about those packages in Texas. Do you recall

17   that?

18   A.   Yes.

19   Q.   And he told you he didn't know anything about 'em, that

20   someone was trying to set him up?

21   A.   Yes.

22   Q.   But then later you terminated Mr. Tarnovsky after

23   looking at some of the evidence from the Canadian officials,

24   the RCMP, correct?

25   A.   Sorry. Repeat it, please.

1 Q.   Last year you terminated Christopher Tarnovsky after

2 reviewing evidence from the Canadian government, the RCMP,

3 about those packages, correct?

4 A.   I terminated him after he was shown the fingerprints

5 and he denied knowing where from the packages are.

6 Q.   Do you still believe, knowing that information, that

7 the packages being sent to Chris Tarnovsky in Texas was part

8 of some elaborate conspiracy to set him up?

9 A.   I cannot exclude this possibility.

10 Q.   But you still terminated him?

11 A.   Yes.

12 Q.   Now, you're aware that DirecTV filed a lawsuit against

13 NDS, correct?

14 A.   Yes.

15 Q.   And I don't want to get into the allegations in that

16 lawsuit, but you're aware that that lawsuit was filed,

17 correct?

18 A.   Very vaguely.

19 Q.   And after that lawsuit was filed, News Corp., the

20 defendants' parent company, purchased the controlling

21 interest in DirecTV, correct?

22 A.   I don't know the sequence of these events. I'm not

23 aware of it, no.

24 Q.   And then after that acquisition, the lawsuit went away.

25 Do you believe that that is just a coincidence?

1 A.   I'm not aware of the sequence of events. I was not

2 involved in this lawsuit.

3 Q.   You're aware that Canal+ filed a lawsuit against NDS?

4 A.   Yes.

5 Q.   And that lawsuit involved the publication of their

6 codes on dr7's website?

7 A.   Yes.

8 Q.   The same codes that were extracted by Mr. Mordinson at

9 the Haifa facility, correct?

10 A.   Correct.

11 Q.   After that lawsuit was filed, News Corp. purchased

12 certain assets of Canal+, correct?

13 A.   Correct.

14 Q.   And then that lawsuit went away, correct?

15 A.   Correct.

16 Q.   Do you believe that was just a coincidence?

17 A.   I don't know. You better ask the people who made the

18 purchases.

19 Q.   Now, Mr. Hasak, you understand that EchoStar filed a

20 lawsuit against NDS and that's what we're here about today?

21 A.   Yes.

22 Q.   And you understand that part of that lawsuit involves

23 NDS hacking EchoStar's system and then a post of code on

24 Mr. Menard's website?

25 A.   Yes.

1   Q.   And after that lawsuit was initiated, NDS went out and

2   hired Allen Menard. Do you believe that was a coincidence?

3   A.   Nothing to do between the two.

4   Q.   Now, I will represent to you that Mr. Mordinson's

5   Headend Report, the report that -- I will represent to you

6   that Mr. Mordinson's Headend Report -- and that is the

7   report that described how to hack EchoStar's system -- the

8   final version was dated November 1st of 1998. The first

9   Nipper posting was 11 days later, on November 12th, 1998.

10   Do you believe that is just a coincidence?

11   A.   I don't know when this report was done, so I can't

12   answer this question.

13   Q.   You're aware that in 1998 DirecTV became dissatisfied

14   with the security technology provided by your company,

15   correct?

16   A.   Yes.

17   Q.   And it was after that that Mr. Mordinson and Mr. Shkedy

18   hacked -- conducted technical research on EchoStar's

19   security system, correct?

20   A.   No, I don't know about it.

21   Q.   And then after that first Nipper posting in November of

22   1998, you're aware that DirecTV decided to remain with NDS

23   and not switch to Nagra.

24   Do you believe that is a coincidence?

25   A.   Mr. Hagan, I am not acquainted with this chain of

 1   events. I can't approve it, and I don't know.

 2   Q.   Now, when NDS's technology was compromised in the

 3   '96-'97-'98 time frame, the company decided to react and

 4   take action. And part of that action was to go out and

 5   recruit hackers, correct?

 6   A.   Recruit pirates.

 7   Q.   And at your deposition you testified that Christopher

 8   Tarnovsky was one of those hackers, correct?

 9   A.   Of these pirates, yes.

10   Q.   In fact, your testimony was that he was one of the two

11   best pirates in the world. Do you still stand by that

12   testimony?

13   A.   Yes.

14   Q.   And the other gentleman that you included in the top

15   two list, the gentleman at the dream team meeting, that was

16   Oliver Kommerling, correct?

17   A.   Correct.

18   Q.   Now, knowing that Oliver Kommerling was one of the two

19   best pirates in the world, can you explain to us why he was

20   allowed to participate in the technical research of NDS's

21   competitors?

22   A.   He was allowed to participate, as far as I recall, in

23   showing to the Haifa team how to use different methods of

24   technical research.

25   Q.   Technical research of NDS's competitors, correct?

1 A.   Technical research in general. I can't tell you if

2 competitors or not.

3   THE COURT: And, Counsel, be specific about

4 competitors. Who are you referring to?

5   MR. HAGAN: The Canal+ and EchoStar competitors.

6   THE WITNESS: I cannot confirm it.

7 BY MR. HAGAN:

8 Q.   Let's take a look at Exhibit 189.

9   Do you have that document in front of you, Mr. Hasak?

10 A.   Yes.

11 Q.   This is a report dated September 26th of 1997 to you,

12 Reuven, correct?

13 A.   Yeah, it's me.

14 Q.   And these are the types of reports that you would

15 receive from the people who reported to you at NDS, correct?

16 A.   No. It's a typical report of Ray Adams, not from other

17 people.

18 Q.   And what was Mr. Adams' position in 1997?

19 A.   He was the head of the UK antipiracy team.

20 Q.   And you are the head of worldwide antipiracy?

21 A.   Yes.

22 Q.   So Mr. Adams at this time reported to you?

23 A.   Yes.

24   MR. HAGAN: Your Honor, I'll offer Exhibit 189

25 into evidence.

1   THE COURT: Any objection?

2   MR. SNYDER: No objection.

3   THE COURT: Received.

4   (Exhibit No. 189 received in evidence.)

5   (Document displayed.)

6   (Live reporter switch with Jane Rule.

7   Further proceedings reported in Volume II.)

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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: May 2, 2008

13

14

15   _____

                          DEBBIE GALE, U.S. COURT REPORTER

16   CSR NO. 9472, RPR

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