

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

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ECHOSTAR SATELLITE)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-0950-DOC
)	
NDS GROUP PLC, et al.,)	
)	Day 14, Volume II
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Thursday, May 1, 2008

Jane C.S. Rule, CSR 9316
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 558-7755
08-05-01 EchoStarD14V2

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APPEARANCES OF COUNSEL:
FOR PLAINTIFFS ECHOSTAR SATELLITE CORPORATION, et al.:
T. WADE WELCH & ASSOCIATES
Attorneys at Law
BY: CHAD M. HAGAN
T. WADE WELCH
DAVID M. NOLL
CHRISTINE D. WILLETTS
Attorneys at Law
2401 Fountainview
Suite 700
Houston, Texas 77057
(713) 952-4334
FOR DEFENDANTS NDS GROUP PLC, et al.:
O'MELVENY & MYERS, LLP
Attorneys at Law
BY: DARIN W. SNYDER
NATHANIEL L. DILGER
DAVID R. EBERHART
MICHAEL O'DONNELL
Attorneys at Law
Embarcadero Center West
275 Battery Street
Suite 2600
San Francisco, California 94111-3305
(415) 984-8700
- AND -
HOGAN & HARTSON, LLP
Attorneys at Law
BY: RICHARD L. STONE
KENNETH D. KLEIN
Attorneys at Law
275 Battery Street
Suite 2600
San Francisco, California 94111-3305
(415) 984-8700
ALSO PRESENT:
SOPHIA LANSKY, Hebrew Interpreter

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I N D E X

EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
HASAK, REUVEN				
By Mr. Hagan		4		

EXHIBITS

Exhibit	Identification	Evidence
Plaintiffs' No. 610-A		41
Plaintiffs' No. 624		47
Plaintiffs' No. 626		51
Plaintiffs' No. 1538		11
Plaintiffs' No. 2009		64

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

2 DAY 14 - VOLUME II

3 (10:17 a.m.)

4 (Live reporter switch with Debbie Gale.)

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

7 REUVEN HASAK, DEFENDANTS' WITNESS (Continued.)

8 CROSS-EXAMINATION (Continued.)

9 BY MR. HAGAN:

10 Q Now, Mr. Hasak, there is a reference six paragraphs
11 down that starts with "Diesel"; do you see that?

12 A Diesel, yeah.

13 Q What is that a reference to?

14 A What's the question, please?

15 Q What is that reference to the name "Diesel"?

16 A Diesel, he was one of -- I guess -- he was an informant
17 to Ray Adams.

18 THE COURT: Well, you used the words "I guess."

19 THE WITNESS: No, I -- I delete it.

20 THE COURT: You're deleting the words "I guess"?

21 THE WITNESS: Huh?

22 THE COURT: You're deleting the words "I guess"?

23 THE WITNESS: Yes.

24 THE COURT: He was an informant to Ray Adams?

25 THE WITNESS: He was an informant to Ray Adams,

1 yes.

2 BY MR. HAGAN:

3 Q And what was his real name?

4 A I don't know.

5 Q Was it Dieter Shiell?

6 A It could be. I don't know.

7 Q And Diesel was a former pirate before becoming an
8 informant to NDS, correct?

9 A Either a pirate or a dealer.

10 Q A dealer in pirate devices?

11 A Yes.

12 Q Okay. Now, it says "The unmarry program he sent us is
13 nowhere as good as Anthony promised him"; do you see that
14 language?

15 A Yes, yes.

16 Q And do you understand that the unmarry program is a
17 pirate program related to EchoStar Smart Cards?

18 A No.

19 Q What is the unmarry program?

20 A It's a program which enabled cards to be put in a box,
21 but not in a specific box.

22 Q In other words, to get around or circumvent the
23 marrying process or pairing process between a box and a
24 card?

25 A Yes.

1 Q Now, going back to Exhibit 610 where Ms. Gutman is
2 saying, "I want to make sure with you that there is nothing
3 about the box or the card that can be traced back to us," do
4 you believe that that is referring to the unmarried program
5 discussed in Exhibit 189?

6 A I can't say it, no.

7 Q You understand that EchoStar, as part of its security
8 measures, has a pairing or marrying process between a box
9 and the card?

10 A I don't know it.

11 Q Now, if you'll look at page 2 of Exhibit 189. It will
12 be the -- actually, the third page in your document, because
13 there are two cover sheets.

14 The fourth paragraph down that starts with "I
15 retrieved," if we can blow that one up, Clint.

16 BY MR. HAGAN:

17 Q In this paragraph, Mr. Adams is telling you, "I
18 retrieved from Prince a copy of an analysis, an estimate for
19 the Bennetts on a Thompson chip." Who is Prince?

20 A Another informant of Ray Adams.

21 Q What is his real name?

22 A I don't know.

23 Q What analysis of the Thompson chip is Mr. Adams
24 referring to?

25 A Please excuse me. What was the question? I was

1 reading it.

2 Q Sure. What analysis of the Thompson chip is Mr. Adams
3 writing to you about?

4 A I don't know. I don't remember.

5 Q You understand that the EchoStar security system used a
6 Thompson chip?

7 A No, I don't know.

8 Q Now, there is a heading that says "Bulgarians"; do you
9 see that?

10 A Yes, yes.

11 Q And underneath that, there is a paragraph that
12 references the Irdeto digital system?

13 A Where is it? Now I don't see it. Where, please --

14 Q The first paragraph under "Bulgarians."

15 A Yeah, yeah.

16 Q Irdeto was a competitor of NDS?

17 A Yes.

18 Q You are aware that NDS Haifa engaged in revert --
19 engaged in technical research of the Irdeto system, correct?

20 A No, I am not aware of it.

21 Q Now, the reference to Bulgarians, is it -- is it true,
22 Mr. Hasak, that NDS recruited two Bulgarian hackers named
23 Plamen Donev and Vesselin or Vesco Nedelchev?

24 A Yes.

25 Q And at the time that you recruited those two Bulgarian

1 hackers, you understood that they were engaged in piracy
2 activities, like Mr. Tarnovsky?

3 A Yes.

4 Q Now, when -- well, let's back up for just a moment.
5 Let's turn to the next page of Exhibit 189.

6 And Clint, let's blow up the first paragraph under
7 "Main story."

8 BY MR. HAGAN:

9 Q And Mr. Hasak, I know that it's small print, so let me
10 read this for you.

11 A Okay.

12 Q Under "Main story," Ray Adams writes to you as follows:

13 "At present, I think we are on the edge of a serious
14 situation. I mentioned the loss of the business in Poland
15 to a rival. Listening to the marketing people, I cannot see
16 where we have had any success. At least part of the problem
17 is the history of the insecurity of our technology. P7 to
18 P10 were hacked, and that fact was very public knowledge.
19 Now, we have the same situation in the U.S.A."

20 You understood, when you received this from Mr. Adams,
21 that he was talking about the situation with the DirecTV
22 system, correct?

23 A Can I give you a general answer?

24 Q Certainly.

25 A Okay. I suggest you take all this report from Ray

1 Adams with two grains of salt. I don't -- much of it is
2 just -- how do you say it in English, blah, blah, blah?

3 (Laughter.)

4 THE WITNESS: You say in English, also?

5 Okay. Much -- I'm not joking, I'm not joking.

6 But this report and other reports was the way of
7 Ray Adams to -- to promote himself and to give all kind of
8 information that will make me take steps that he would like
9 to take. And he was a big rival of John Norris. He hated
10 Chris Tarnovsky because of Oliver Kommerling, a politician
11 and manipulation. So a big part of these stories are not --
12 are not true, and you have to -- to look at it as it is
13 with -- as I mentioned before, with two grains of salt, not
14 one.

15 BY MR. HAGAN:

16 Q So when you received this memo from Mr. Adams in 1997,
17 September of 1997, you just thought it was "blah, blah,
18 blah"?

19 A Most of it, yes. Most of it, yes.

20 Q And the part where he is talking about a serious
21 situation in the United States, is that one of the parts
22 that you thought was just "blah, blah, blah"?

23 A Yes, it was -- it was his way to try to step into
24 U.S.A. and to replace John Norris.

25 Q Now, you also understood that at that time, end of

1 1997, DirecTV was discontent or unhappy with NDS's product?

2 A I don't remember the dates.

3 Q Now, let's look at page 4, the second paragraph from
4 the bottom.

5 If we can blow that up, Clint.

6 BY MR. HAGAN:

7 Q Mr. Adams writes to you as follows:

8 "The result of more hacks will be a loss of confidence
9 and a loss of business. At present, we are not gaining most
10 of the new projects. How long before we actually lose one
11 to a competitor? Our jobs are on the line. Maybe not yet,
12 but we are vulnerable."

13 Now, is this part of Mr. Adams's memo to you that falls
14 under the category of "blah, blah, blah"?

15 A With capital letters, yes.

16 (Laughter.)

17 BY MR. HAGAN:

18 Q Now, at the time that Mr. Adams wrote this -- well, let
19 me back up.

20 Did you believe that it fell into that category of
21 "blah, blah, blah" in September of 1997?

22 A You mean what you just showed me?

23 Q Yes.

24 A Yes.

25 Q And Mr. Adams was reporting to you in September of

1 1997?

2 A Yes.

3 Q Mr. Adams was the head of security for NDS for the
4 United Kingdom?

5 A Yes.

6 Q And certainly, sir, after receiving this e-mail, you --
7 did you terminate him?

8 A No.

9 Q Did you discipline him?

10 A Yes.

11 Q What did you do?

12 A I called him, and I told him to stop with his "blah,
13 blah, blah." Not all of these were very effective.

14 Q Well, let's take a look at another one of the memos
15 that you received from Mr. Adams, Exhibit 1538.

16 Now, this is another one of the reports that you
17 received from Mr. Adams in 1999, correct?

18 A Yes.

19 MR. HAGAN: Your Honor, I would offer Exhibit 1538
20 into evidence.

21 THE COURT: Any objection?

22 MR. SNYDER: No objection.

23 THE COURT: Exhibit 1538 is received.

24 (Plaintiffs' Exhibit No. 1538 is received
25 into evidence.)

1 BY MR. SNYDER:

2 Q Now, if you'll look, Mr. Hasak, at page 4 of
3 Exhibit 1538, and at the bottom --

4 A The last one?

5 Q Page --

6 A Is it the last one?

7 Q No. The second to last --

8 A Oh, the one before the last, okay.

9 Q Yes, sir.

10 A Yeah.

11 MR. HAGAN: All right. And about halfway down the
12 page, Clint, there's a sentence that starts with "JOD was
13 heavily involved." Can you blow that up?

14 THE WITNESS: Yes.

15 BY MR. HAGAN:

16 Q Now, who is JOD?

17 A John O'Donnell.

18 Q And Mr. Hasak --

19 A John O'Donnell.

20 Q Mr. Hasak, in 1999 Ray Adams writes to you, and he
21 tells you that "John O'Donnell was heavily involved in the
22 DirecTV negotiations. He thinks we will lose them soon."

23 Did you have any involvement in the negotiations with
24 DirecTV to keep them from switching to Nagra's technology?

25 A The answer is no, but I had a meeting with DirecTV with

1 their lawyer regarding how to -- how to establish the --
2 the -- the joined unit, DirectTV, NDS. But I think it was
3 later, but I was involved in this lawsuit, no.

4 Q Were you involved in any aspect of the decision for NDS
5 Haifa to develop a hack for EchoStar's security system in
6 1998?

7 A I don't know about a hack -- developing a hack. I knew
8 about the -- the technical research.

9 Q Were you involved in the decision making process to
10 allow NDS Haifa to perform technical research on EchoStar,
11 one of its competitor's security system?

12 A No.

13 Q Who was involved in that decision?

14 A I guess the superior of Haifa team.

15 Q And that would include Chaim Shenor?

16 A I guess. I'm sorry.

17 I'm sorry, your Honor, I said "guess." I delete it.

18 BY MR. HAGAN:

19 Q And that would include Chaim Shenor?

20 A Yeah, the -- the answer would be, it would be one of
21 the superiors of Haifa team. And Chaim Shenor, no, I don't
22 think Chaim Shenor was the boss of Haifa team, of who could
23 approve it; somebody above.

24 Q Who was above Chaim Shenor?

25 A It could be Perry Smith, it could be Yossi Tzuria.

1 Yossi Tzuria, T-z-u-r-i-a.

2 Q Yossi Tzuria, that's -- that was an employee of NDS at
3 the time?

4 A Yes.

5 Q Did you ever become aware of allegations that
6 Mr. Tzuria was involved in terroristic activities and was --

7 A Sorry for smiling.

8 THE COURT: Well, just answer the question.

9 THE WITNESS: Yes, sir.

10 THE COURT: Answer the question.

11 THE WITNESS: Yes, sir.

12 1981, when I was back in the service, I was in
13 charge of -- of exposing an underground against -- a Jewish
14 underground against the Arabs. We exposed them. Yossi
15 Tzuria was one of the people who supported it. So he was
16 not a terrorist, but he went to jail because of knowing of
17 it and being a supporter. So the answer, he's not a
18 terrorist, but I knew he was in jail, yes, and because of
19 me.

20 BY MR. HAGAN:

21 Q And then NDS hired him after he got out of jail,
22 correct?

23 A Oh, yeah, sure.

24 Q Now, during the -- the course of the years of discovery
25 in this case, Mr. Hasak --

1 A Excuse me?

2 Q During the course of the years of discovery in this
3 action, Mr. Hasak, the lawyers exchanged questions to the
4 parties called "interrogatories." I want to take a look at
5 one of those sets of interrogatories and your company's
6 position.

7 Christine, if you could give Mr. Hasak Exhibit 1073.

8 THE COURT: Could I speak to counsel for just a
9 moment. Could I see just lead counsel for just a moment.

10 Could I -- would you excuse us for just one
11 moment.

12 Could I see the exhibit.

13 (The following proceedings is taken in
14 camera, outside the presence of the jury.)

15 THE COURT: All right. The gentleman who is on
16 the stand was asked a question about Mr. Tzuria --

17 MR. SNYDER: Tzuria, T-z-u-r-i-a.

18 THE COURT: -- who is known to Counsel and the
19 Court as the, quote-unquote, "terrorist" who is part of this
20 Israeli group to blow up the --

21 MR. SNYDER: The Dome of the Rock.

22 THE COURT: The Dome of the Rock.

23 I'm afraid with the introduction of the word
24 "terrorist," as this continues to expand, that the jury has
25 a vision of a foreign terrorist implementing some act

1 against the United States when, in fact, this is an internal
2 Israeli issue. So while nobody is precluded, now we are
3 into this broad area, because he is a security expert and is
4 expected to know all of the security across the world for
5 NDS, and we're finally getting at least top people in here.

6 I leave that to the two of you to ferret that out,
7 but I'm not going to preclude a discussion by either one of
8 you concerning what that terrorist act is, because EchoStar
9 dropped it at that point, and the jury could have visions of
10 terrorism, you know, New York, United States, and it has
11 nothing to do with that. It's an internal Israeli problem.

12 I am not saying that's de minimis, et cetera, but
13 the point being made he is a terrorist and, therefore, NDS
14 hires him, and I'm a little afraid of spillover, so either
15 one of you can get into that. You can object for the other
16 side, but leaving just the word "terrorist" dangling, this
17 has tremendous implications for both of you, and as a Judge,
18 I am now in an area not certain what to expect, so --

19 MR. HAGAN: I have no further questions on it.

20 THE COURT: I didn't think you would have. I am
21 just saying I am not precluding you or discouraging you, but
22 NDS has done something -- left the word "terrorist," so you
23 know that NDS can choose to get into it and all parties can
24 get into it since you continue to unwind this drama. Thank
25 you.

1 Counsel?

2 (The in-camera proceedings concluded.)

3 (The following proceedings is taken in the
4 presence of the jury.)

5 THE COURT: You were on interrogatories.

6 MR. HAGAN: Thank you, your Honor.

7 BY MR. HAGAN:

8 Q Mr. Hasak, before we took a short break, we were
9 talking about a set of interrogatories, which are questions
10 that were exchanged between the parties during the course of
11 discovery. You should now have in front of you a copy of
12 what is marked Exhibit 1073; do you have that, sir?

13 A Yes.

14 MR. HAGAN: Your Honor, I would move Exhibit 1073
15 into evidence.

16 THE COURT: Any objection?

17 MR. SNYDER: (No audible response.)

18 THE COURT: I don't think the whole document would
19 ever come in, Counsel. It would be the specific question, I
20 would think.

21 MR. HAGAN: We can do it question by question,
22 your Honor.

23 THE COURT: I think that's been somewhat in
24 agreement by all sides.

25 MR. SNYDER: Precisely, your Honor.

1 THE COURT: I will allow the question, but not the
2 entire document, unless it's relevant.

3 BY MR. HAGAN:

4 Q Let's focus on Interrogatory Number 5.

5 And Christine, if you could help him turn to that
6 particular page.

7 THE COURT: That would be page 4.

8 MR. HAGAN: Your Honor, I would move
9 interrogatory -- just that one question and answer into
10 evidence, so that we could display it for the jury.

11 THE COURT: Well, I'd like to see the relevant
12 question first.

13 MR. HAGAN: Okay.

14 THE COURT: This is just a broad --

15 BY MR. HAGAN:

16 Q Let me --

17 THE COURT: -- statement.

18 BY MR. HAGAN:

19 Q -- read it for you, Mr. Hasak.

20 "Interrogatory Number 5, we asked the defendants to
21 identify and describe each instance when you reverse
22 engineered, examined, tested, analyzed, modified, altered or
23 accessed any EchoStar access card, including without
24 limitation the date, location, all persons involved" --

25 THE COURT: Counsel, I must have the wrong

1 document. Is this 1073?

2 MR. HAGAN: Yes, your Honor.

3 THE COURT: Question number 5 --

4 MS. WILLETTS: Interrogatory Number 5 --

5 THE COURT: Oh, my apologies. Just a moment. Let
6 me see number 5 again. I had the first 5.

7 You may display that question, Counsel.

8 MR. HAGAN: Thank you, your Honor.

9 THE COURT: I'll reverse my ruling, now that I
10 have the correct question.

11 BY MR. HAGAN:

12 Q Mr. Hasak, in Interrogatory Number 5, we asked for your
13 company to identify every act of reverse engineering, or to
14 use your words, "technical research," for EchoStar's
15 security system. And the -- your company provided us with
16 an answer. It's on the next page. I won't read in all of
17 the lawyer language with objections, but I want to focus you
18 just down on the very last sentence of the answer.

19 Clint, if we could highlight that, just the last
20 sentence.

21 Yeah, you can just highlight the last sentence.

22 BY MR. HAGAN:

23 Q And in the last sentence, Mr. Hasak, your company
24 stated under oath as follows:

25 "Oliver Kommerling may also have been involved, and he

1 may also have conducted such activities at his lab in
2 Germany.

3 Now, did Oliver Kommerling participate in reverse
4 engineering EchoStar's security system at his lab in
5 Germany?

6 A I don't remember if it was EchoStar, but according to
7 what's written here, I have to accept it.

8 Q Did you ever personally visit Mr. Kommerling's lab in
9 Germany?

10 A Yes.

11 Q On how many occasions?

12 A Maybe two, maybe three times.

13 Q And on any of those occasions, did you question
14 Mr. Kommerling about his involvement in the reverse engineer
15 or technical research of EchoStar's security system?

16 A No.

17 Q Now, once you hired Chris Tarnovsky --

18 THE COURT: Excuse me. I'm sorry to interrupt.
19 Just a moment.

20 (Interruption in the proceedings.)

21 THE COURT: All right, Counsel. Please continue.
22 I'm sorry for the interruption.

23 MR. HAGAN: Thank you, your Honor.

24 BY MR. HAGAN:

25 Q Mr. Hasak, once you hired Chris Tarnovsky, part of his

1 role within the company was to continue to act like a
2 pirate, correct?

3 A You say to act or to hack?

4 Q To act.

5 A To act, to behave -- to behave as a pirate, yeah.

6 Q Now, you would agree with me, sir, that at the time
7 that you hired him, he was already behaving like a pirate,
8 correct?

9 A Yeah, yes.

10 Q And then you put him on the payroll, and you pay him
11 money to continue to behave like a pirate, correct?

12 A Under some limitations, yes.

13 Q Now, you would agree with me, sir, that that type of
14 conduct on your part involved some inherent risks, correct?

15 A Yes.

16 Q Now --

17 A But as I said before, we took control to control it.

18 Q And we'll get to control in just a moment, but you
19 would agree with me that there were risks involved with
20 hiring pirates like Chris Tarnovsky and then paying them to
21 continue to act or behave like a pirate, correct?

22 A If -- as I said before, it's -- it's one of the
23 considerations that should be -- which should be controlled,
24 yes.

25 Q Part of the way that Chris Tarnovsky continued to

1 behave like a pirate was to post information on pirate
2 websites, correct?

3 A Not to post, but to communicate with pirates.

4 Q Did -- well, let's back up for a moment.

5 Is it your testimony that Chris Tarnovsky did not post
6 information on pirate websites as part of his work for NDS?

7 A To the best of my recollection, his task -- his task
8 was to communicate with pirates, not to post.

9 THE COURT: Reask the question. Maybe the
10 gentleman didn't understand.

11 BY MR. HAGAN:

12 Q Is it your testimony that Christopher Tarnovsky did not
13 post any information on pirate websites as part of his work
14 for NDS?

15 A My answer would be that he was communicating with
16 pirates. I don't remember any case that he was posting
17 somebody -- something.

18 THE COURT: You may ask the question again.

19 Maybe you've misunderstood, sir. I want to make
20 sure you hear the question.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Reask the question.

23 BY MR. HAGAN:

24 Q Is it your testimony, Mr. Hasak, that Christopher
25 Tarnovsky did not ever post information on pirate websites

1 as part of his work for NDS, and that part being "behave
2 like a pirate"?

3 A I don't remember any case that he was posting, but
4 that's it.

5 Q Now, you understand as the head of operational security
6 worldwide, that the way pirates communicate on these
7 websites is to post information, whether it be questions and
8 answers, portions of code or instructions?

9 A Okay. There is a misunderstanding between you and me.
10 When I say -- I mean, communicating between the pirates,
11 which you call it posting. I'm calling communicating
12 between pirates, yes. The answer is yes.

13 Q And you would agree, Mr. Hasak, that Chris Tarnovsky
14 posting or communicating with pirates on these pirate
15 websites as part of his work for NDS involved some inherent
16 risks?

17 A Yes.

18 Q Mr. Tarnovsky did not post on these websites using his
19 name, Chris Tarnovsky, he posted using what's known as
20 aliases, correct?

21 A His communication with other pirates was -- were in
22 aliases.

23 Q And as the head of operational security worldwide, did
24 you take it upon yourself to get a list of all of the
25 aliases that Chris Tarnovsky used to conduct activity

1 behaving like a pirate on the internet?

2 A If you mean by myself, I had the list, the answer is
3 no, my people had the list. I --

4 Q I'm sorry?

5 A I made sure that he gave -- that he would gave them --
6 he would give them all the -- all the names that he was
7 using.

8 Q Have you ever seen that list?

9 A No.

10 Q Has anyone ever told you that that list existed?

11 A Yes.

12 Q Okay. Is there any particular reason why that list
13 wasn't produced to us in this case?

14 A I don't think it was a written list; I don't know. I
15 never saw it.

16 Q So it was just a verbal list by Chris Tarnovsky of the
17 aliases that he used to conduct business on the pirate
18 websites?

19 A It was a verbal way that my people told me that they
20 know all the aliases of Chris Tarnovsky.

21 Q Who within your organization told you that?

22 A It could be -- it could be one of three, Avigail
23 Gutman, Roni Segoly or Yoni Shiloh.

24 Q And they never showed you a list of Chris Tarnovsky's
25 aliases, correct?

1 A I never asked them to show me a list.

2 Q As the head of operational security worldwide, don't
3 you think it would have been important for you to see such a
4 list?

5 A No.

6 Q You just testified that there were inherent risks in
7 allowing Chris Tarnovsky to communicate on these pirate
8 websites, and you don't think it was important for you to
9 see a list of aliases through which he would communicate?

10 A Not for me, for my people who got an order from me to
11 use -- to -- to enter internet research, not for me. I was
12 not -- I was not running the internet research.

13 Q The only alias -- well, let me ask it another way.

14 Can you please name for us all of the aliases that
15 Christopher Tarnovsky used that you were aware of?

16 A Mike, Von -- Big Gun, I don't know if he used it or
17 used nickname.

18 Q Big Gun?

19 A Big Gun.

20 Q Any others?

21 A No, that's what I remember.

22 Q Well, we -- we did not receive a list of these aliases,
23 so we asked in interrogatory to your company. And if you'll
24 turn to page 5.

25 Christine, maybe you can flip that page for him. It's

1 Interrogatory Number 8.

2 BY MR. HAGAN:

3 Q And in that request, Mr. Hasak, we asked the defendants
4 to identify and describe each alias used by Chris Tarnovsky
5 from January, '98 through present, which was the date of
6 these interrogatories last year. And if you'll look down to
7 the response, the defendants listed the following.

8 And Clint, can we blow up the -- the list of aliases
9 under "Response to Interrogatory 8."

10 THE WITNESS: Yes, I see it.

11 BY MR. HAGAN:

12 Q And they identified Mike George, Shrimp, The Shrimp,
13 Arthur Von Neumann, Von, Von Rat, and Vonrola. Do you
14 believe that that list is accurate?

15 A I believe so.

16 Q Do you believe that that list identifies all of the
17 aliases that Christopher Tarnovsky used to conduct business
18 on the internet?

19 A I believe so.

20 Q Were you aware that Chris Tarnovsky used the alias
21 "Coleman," and he admitted to that at his deposition and at
22 trial?

23 A No.

24 Q Were you aware -- well, you said that you were aware
25 that Chris Tarnovsky used the alias "Big Gun," correct?

1 A No. I said that maybe he used the other nickname he
2 had than Big Gun.

3 Q Well, the interrogatory requests every screen name,
4 alias, pseudonym, handle or nickname, so that would have
5 fallen under the nickname category, correct?

6 MR. SNYDER: Your Honor, I would ask the --
7 counsel read the complete interrogatory, which is limited in
8 time.

9 MR. HAGAN: I'll be happy to read it, your Honor.
10 BY MR. HAGAN:

11 Q "Identify and describe each screen name, alias,
12 pseudonym, handle or nickname, collectively alias, used by
13 Chris Tarnovsky from January 1998 through the present date
14 in either a work-related or personal capacity."

15 "Big Gun" is not in the answer to Interrogatory Number
16 8, is it, Mr. Hasak?

17 A I don't see it here.

18 Q Chris Tarnovsky also admitted to using the alias
19 "Artie" and "Artichoke," but those aren't in this list
20 either, are they?

21 A I -- I know -- I don't know about the name "Artie."

22 Q And you understand that this answer was provided under
23 penalty of perjury by your company, correct?

24 A It's up to our legal. I don't know.

25 Q So after looking at that list and your recollection and

1 Chris Tarnovsky's testimony, you would agree with me, sir,
2 that it may have been a good idea to have a written list of
3 all Chris Tarnovsky's aliases, correct?

4 A If you ask me today, maybe it would be a good idea, but
5 maybe there was a list. I don't know.

6 Q Well, you took it upon yourself to ensure that Chris
7 Tarnovsky's activities, once he got hired by NDS, were
8 supervised and monitored, correct?

9 A Not upon myself. I have people who are doing it. I
10 took part only in -- in -- with -- in talking with him,
11 mainly in talking with him. All the other was done by other
12 people.

13 Q And some of Mr. Tarnovsky's work for NDS was to
14 communicate with pirates on these pirate websites?

15 A Yes.

16 Q How were you or your people able to effectively monitor
17 Chris Tarnovsky's postings on pirate websites without
18 knowing a complete list of his aliases?

19 A First of all, I don't think we --

20 (Interruption in the proceedings.)

21 THE WITNESS: I don't agree with what you are
22 saying, that we didn't have the full list.

23 Secondly, we knew exactly his way of writing. It
24 was very easy to identify it. And thirdly, we used to
25 brief -- and did brief him with what's going on the net.

1 And thirdly -- and fourthly, we had
2 cross-referenced to every piece of information that was
3 relevant to us. Not done by me, but I -- done by people
4 according to my instructions.

5 BY MR. HAGAN:

6 Q Did any of your people ever take samples of Chris
7 Tarnovsky's postings, his style of coding or the way he
8 writes, as you said, and compare it to postings that were on
9 pirate websites to determine whether or not he was
10 responsible for those postings?

11 A You're asking if I did it?

12 Q Did any one of your people under you do that?

13 A I assume they did, yes, it was part of the job.

14 Q Do you know where those documents would be?

15 A I -- I don't think it's documents. They're just
16 reading and looking for some comparison. It's not a
17 document.

18 Q Now, we talked a little bit about a gentleman named
19 Allen Menard earlier, and how Mr. Menard was hired by NDS
20 after the inception of this lawsuit. Are you aware,
21 Mr. Hasak, that the defendants paid Mr. Menard nearly
22 \$400,000 after this lawsuit was filed for him to surf the
23 internet?

24 A I don't know this amount.

25 Q Would it surprise you if he was paid nearly \$400,000 to

1 surf the internet?

2 A For -- what's the -- what's the -- what was the period
3 was he paid \$400,000, five years or one year or one month?

4 I don't know.

5 Q He was retained in 2003, and he was terminated the same
6 day as Chris Tarnovsky, last year.

7 A So it's four years or three years?

8 Q Yes, sir.

9 A So it looks to me like a good salary.

10 (Laughter.)

11 BY MR. HAGAN:

12 Q Particularly, for just surfing the internet?

13 A It's a difficult job. Don't underestimate the
14 difficulty of running the internet -- see, my people in
15 Jerusalem, it's 24/7, so it's not an easy job to do it.

16 Q Now, as part of Mr. Menard's agreement with NDS to get
17 that nearly \$400,000 to surf the internet, did you ever take
18 a look at any of his work product, any logs of what he was
19 doing to get that money?

20 A No.

21 Q Do you know if anyone did?

22 A Oh, yes. I mean, the Jerusalem team invest a lot of
23 time in working together with Al Menard.

24 Q And do you know why those supposed logs of his activity
25 were not produced in this case?

1 A I don't know.

2 Q Now, let's look at Interrogatory Number 7.

3 It's on page 4, Christine, if you'll turn to that page
4 for him.

5 BY MR. HAGAN:

6 Q In Interrogatory Number 7, Mr. Hasak, we asked your
7 company to identify and describe the relationship, whether
8 business, employee, agency, independent contractor or other.
9 Anyways, in the broadest term, describe your relationship
10 with a list of individuals. One of those individuals was
11 Allen Menard; do you see that, he's number 6?

12 A Yes.

13 Q Now, if you will turn -- actually, start on the bottom
14 of that page and read to the top of the next page, and let
15 me know if there is any statement under oath by your
16 company --

17 A I lost you --

18 Q -- that Mr. Menard was --

19 A I lost you. Mr. Hagan, I lost you.

20 Q If you could, read the response to Interrogatory
21 Number 7 to yourself, and let me know if there is any
22 portion of that response that advises us Mr. Menard was an
23 employee of NDS.

24 A Consultant. He wasn't an employee. He was a
25 consultant.

1 Q Consultant?

2 A Yeah.

3 MR. SNYDER: Your Honor, I have an objection. May
4 I be heard?

5 THE COURT: Certainly.

6 MR. SNYDER: Do you want me to go ahead in front
7 of the jury, your Honor?

8 THE COURT: Well, let's wait.

9 Much of this may also be a timing issue, when
10 things are disclosed.

11 What's the date of the interrogatory, Counsel?

12 MR. HAGAN: November 23rd, 2005.

13 THE COURT: All right. And Counsel, you'll be
14 able to come back on redirect and explain when.

15 MR. SNYDER: The issue isn't timing, your Honor.
16 There was an agreement between counsel in responding to this
17 interrogatory that the answer would be limited to
18 Mr. Tarnovsky.

19 THE COURT: Well, it's hard to tell those private
20 agreements. Is there maybe -- is there something in writing
21 that you two have?

22 MR. SNYDER: I believe it's in the response.

23 THE COURT: Well, then, if it's in this
24 interrogatory, a response, you're more than welcome to show
25 it.

1 MR. SNYDER: Thank you.

2 THE COURT: I won't limit you at this point,
3 either one of you.

4 Counsel?

5 BY MR. HAGAN:

6 Q Mr. Hasak, maybe I can short-circuit this a little bit.
7 I'll represent to you that nowhere in this response did your
8 company notify us that Allen Menard was a consultant of NDS
9 in November of 2005.

10 Now, I bring this issue up, because it is important.
11 We asked to depose Mr. Menard to get his sworn testimony.
12 And sir, do you know that the first time we learned Allen
13 Menard was a consultant for your company and he was hired
14 after this lawsuit was filed was 72 hours after you
15 terminated that relationship?

16 A (No audible response.)

17 Q Now, do you believe that that is just a coincidence?

18 A Your theory is too long for me. Please cut it in two
19 pieces, okay? In Hebrew, I can do it, but in English, you
20 better cut it in pieces.

21 Q We'll -- we'll move on, Mr. Hasak.

22 One of the issues that you testified about this morning
23 was operation Johnny Walker?

24 A Yes.

25 Q Do you recall that testimony?

1 A Yes, yes.

2 Q And that was a legitimate anti-piracy operation by NDS,
3 correct?

4 A Yes.

5 Q That was all done aboveboard with DirecTV's knowledge?

6 A Yes.

7 Q And Chris Tarnovsky was involved in that operation?

8 A Yes.

9 Q And this was in 1997, the same year that he was hired
10 by NDS?

11 A Yes.

12 Q And as part of this operation, Mr. Tarnovsky was
13 instructed to develop a device for creating pirated access
14 cards, correct?

15 A No. There was a device developed by NDS involving
16 Chris Tarnovsky.

17 Q And the purpose of that device was to create pirated
18 access cards, correct?

19 A Correct.

20 Q And Mr. Tarnovsky provided this pirate device to
21 individuals in Canada, correct?

22 A Correct.

23 Q And they were able to use that device to create pirated
24 access cards, correct?

25 A Correct.

1 Q And for Mr. Tarnovsky's work in this legitimate
2 operation, he was paid nearly \$20,000 shipped through the
3 mail account that NDS was paying for in Manassas, Virginia,
4 correct?

5 A Correct.

6 Q And the payments and the way that Mr. Tarnovsky
7 received these payments, that was brought to your attention;
8 is that right?

9 A Yes.

10 Q Okay. And at the time that it was brought to your
11 attention, you instructed Mr. Tarnovsky to turn that money
12 over to the government?

13 A No. I talked only to John Norris about it, and John
14 Norris told me the best way would be to put it in the bank,
15 and I agreed -- I agreed, yeah.

16 Q And so to do that, the company set up a special bank
17 account, an escrow account, to keep that money, that
18 legitimate money?

19 A I don't know which account. It was Tarnovsky. Either
20 we made the new account or not, I don't remember. I don't
21 know. The main point was to keep the money, not to use it.

22 Q And let me -- let me make sure I understand this,
23 Mr. Hasak. You hired Chris Tarnovsky, who you believed was
24 a criminal?

25 A Say it again, please.

1 Q You hired Chris Tarnovsky, who you believe was a
2 criminal at that time?

3 A Was.

4 Q Was a criminal?

5 A Yeah.

6 Q The same year you hire him, he develops or helps to
7 develop a pirate device for creating pirate access cards,
8 correct?

9 A Correct.

10 Q He gets money through the mail concealed inside
11 electronic devices through an NDS mail account, correct?

12 A Correct.

13 Q And Mr. Tarnovsky was allowed to put that money in his
14 bank account?

15 A I didn't say in his bank account. I said in a bank
16 account, so it will be not used.

17 Q Would it surprise you if Mr. Tarnovsky put that money
18 in his bank account?

19 A No. As far as it's being not used.

20 Q Now, let's take a look for a moment at Exhibit 478.

21 Do you have that exhibit in front of you?

22 THE COURT: November 24th, 1997.

23 BY MR. HAGAN:

24 Q Now, this is one of the secret documents that

25 Mr. Snyder asked you about?

1 A Yes.

2 Q And this is the document that describes the legitimate
3 operation of Johnny Walker, correct?

4 A Yes.

5 Q Now, if you look down, there is a section entitled
6 "Securing the product."

7 And Clint, this is in evidence. Do we have it?

8 THE WITNESS: Yes.

9 BY MR. HAGAN:

10 Q And under that section, there is a bullet point that
11 says, "Chris will change the password and the *exe file from
12 'BG' to something that will not identify him"; do you see
13 that?

14 A Yes.

15 Q And do you understand that the reference to "Chris" is
16 to Chris Tarnovsky?

17 A Yes.

18 Q And the reference to "BG" is Big Gun, or one of his
19 more famous internet aliases?

20 A Yes.

21 Q Now, it was your testimony, I believe, that operation
22 Johnny Walker involved Chris Tarnovsky building a device to
23 create pirated DirecTV cards?

24 A Together with NDS's research department, yeah, not --
25 together with NDS R and D.

1 Q Now, have you ever heard of an E3M card or an EchoStar
2 3M card?

3 A Which one?

4 Q An EchoStar 3M card, it's a pirated card?

5 A I remember 3M going for Three-Musketeers, but I don't
6 remember EchoStar 3M.

7 Q If you'll -- and this operation Johnny Walker did not
8 have anything to do with EchoStar pirate cards?

9 A No.

10 Q If you'll look at the bullet right above the one that
11 says "Chris and BG," in parentheses at the end, it says
12 "3echo" and "99"; do you see that?

13 A Yeah.

14 Q You understand that that reference is to EchoStar?

15 A No. I don't know, no.

16 Q You don't know what that reference is to?

17 A No, no.

18 Q So when you received this memo in 1997, and you saw a
19 reference to 3echo, you didn't ask anyone what that meant?

20 A Could be I asked many years ago. I don't remember. I
21 don't recognize it, no.

22 Q Now, let's take a look at Exhibit 610. And while
23 we're -- while we're getting that out, if I understood your
24 testimony correctly --

25 A I don't hear you, sorry.

1 Q If I understood your testimony correctly, you notified
2 DirecTV that Mr. Tarnovsky was going to be involved in this
3 operation Johnny Walker?

4 A You are referring me to a paper, or you're asking me a
5 question?

6 Q I'm asking you -- I'm just asking you a question,
7 generally.

8 A Yeah, okay. What the question?

9 Q Was it your testimony that you notified DirecTV of this
10 operation Johnny Walker where Chris was going to build a
11 device for creating pirated access cards?

12 A I don't remember if we mentioned Chris, but we
13 mentioned -- we got the approval to use some software
14 belonging to them for an operation.

15 Q And DirecTV gave their approval?

16 A Yes.

17 Q Do you think that it would have been important to
18 DirecTV when considering this approval that they know Chris
19 Tarnovsky was going to be used in this undercover operation?

20 A I don't think so.

21 Q Despite the fact that Mr. Tarnovsky, using the alias,
22 among others, "Big Gun," was heavily involved in the piracy
23 of DirecTV system, you don't think they would have wanted to
24 know he was building a pirate device for their cards,
25 correct?

1 A The main thing was to get their approval to use the
2 software.

3 Q And you were willing to do whatever it took to get that
4 approval?

5 A Sorry?

6 Q Withdrawn.

7 Now, do you have Exhibit 610-A in front of you?

8 A Yes.

9 Q This is a memorandum between various NDS and DirecTV
10 employees, correct?

11 A DirecTV and NDS, yes.

12 Q And on the far right-hand corner, there is a "from"
13 line, and it's got Genie Gavencheck (phonetic), Reuven Hasak
14 and Megan McNulty.

15 A Yes.

16 Q Now, who is Genie Gavencheck?

17 A She's executive vice president of this corporation,
18 dealing with legal issues.

19 Q And who is Megan McNulty?

20 A She was the lawyer working for DirecTV.

21 Q And then Reuven Hasak, that's you, correct?

22 A Me.

23 MR. HAGAN: Your Honor, I move Exhibit 610-A into
24 evidence.

25 THE COURT: Any objection?

1 MR. SNYDER: Subject to our previous objection,
2 no, your Honor.

3 THE COURT: Received.

4 (Plaintiffs' Exhibit No. 610-A is received
5 into evidence.)

6 BY MR. HAGAN:

7 Q Now, this is dated August 28th of 2001; is that
8 correct, Mr. Hasak?

9 A Correct.

10 Q Now, if you'll turn to page 3 of the exhibit, it's
11 actually page 2 of the Memorandum.

12 A Yeah.

13 MR. HAGAN: The second paragraph, full paragraph,
14 "with respect to," can we blow up just the first four lines
15 of that.

16 BY MR. HAGAN:

17 Q Now, in this joint memorandum authored, in part, by
18 you, it says "With respect to internet pirates, DirectTV
19 explained the outside expertise, Internet Crimes Group and
20 Kirkland & Ellis Cyber Law Group, retained by DirectTV to
21 identify individuals behind internet pirate sites."

22 Do you see that?

23 A Yeah.

24 Q Have you ever participated in any meetings or
25 discussions with any representative from ICG, or Internet

1 Crimes Group?

2 A Never.

3 Q Okay. Do you believe that ICG is a -- an effective
4 tool used by NDS and DirecTV to investigate internet piracy?

5 A I don't have any opinion. I just can tell you that we
6 can do it better than they do.

7 Q You are aware that your company has put on witnesses
8 from ICG to testify as experts in this case?

9 A I don't think I'm aware. Maybe I, you know, in the
10 list of the witnesses, but --

11 Q Do you believe that their work is reliable as it
12 relates to investigating internet piracy?

13 A I assume they are reliable, yes.

14 Q Have you ever read any of the reports by ICG linking
15 Chris Tarnovsky to the posting in December of 2000 under a
16 Nipper alias?

17 A No.

18 Q Now, let's talk briefly about the stolen -- allegedly
19 stolen documents.

20 A Stolen documents, yes.

21 Q Did you ever -- well, you -- you understand that there
22 are counterclaims in this case about some allegedly stolen
23 documents --

24 THE COURT: Counsel, that's going to be confusing.
25 You're referring to Ray Adams?

1 MR. HAGAN: Yes, sir.

2 THE COURT: All right. Make that clear so the
3 jury understands where you're going.

4 BY MR. HAGAN:

5 Q Mr. Hasak, you're -- you're aware that your company has
6 made some allegations that Ray Adams's hard drive was stolen
7 and the information contained on that hard drive was stolen,
8 correct?

9 A Stolen from NDS, yeah.

10 Q You don't believe, though, sir -- as you testified at
11 your deposition, you don't believe that either EchoStar or
12 NagraStar had any involvement in stealing that hard drive,
13 correct?

14 A No, I don't think I did -- I did say so, I said that
15 they didn't have any -- any proof that it was done.

16 Q Okay. And if -- if I understood your testimony on
17 direct examination, you don't even believe that that hard
18 drive was stolen from Mr. Adams's car; is that correct?

19 A From Mr. Adams? From -- yes, I don't believe it.

20 Q Do you believe that Mr. Adams distributed that
21 information on his own?

22 A Yes.

23 Q Do you think that Mr. Adams was acting as a
24 whistle-blower to expose NDS's involvement in the piracy of
25 Canal+ and EchoStar?

1 A You have to repeat your question.

2 Q You testified that you believe Mr. Adams distributed
3 those documents in the hard drive himself, correct?

4 A He gave it to somebody, yeah.

5 Q And prior to him leaving NDS, he was the head of
6 security for the United Kingdom, correct?

7 A Correct.

8 Q Now, do you believe that Mr. Adams distributed those
9 materials as a whistle-blower to expose NDS's involvement in
10 the piracy of the Canal system and the EchoStar system?

11 A For me, a whistle-blower is a positive term. I don't
12 think that Mr. Adams was a whistle-blower.

13 Q Did NDS ever sue Mr. Adams based on his disclosure of
14 these documents?

15 A I don't know.

16 Q Did -- and you testified that your company never filed
17 a police report about the stolen laptop, correct?

18 A Yeah, but I explained why.

19 Q Did you ever follow up with the authorities on that?

20 A Authorities? What do you --

21 Q Any of the authorities.

22 A No, but the only thing I said was that after we are
23 over with this trial, I am going to sue him, yes.

24 Q And other --

25 THE COURT: Just a moment.

1 I don't think we got that.

2 Would you repeat your answer, sir?

3 THE WITNESS: Yes. That I said that after we are
4 finished with this case, I am going to go after Ray Adams
5 and sue him, yes.

6 THE COURT: Okay.

7 BY MR. HAGAN:

8 Q And when did Mr. Adams report that his hard drive was
9 taken out of his laptop and out of his car; what year was
10 that?

11 A 2002, I think; no?

12 Q 2002, the best that you can recall?

13 A You know that I'm not very good in year. We know each
14 other already, so I think it's 2002.

15 Q It -- it's been more than --

16 A When he retired, okay?

17 Q And we'll go back to his retirement in a minute, but
18 just right now I am trying to establish the time frame for
19 the jury. It's been more than half a decade; fair?

20 A Half a decade?

21 Q Since Mr. Adams said his laptop was -- or hard drive
22 was taken --

23 A Oh, more than half a decade, yes, six years ago.

24 Q Now, other than those documents being distributed to
25 Canal+ and to EchoStar and used in the litigation against

1 NDS, has your company been damaged in any other way by the
2 distribution of those documents?

3 A Yes.

4 Q How?

5 A First of all, it included many documents referring to
6 anti-piracy. And I have mentioned before, exposing our
7 modus operandi, exposing our names, exposing our agent, our
8 informants, et cetera, it's a big dimension. It puts people
9 under risk.

10 Secondly, Ray Adams had in his possession, also, all
11 kind of marketing and other communications with people
12 within NDS.

13 Q Can you identify any specific instance where one of
14 those marketing documents were -- were used in a way to
15 injure NDS?

16 A Market -- marketing papers, sensitive information
17 belongs to NDS, so why to show it to others, sure.

18 Q So it -- it could cause damage, but you are not aware
19 of any specific instance?

20 A I am not aware of any specific, but in general, I can
21 tell you that it's a damage, yes.

22 Q Now, you said a moment ago that Mr. Adams retired from
23 NDS; is that correct?

24 A Yes, yes.

25 Q Isn't it true, sir, that he was forced out of the

1 company?

2 A (No audible response.)

3 Q Isn't it true, Mr. Hasak, that Ray Adams was forced out
4 of the company?

5 A No.

6 Q Isn't it true that Mr. Adams was forced out of the
7 company, because he knew of NDS's involvement in the
8 publication of the Canal code on Mr. Menard's website?

9 A Wrong.

10 Q Isn't it true that he was forced out of the company
11 after Oliver Kommerling gave a declaration in the Canal+
12 lawsuit?

13 A No, I told you that he was not forced out.

14 Q Let's take a look at Exhibit 624.

15 Now, this is an e-mail exchange between you and
16 Mr. Adams, among other people, correct?

17 A Yes.

18 MR. HAGAN: Your Honor, I move Exhibit 624 into
19 evidence.

20 THE COURT: Any objection?

21 MR. SNYDER: No objection.

22 THE COURT: Received.

23 (Plaintiffs' Exhibit No. 624 is received into
24 evidence.)

25

1 BY MR. HAGAN:

2 Q Now, on the bottom portion of page 1 is an e-mail from
3 you dated May 2nd, 2002, correct?

4 A Yes, yes.

5 Q And you're sending that e-mail to a number of NDS
6 employees?

7 A Yes.

8 Q And in that e-mail you state, "Ray Adams, the head of
9 the UK operational team, expressed his wish to retire on May
10 2002"; is that correct?

11 A Yes.

12 Q And then Mr. Adams responded to this e-mail, and that's
13 the e-mail that we have at the top. And in his response, he
14 says, "Announcements of my retirement are premature"; do you
15 see that?

16 A Yes.

17 Q What was Mr. Adams referring to when he said
18 announcements of his retirement are premature?

19 A To my note, to my e-mail.

20 Q Now, did there come a time when there was a dispute
21 about --

22 A Excuse me. Do you leave this paper? Now, we are done
23 with this, with this paper?

24 Q Yes, sir, we're done.

25 A I want to tell you that he is lying here.

1 Q Okay. I --

2 A -- in this paper. You showed me the paper, and he
3 writes here that I was going to meet him. It's a full lie.

4 Q You don't believe that Mr. Adams is an honest person,
5 correct?

6 A No, I don't believe so.

7 Q And you didn't believe that he was an honest person in
8 1997 when he was sending you those memorandums, correct?

9 A No. I thought that he was a big politician and
10 manipulation -- manipulator. Today I know that he is not an
11 honest person.

12 Q And besides your opinion that Mr. Adams was a
13 manipulator and he was sending you reports that included
14 language that you considered "blah, blah, blah," you never
15 terminated his employment, and that employment didn't end
16 until 2002, correct?

17 A I took the simple steps, and then I was tolerate with
18 him, because he -- he was holding -- Oliver Kommerling was a
19 big asset to us.

20 Q Now, after Mr. Adams departed from the company, there
21 was a dispute about his department, correct?

22 A Between the lawyers.

23 Q Now, let's take a look at Exhibit 626.

24 This is a letter from Mr. Adams's counsel, Nabarro
25 Nathanson (phonetic), dated May 21st, 2002.

1 A Yes.

2 Q Which is a couple weeks after you sent the e-mail
3 saying Ray Adams expressed a wish to retire from the
4 company, correct?

5 A Yes.

6 Q And in this letter from Mr. Adams's counsel, it states
7 "The position was compounded by the issues which were raised
8 by the company at the meeting with our client" --

9 A I --

10 Q -- "on May 13th" --

11 A I have to find it.

12 Q Sure.

13 It's on the first page, the third paragraph down.

14 A Third paragraph?

15 Q Yes, sir.

16 A Yes.

17 Q It says "The position was compounded by issues which
18 were raised by the company at the meeting with our client on
19 13 May, 2002."

20 A What does it mean "the position was compounded"?

21 Q We're getting there.

22 A Okay.

23 Q "In particular, the company's completely unacceptable
24 threat to our client, that unless he resigned, the company
25 would implement its disciplinary procedure against our

1 client on grounds which are nothing short of spurious and
2 without foundation."

3 Now, do you understand that language to be referring to
4 the dispute between NDS and Mr. Adams when he left the
5 company?

6 A It's the dispute between the lawyers, yes.

7 Q And you understand from reading that language that
8 Mr. Adams's position, consistent with what he said in his
9 e-mail, Exhibit 624, was that he was being forced out of the
10 company, not voluntarily retiring, correct?

11 A No, I don't think I agree with the fact that -- to say
12 that he was forced out.

13 MR. HAGAN: Your Honor, we offer Exhibit 626.

14 THE COURT: Any objection?

15 MR. SNYDER: No objection.

16 THE COURT: Received.

17 (Plaintiffs' Exhibit No. 626 is received into
18 evidence.)

19 THE WITNESS: It's this one?

20 BY MR. HAGAN:

21 Q Yes, sir, we are done with that one.

22 Now, do you believe that Oliver Kommerling was involved
23 in the technical research of the Canal+ system on behalf of
24 NDS?

25 A Yes.

1 Q And that was --

2 A Yes.

3 Q And that was done as part of his work for NDS?

4 A Yes.

5 Q And were you aware at the time, 1998, that
6 Mr. Kommerling was performing that work on the Canal+ system
7 for NDS?

8 A What's "performing"; what do you mean by "performing"?

9 Q Doing, helping the Haifa team.

10 A Yeah, helping the Haifa team.

11 Q In fact, Mr. Kommerling was the person, the engineer
12 who taught David Mordinson and Zvi Shkedy how to attack
13 Smart Cards, correct?

14 A I don't know if -- if he taught, but he showed them
15 other ways, so maybe "taught" is too strong. They knew also
16 things, you know.

17 Q Now, do you believe that as part of Mr. Kommerling's
18 work for NDS, he or Chris Tarnovsky assisted in the posting
19 of that Canal+ code on the dr7 website?

20 A No.

21 Q Do you believe that Mr. Kommerling had any involvement
22 whatsoever in the posting of that code on the dr7 website?

23 A I cannot exclude such a possibility.

24 Q And why can't you?

25 A Because, you know, today when you think back and you

1 remember all kind of things and politics, the manipulation,
2 et cetera, I cannot exclude. I am under oath here, so I
3 cannot exclude there's such a possibility.

4 Q And by the same token, you cannot exclude the
5 possibility that Chris Tarnovsky was involved in the posting
6 of the EchoStar code on Mr. Menard's website?

7 A I'm much more stronger that he was not involved,
8 because he was not a manipulator. John Norris was not a
9 manipulator. He was not involved in any manipulation or
10 politics.

11 Q And you conducted an investigation into Chris
12 Tarnovsky's involvement in EchoStar piracy?

13 A Yes.

14 Q And as part of that investigation, you gave Chris
15 Tarnovsky a polygraph test or a lie detector test?

16 A Yes.

17 Q And the focus of that test was to determine whether or
18 not Chris Tarnovsky was being honest with you, correct?

19 A Yes.

20 Q Okay. And so what did Mr. Tarnovsky say when you asked
21 him -- what did Mr. Tarnovsky say when you asked him on a
22 lie detector test about the money being shipped from
23 Mr. Menard through the mail account in Texas?

24 A He was not -- he was not asked about it. He was asked
25 about pirating DirecTV.

1 Q And what did Mr. Tarnovsky say when you had him under
2 the polygraph examination about his involvement in the
3 publication of EchoStar's code on Mr. Menard's website?

4 A He was -- he was not asked, because it was not the
5 allegation.

6 Q And what was Mr. Tarnovsky's answer when he was asked
7 about creating a device for reprogramming EchoStar Smart
8 Cards --

9 A He was --

10 Q -- and giving that Stinger device to Allen Menard?

11 A He was not asked about it in the polygraph, because the
12 only allegation was DirecTV.

13 Q Okay. So part of your investigation into Chris
14 Tarnovsky's involvement in EchoStar piracy didn't include
15 the polygraph, correct?

16 A Sorry. Just now you ask about the polygraph, so I
17 answered you that he was polygraphed.

18 Q And if -- if I understand your testimony, he was not
19 polygraphed on the issues of posting EchoStar code, creating
20 pirate EchoStar cards or receiving cash through the mail
21 account from Mr. Menard, right?

22 A He was polygraphed when he was recruited. He was
23 polygraphed regarding DirecTV, and maybe there was another
24 polygraph later on, which I don't remember. Two or three
25 times; two for sure.

1 Q Was he ever asked on a polygraph about those three key
2 issues, posting EchoStar's code on Mr. Menard's website,
3 creating a device for pirate EchoStar cards with Mr. Menard,
4 or receiving cash related to EchoStar piracy through that
5 mail account in San Marcos, Texas?

6 A Let me explain the answer. In the polygraph test, you
7 have questions, and you have all the investigation before
8 there is a test, so I can't tell you what was in the -- in
9 the investigation of the tester before the polygraph test.

10 Q Okay. So just -- let me -- let me reask my question.
11 I understand your answer, and I appreciate the explanation,
12 but my question is -- is a very simple one.

13 Was Chris Tarnovsky ever asked on a polygraph test
14 about his involvement in posting EchoStar's code on
15 Mr. Menard's website?

16 A No.

17 Q Was Chris Tarnovsky ever asked --

18 A You mean on the polygraph, not --

19 Q Yes, sir.

20 A -- not in the investigation, before the polygraph; yes?

21 Q Yeah, when -- when he --

22 A When he --

23 THE COURT: Let's just stop, both. You are
24 talking over the top of each other.

25 Listen to the question, and then he'll wait for

1 your answer, we hope.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Counsel?

4 BY MR. HAGAN:

5 Q Was Chris Tarnovsky ever asked on a polygraph test
6 about his involvement in the posting of EchoStar code on
7 Mr. Menard's dr7 website?

8 A Mr. Hagan, please make it clear, when I'm referring --
9 when you are referring to polygraph, you mean when he was
10 attached to the machine, or you are referring to the
11 investigation before the polygraph goes, because the
12 polygraph test consist of two parts. The first part is
13 investigation by the tester, and then he's going to be
14 attached to the machine. So now I can answer you if you'll
15 ask me.

16 Q And the purpose of attaching all those cords and cables
17 to Mr. Tarnovsky was to read his biological reactions to
18 certain questions, correct?

19 A Yes.

20 Q And to determine whether or not he was giving truthful
21 and honest answers, correct?

22 A Yes.

23 Q Okay. During that part of the polygraph test where you
24 had him hooked up to the machine, did you ever ask him if he
25 was involved in the posting of EchoStar code on Mr. Menard's

1 website?

2 A No.

3 Q Did you ever ask him during that portion of the
4 polygraph test where he was hooked up to the machine, if he
5 was involved in creating pirated EchoStar Smart Cards and
6 distributing those cards with Allen Menard?

7 A No.

8 Q And is the answer the same, you never asked him when he
9 was hooked up to that machine whether or not he had any
10 involvement in the money being shipped through the -- being
11 shipped through the mail account in San Marcos, Texas?

12 A No.

13 Q Now, in addition to investigating Mr. Tarnovsky's
14 involvement, did -- did you image his computers or have any
15 forensic expert look at his computers to determine if there
16 was metadata that linked him to posting EchoStar code?

17 A You mean Chris Tarnovsky?

18 Q Yes, sir.

19 A No.

20 Q All right. So then the lawsuit was filed, and NDS went
21 out and hired Allen Menard, and you conducted an
22 investigation into Mr. Menard to make sure that he could be
23 a proper candidate for the company, correct?

24 A Correct.

25 Q And you gave Mr. Menard a polygraph test?

1 A Correct.

2 MR. SNYDER: Objection.

3 THE COURT: I'm going to sustain that objection at
4 this time. This is a new area. I don't think we've
5 discussed this, Counsel.

6 BY MR. HAGAN:

7 Q Did -- as part of your investigation into Mr. Menard,
8 did you have anyone forensically image his hard drives to
9 determine whether or not there was metadata that linked
10 Chris Tarnovsky and Mr. Menard to the Nipper postings?

11 A Not to the best of my recollection.

12 Q Now, we talked earlier about getting DirecTV's approval
13 for Johnny Walker, right?

14 A Yes.

15 Q Has it -- is it always NDS's practice to get the
16 approval of DirecTV when conducting these types of
17 undercover covert operations?

18 A Always it means that every week running such an
19 operation is very unique cooperation, and in this case, yes,
20 we have their approval.

21 Q And why is it important to get their approval before
22 initiating these types of covert operations?

23 A Because it -- it would -- it would be improper not to
24 ask them their approval.

25 Q Can you think of any particular instance where you did

1 not notify DirecTV and get their approval about a piracy
2 operation that you wanted to engage in -- or anti-piracy
3 operation, sorry?

4 A You mean using their information? Because I didn't
5 report to DirecTV or to other customer of every operation
6 that I went, only if it was relevant to get their approval.
7 So the answer, if there was something relevant to get the
8 approval, yes, we were asking for the approval.

9 Q Now, did you ever use -- we established you used Chris
10 Tarnovsky for some of these covert operations. Did you ever
11 use Oliver Kommerling for these covert, undercover
12 operations?

13 A I don't remember any specific -- now, I remember one,
14 yeah.

15 Q And as part of these --

16 A Yeah, I remember one operation.

17 Q As part of these undercover operations, were Chris
18 Tarnovsky and Oliver Kommerling instructed to conceal
19 evidence of their involvement?

20 A I didn't understand your question.

21 Q As part of their involvement in these undercover
22 operations --

23 A Yes.

24 Q -- were Chris Tarnovsky and Oliver Kommerling
25 instructed to conceal evidence of their involvement?

1 A What do you mean "to conceal"? To conceal evidence
2 from whom?

3 THE COURT: That may be unclear, through the
4 corporation or is -- from other pirates?

5 MR. HAGAN: From -- from anyone outside of the
6 corporation to hide their involvement, from government
7 officials, from EchoStar or NagraStar, from Canal+, Irdeto,
8 Saka (phonetic).

9 THE WITNESS: Usually, this -- I mean, "usually."
10 This operation doesn't need to know, so only people who had
11 to know about it knew about it.

12 BY MR. HAGAN:

13 Q Can you think of any particular instance where Oliver
14 Kommerling was instructed to conceal evidence of his
15 involvement in an undercover operation in the United States?

16 A I guess you refer to his visit to the United States, so
17 if he was concealing or not, I think he did something, but
18 not to conceal, but just to get away from the states, as far
19 as I recall, if -- if you refer to the same operation.

20 Q And what do you mean "to get away from the United
21 States"?

22 A There was an operation that Oliver Kommerling went to
23 try and to meet, I think it was Marty Mullen, and to get
24 information from him.

25 Q Was that --

1 A And --

2 Q I'm sorry, go ahead. I'm sorry.

3 A And this operation was not a big success. He failed
4 doing it, and then he left the states.

5 Q And was that the operation where Mr. Kommerling
6 attempted to sell the EchoStar hack to Mr. Mullen for
7 \$1 million?

8 A No. Never, never, no. It's a big lie.

9 Q Mr. Kommerling also had an alias for his work within
10 NDS, correct?

11 A Yeah.

12 Q And that alias was Alex?

13 A Alex.

14 Q Let's take a look at Exhibit 2009.

15 And before we get into the substance of this, do you
16 know an individual named Larry Rissler?

17 A Yeah, I know.

18 Q And during the '96, '97, '98, '99, 2000 time frame,
19 Mr. Rissler worked for DirecTV?

20 A As far as I recall, yes.

21 Q Do you recall his position at DirecTV?

22 A He was the head of anti-piracy team.

23 Q He was the gentleman that you notified when you wanted
24 to do these undercover operations, correct?

25 A Which one?

1 Q Mr. Rissler.

2 A No, no. Which operation, I mean.

3 Q The undercover operations you --

4 A Johnny Walker?

5 Q Or others, yes, sir.

6 A Johnny Walker? I assume it would be Larry Rissler.

7 Q Now, looking at Exhibit 2009, this is another one of
8 the memorandums that you received -- we can take a break if
9 you need water?

10 A Yeah, I need --

11 Q Sure.

12 THE COURT: You need a break?

13 THE WITNESS: Yeah.

14 THE COURT: Okay.

15 THE WITNESS: I mean, I have to drink and --

16 THE COURT: Why don't we do this. Why don't we
17 come back in just a few moments. We'll go to about 12:15
18 okay?

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

22 We'll come and get you in less than 10 minutes,
23 and then we'll be in session about another half hour.

24 Sir, why don't you step down and rest for a
25 moment.

1 Counsel, just about 10 minutes, okay?

2 (Recess.)

3 (The following proceedings is taken in the
4 presence of the jury.)

5 THE COURT: We are back in session. All counsel
6 are present.

7 Counsel, thank you for your courtesy, and the
8 witness.

9 And Counsel, if you'd like to continue your
10 cross-examination.

11 THE WITNESS: Thank you for the intermission. I
12 got tea and feel better.

13 BY MR. HAGAN:

14 Q Now, Mr. Hasak, before we took a break, we were looking
15 at Exhibit 2009. Do you still have that document in front
16 of you?

17 A Yes.

18 Q This is another one of the reports that you received
19 from Mr. Adams; is that correct?

20 A Yes.

21 MR. HAGAN: Your Honor, we offer Exhibit 2009 into
22 evidence.

23 THE COURT: 2009?

24 Counsel, any objection?

25 MR. SNYDER: No objection.

1 THE COURT: 2009 is received.

2 (Plaintiffs' Exhibit No. 2009 is received
3 into evidence.)

4 BY MR. HAGAN:

5 Q And before we took a break, you said that Oliver
6 Kommerling's code name or alias within NDS was Alex; is that
7 correct?

8 A Yes.

9 Q And so if you'll look at page 1 of 2009 where it says
10 "Alex did not touch the card. His fingerprints would not be
11 on it."

12 A Yes.

13 Q That's referring to Mr. Kommerling?

14 A Yes.

15 Q And the fourth bullet point down, it says "The card
16 sent by PC to LR by FedEx could have come from any source,
17 and there is no continuity of evidence to suggest that it
18 was the card seen by Alex. As we all know, continuity of
19 exhibits is an essential ingredient in court cases. This
20 was the major point that ruled a great deal of evidence
21 inadmissible in the OJ trial, and they did not send the
22 exhibits by courier from another company -- another
23 country."

24 Do you know what Mr. Adams was referring to in that
25 section?

1 A He's referring -- he is referring to one of the aspects
2 of this visit of Kommerling to the states, but once again,
3 he is going somewhere, you know -- somewhere else.

4 Q Now, "LR," I'm guessing that refers to Larry Rissler;
5 is that correct?

6 A Yeah.

7 Q Who is PC?

8 A I don't remember. I assume it was one of Mr. Rissler's
9 informants.

10 Q You are familiar with the alias "Jellyfish"?

11 A Yes.

12 Q And who was that gentleman?

13 A Jellyfish was a wheeler-dealer in the states trying to
14 make business with everyone, and his nickname "Jellyfish"
15 came out, because he was -- he didn't have any backbone,
16 nothing. He was just a wheeler-dealer and spin liar and
17 speaker and talker, and whatever. That was the reason for
18 calling him Jellyfish, so --

19 Q That was John Luiando (phonetic)?

20 A Yeah, John Luiando, yeah.

21 Q And as part of this undercover operation with
22 Mr. Kommerling, did he work with John Luiando for that
23 operation in the United States?

24 A I don't remember. I have to look at the paper.

25 Q Now, you also said that Mr. Kommerling had to get out

1 of the United States. What did you mean by that?

2 A No. To leave the United States.

3 Q To leave the United States.

4 A There was some complications in the operation, because
5 of the -- the conflict between Larry -- between Larry
6 Rissler and Ray Adams and Kommerling and John Norris, so the
7 operation failed, and -- and Alex was told by Ray Adams, I
8 guess -- I assume, to -- to leave the states.

9 Q Now, this -- what was the name of this operation, the
10 one where Mr. Kommerling came to the United States?

11 A I don't remember.

12 Q And you don't recall whether or not this was the
13 operation where Mr. Kommerling was offering to sell the
14 EchoStar hack to Marty Mullen for one million dollars?

15 A No, it's a lie by somebody.

16 Q Now, if you look at the second page, the last
17 paragraph, it says "John Norris says that the alert to the
18 airport was to effect the arrest" --

19 A Wait one moment. Sorry, I lost you. Where?

20 Q Sure. The bottom paragraph on page 2 of Exhibit --

21 A Yeah, yeah --

22 THE COURT: Just a moment, Counsel.

23 Where are you going to start reading? Look at the
24 screen.

25 MR. HAGAN: At "JN."

1 THE COURT: Thank you.

2 BY MR. HAGAN:

3 Q Mr. Hasak, the "JN," that refers to John Norris?

4 A Yes.

5 Q Mr. Adams writes to you, "John Norris says that the
6 alert to the airports was to effect the arrest of Alex on
7 probable cause." That's referring to Mr. Kommerling,
8 correct?

9 A Yeah.

10 Q He would be searched and detained. The assumption
11 being that something would be found in his possession.

12 What do you understand Mr. Adams to be referring to
13 there?

14 A He's referring to the possibility that maybe someone
15 can find Alex, either computer, some -- some material, which
16 refers to DirecTV, I assume.

17 Q But it's not DirecTV, because you didn't notify
18 Mr. Rissler about this operation?

19 A The reason I don't think there was anything viable
20 regarding DirecTV.

21 Q And there's only two satellite providers in the United
22 States, DirecTV and EchoStar, correct?

23 A If you say so. I don't know. I am not aware of
24 anything else.

25 Q You're not aware --

1 A I didn't say -- I didn't say it was a software
2 regarding satellite TV.

3 Q Now, look at the next page of Exhibit 2009.

4 And let's blow up the top two paragraphs, please,
5 Clint.

6 BY MR. HAGAN:

7 Q At the top, Mr. Adams writes "Alex had absolutely
8 nothing with him. I even disobeyed your advice that he
9 could walk through with his laptop. He did not even have a
10 credit card with him. There would have been absolutely no
11 legitimate grounds for detaining him for a second. Had
12 anyone done so, there was a lawyer ready to get him out of
13 trouble."

14 What is Mr. Adams referring to there?

15 A It's another way of building up a story by Mr. Adams.
16 I tell him -- him nothing to worry about. He doesn't have
17 anything he can go through, and that's it.

18 Q And then Mr. Adams further explains that in his next
19 paragraph where he says as follows:

20 "The only possible evidence that could ever have
21 existed to connect Alex to the card was what was on his PC."

22 Now, you under -- did you understand "card" to be
23 referring to a Smart Card?

24 A Yes, yes.

25 Q So do you believe, now, that this operation involved

1 conditional access systems for Smart Cards, for satellite TV
2 providers?

3 A Yes.

4 Q And it's not related to the DirecTV system?

5 A I didn't say so. I didn't say so. It was related, but
6 not the software.

7 Q Now, Mr. Adams goes on and says, "About the computer,
8 it was wiped clean the same day the card was programmed. As
9 an extra precaution, the computer was broken into two parts
10 and sent by two separate courier companies to two separate
11 addresses in Germany. So what was on the card that LR
12 received from PC? It was the 3M program from Bill."

13 Now, 3M, do you understand that to be referring to the
14 EchoStar 3M pirate card?

15 A No, it was -- as far as I recall, it was DirecTV,
16 Three-Musketeers.

17 Q And "Bill," that's referring to Marty Mullen?

18 A Yes.

19 Q So what was on the card -- I'm sorry.

20 It was a 3M program from Bill, of which there are
21 thousands in existence. Nothing existed, technically, to
22 connect Oliver to the card in either -- either Canada, the
23 U.S.A. or Germany?

24 A Yeah, yes.

25 Q Now, when you received this memo from Mr. Adams, did

1 you understand that steps had been taken to conceal
2 Mr. Kommerling's involvement in reprogramming 3M cards?

3 A No. I just understood that what is -- this is what way
4 he's writing. I did not take it for granted that this was
5 done or there was any reason to do it. I talked to him
6 later.

7 MR. HAGAN: Now, two paragraphs down, Clint, if we
8 can blow that up. It's the last full paragraph on this same
9 page.

10 BY MR. HAGAN:

11 Q "Mr. Adams says, "We also discussed between ourselves,
12 that, quote, 'under no circumstances must we tell Larry
13 Rissler that Oliver Kommerling works for us.'"

14 Why would you be concealing Oliver Kommerling's
15 employment relationship with NDS from your largest client in
16 the United States?

17 A Because he had nothing to do with this client.

18 Q This operation had nothing to do with DirecTV?

19 A No. The -- the project, the target of this operation
20 was to get from Marty Mullen what he has.

21 Q Now, did there come a point in time after the Nipper
22 postings in December of 2000 on Mr. Menard's website where
23 NDS asked its contacts to estimate the number of E3M cards?

24 A Not to the best of my recollection.

25 Q Let's take a look at Exhibit 1270.

1 And your Honor, this has already been admitted into
2 evidence.

3 BY MR. HAGAN:

4 Q Now, Mr. Hasak, you have a document in front of you,
5 Exhibit 1270.

6 A Yes.

7 Q NDS marketing competitive intelligence. Is this the
8 type of document that NDS generates for purposes of
9 competitive intelligence?

10 A It's not typical, you know. Once in a couple of years
11 for such a big paper. Usually, it's not such a big paper.

12 Q And you are familiar with the term "competitive
13 intelligence," correct?

14 A Yes.

15 Q And what does that term mean?

16 A It means the lawful way to gain information about
17 competitors. It's not to differ from industrial espionage.

18 Q Now, if you'll look at page 9 of 10.

19 Christine, you may want to turn it for him.

20 THE WITNESS: Which one?

21 BY MR. HAGAN:

22 Q On the top right-hand corner, it says page 9 of 10.

23 A Yes.

24 Q About halfway down the page, there is an entry that
25 reads as follows:

1 "NDS field contacts confirmed that Nagra did not start
2 sending an ECM --

3 A Sorry, sorry, sorry. Mr. Hagan, I don't see it.

4 MR. HAGAN: Christine, will you show him the
5 paragraph.

6 THE WITNESS: 9 of 10 down?

7 BY MR. HAGAN:

8 Q Yes, sir.

9 THE COURT: Just a moment. They will find that
10 for you.

11 MS. WILLETTS: I'll find it for you, sir.

12 THE WITNESS: Okay.

13 BY MR. HAGAN:

14 Q There is an entry that reads as follows:

15 "NDS field contacts confirmed that Nagra did not start
16 sending an ECM until after the game was over. Anyone with a
17 pirated NagraCard saw the game for free. Our estimate is
18 that this commercial loss to EchoStar probably accounted for
19 over 100,000 non-paying subscribers."

20 Do you know what's being referred to in that section of
21 the document?

22 A A what? If I note --

23 Q Do you know what's being referred to there?

24 A I mean, it's part of this report. I don't understand
25 your question, sorry.

1 Q Well, let me -- let me rephrase it. It says "NDS field
2 contacts confirmed."

3 A Oh, okay.

4 Q Who are the NDS field contacts?

5 A Internet and informants.

6 Q Those include some of the individuals previously
7 involved in piracy that NDS has recruited and put on its
8 payroll, correct?

9 A No, the only one was Chris Tarnovsky. Informants are
10 not agents.

11 Q So when it says "NDS field contacts," it's your
12 understanding that that is referring to Christopher
13 Tarnovsky?

14 A Not only, no. It refers only to the internet itself
15 and to informants.

16 Q Other than Christopher Tarnovsky, who could that
17 reference be alluding to? Who besides Chris Tarnovsky would
18 be included in that field contacts?

19 A Internet research and other informants.

20 Q Are you aware of any of those names?

21 A No. Now, no.

22 MR. HAGAN: Your Honor, I'm about to go into a new
23 topic. Would this be a good time to break for lunch?

24 THE COURT: This would be a good time.

25 Ladies and gentlemen, you're admonished not to

1 discuss this matter amongst yourselves, nor form or express
2 any opinion concerning the case.

3 We will see you at -- let's just make it 1:30,
4 okay? Go have a nice lunch.

5 Sir, we'll see you at 1:30. Thank you.

6 And Counsel, 1:30? And then, Counsel, if you'd
7 remain for just a moment.

8 Sir, you may step down. Thank you.

9 (The following proceedings is taken outside
10 the presence of the jury.)

11 THE COURT: All right, Counsel. We are on the
12 record. The jury is no longer present.

13 I want to pause at a question to you that is
14 relevant to the Court or may be relevant to the Court. The
15 question of whether the Last Overt Act Doctrine applies
16 under California law depends on the scope of the alleged
17 conspiracy at issue. The same is true concerning NDS's use
18 of the Unclean Hands Doctrine.

19 If the conspiracy at issue is broadly defined to
20 include any and all efforts by NDS to sabotage EchoStar's
21 and NagraStar's conditional access system, then the Last
22 Overt Doctrine might bring acts occurring as early as 1996,
23 within the statutory period. However, this would also make
24 the Unclean Hands Doctrine a more plausible defense, given
25 that the transaction at issue would be a general conspiracy

1 to commit anti-competitive conduct.

2 On the other hand, the conspiracy to hamper the
3 DirecTV and NagraStar negotiations might be defined narrowly
4 as a discreet conspiracy arising from the Nipper postings
5 and other acts occurring in the 1999, 2000 time frame. If
6 this is the case, the last overt -- the Last Overt Act
7 Doctrine would not bring conduct occurring in 1996 through
8 early 1999 into the statutory period. However, Unclean
9 Hands would also be unavailable as a defense.

10 Therefore, before ruling on either of these
11 issues, this Court needs to have an idea of how broadly or
12 narrowly the parties wish to define the conspiracy at issue.
13 In other words, this Court tentatively finds that they go
14 hand in hand. Let me explain it in a simpler way.

15 If the focus as you began this case was on the
16 conduct occurring because of the 2000 Nipper postings, I'd
17 originally allowed into evidence the DirecTV and Canal+
18 incidences or activities as same or similar conduct. If
19 that is and was, and seemingly was consistently, the focus
20 of your definition of what this conspiracy was, then I may
21 have grave reservations that Unclean Hands is an affirmative
22 defense, subject to hearing from counsel.

23 But if you have now recently taken the position,
24 or you believe have consistently taken the position that
25 this is a broader and ongoing conspiracy, and your focus now

1 shifts to what this Court believes were simply the
2 introduction of this evidence for same or similar conduct to
3 a much broader conspiracy extending earlier in time, then it
4 would appear to me that without question, the Unclean Hands
5 Doctrine applies. So some choices have to be made by both
6 parties in this regard, because without choices, the Court
7 may be in the position of taking -- well, I'll wait. I just
8 don't know.

9 And the evidence doesn't lend itself right now to
10 a fact situation that the Court feels comfortable in, that I
11 can point to a specificity and state that -- where you
12 believe your conspiracy lies on EchoStar's part, because NDS
13 has argued that this has significantly expanded. And
14 remember, coming into this case, you didn't know if you were
15 going to get a same or similar act. So there seems to be
16 kind of a morph, you know, frankly, driven by your
17 disgorgement theory.

18 On the other hand, you may have a -- a strong
19 argument that while mitigation still applies as an
20 affirmative defense, that Unclean Hands doesn't if your
21 conspiracy is focused on the 2000 Nipper postings.

22 Now, I toss that out to you, once again, never
23 expecting agreement between the parties, but telling each of
24 you that those two seem to go, at least from the Court's
25 perspective, hand in hand. And so your statements to this

1 Court need to be well thought out when you decide, for
2 instance, on EchoStar's part, and you address the Court
3 about where you believe the conspiracy lies, and well
4 thought out on NDS's part when you address the Court
5 concerning Unclean Hands.

6 If NDS, for instance, believes that NDS is in the
7 position of claiming Unclean Hands across the board, then
8 I'm not certain, but it seems to focus the conspiracy into a
9 much, much broader range, but I don't know that you really
10 have to define that first. The -- the responsibility,
11 really, lies with the plaintiff to define that first. So I
12 see you reacting to the defense -- or to EchoStar's choice.
13 So, therefore, I'm not certain I would rule in EchoStar's
14 favor concerning disgorgement, yet, but you need to
15 understand that, tentatively, if you move down that line,
16 then, tentatively, my belief is that NDS is entitled to an
17 Unclean Hands affirmative defense, which normally might not
18 lie if the conspiracy was focused in 2000.

19 Now, do you understand that? Do you truly
20 understand what I'm saying?

21 Mr. Hagan?

22 MR. HAGAN: I understand the issue.

23 THE COURT: Do you truly understand what I'm
24 saying, Mr. Noll?

25 MR. NOLL: I believe I do, your Honor.

1 THE COURT: Counsel?

2 MR. WELCH: I believe I do.

3 MR. HAGAN: Can I repeat it back to you, sir?

4 THE COURT: No. I'll repeat it back to you 10
5 times so I can't get lawyers redefining what I've said.
6 Would you like me to read that again to you?

7 MR. HAGAN: I -- I believe that I fully understand
8 the question.

9 THE COURT: "I believe," I love those words.

10 (Laughter.)

11 THE COURT: "Could have been," "might have been,"
12 "to the best of my recollection." I'm just joking with you.

13 Without redefining it back to me, I don't need
14 redefinitions. Apparently witnesses do from different
15 sides, but I don't need that.

16 Do you understand what I'm saying, Mr. Snyder?

17 MR. SNYDER: I do understand the issue, your
18 Honor, and I agree that plaintiffs have to first define the
19 conspiracy before we can define --

20 THE COURT: You're restating that. I've already
21 gone far beyond that.

22 MR. SNYDER: I understand the issue.

23 THE COURT: You understand the issue.

24 Mr. Stone?

25 MR. STONE: Yes, your Honor, I understand.

1 THE COURT: Mr. Eberhart?

2 MR. EBERHART: I understand, your Honor.

3 THE COURT: Mr. Klein?

4 MR. KLEIN: I understand, your Honor.

5 THE COURT: Okay. Be careful of your answers to
6 the Court. I am not asking for an agreement. I am just
7 informing you that they seem philosophically, intellectually
8 and legally and equitably to go hand in hand with each
9 other.

10 So, therefore, if this goes to the jury on the
11 California Penal Code section, which may lead to
12 disgorgement, tentatively, Unclean Hands goes across the
13 board, also. And therefore, what you raised informally,
14 Mr. Hagan, please raise it again. It may fall by the
15 wayside.

16 If it's defined narrowly, certainly mitigation
17 still remains, but I'm not certain Unclean Hands does. The
18 Court's considered that the argument could still be made by
19 NDS that Unclean Hands could even encompass the warranty
20 issues that are placed before the Court, but that seems to
21 the Court, tentatively, like mitigation issues, not warranty
22 issues -- or not Unclean Hands issues.

23 Now, the argument could be made, and I may be
24 taking a chance making that type of ruling, and I'm not
25 certain, yet, so I'm going -- I'm going to listen to you

1 first. My guess is that one of you may want to pursue the
2 largest possible pot, and that may drive you -- and I'm
3 kidding you for a moment. Another one of you may want to
4 draw back, so you need to be a concerted voice, no pop-up
5 attorneys. One of you address me later in the day, okay?

6 Okay. Have a nice lunch. We'll see you at 1:30.

7 (Recess.)

8 -oOo-

9 CERTIFICATE

10

11 I hereby certify that pursuant to Section 753,
12 Title 28, United States Code, the foregoing is a true and
13 correct transcript of the stenographically reported
14 proceedings held in the above-entitled matter and that the
15 transcript page format is in conformance with the
16 regulations of the Judicial Conference of the United States.

17

18 Date: May 2, 2008

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JANE C.S. RULE, U.S. COURT REPORTER

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