

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 16, Volume III
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Tuesday, May 6, 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  
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08-05-06 EchoStarD16V3

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## I N D E X

## EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
PELED, ABRAHAM				
By Mr. Welch	4			
By Mr. Snyder		24		

1 SANTA ANA, CALIFORNIA, TUESDAY, MAY 6, 2008

2 DAY 16 - VOLUME III

3 (1:05 p.m.)

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

6 THE COURT: All right. The jury is present. All  
7 counsel are still present, the parties, Dr. Peled.

8 Have a seat, sir.

9 DR. ABRAHAM PELED, PLAINTIFFS' WITNESS, RESUMED

10 THE COURT: This Mr. Welch's continued  
11 cross-examination -- strike that -- direct examination, my  
12 apologies.

13 DIRECT EXAMINATION (Continued.)

14 BY MR. WELCH:

15 Q Okay, Dr. Peled. I just want to hit a couple of  
16 highlights with you, okay?

17 A (No audible response.)

18 Q One of the areas we skipped over was a conversation  
19 about Al Menard. Do you know a man by the name of Al  
20 Menard?

21 A I don't know him, I know of him.

22 Q You know that Mr. Menard is a distributor of pirate  
23 devices, correct?

24 A I know that he was the owner of the dr7 website.

25 Q And that's the same website that the Canal+ code was

1 posted on, correct?

2 A Correct.

3 Q And that Canal+ code that was posted, you were told by  
4 Mr. Kommerling that that was posted by Chris Tarnovsky,  
5 correct?

6 A Correct.

7 Q Okay. And I just want to make something clear while we  
8 are talking about Mr. Tarnovsky and his hacking activities  
9 and his posting. If we go back to this September 2001  
10 dinner meeting at Trader Vic's in London, Mr. Kommerling  
11 told you, or he repeated his allegation that Chris Tarnovsky  
12 was involved in Nagra piracy. He's flat-out told you that;  
13 yes or no?

14 A He did not repeat it. This is the first time he  
15 alleged that Chris Tarnovsky was involved in posting of the  
16 EchoStar code.

17 MR. WELCH: Chad, could you -- or Mr. Ferguson,  
18 could you show him page 119, lines 18 to 23.

19 THE COURT: Just a moment.

20 Counsel.

21 BY MR. WELCH:

22 Q I'm going to read the question to you, and you read the  
23 answer that you gave me under oath on Wednesday.

24 My question was, "Tell me about the conversations as it  
25 relates to satellite piracy."

1           If you could slowly read your answer.

2           A     Well, Mr. Tarnovsky again repeated his allegations that  
3           Chris Tarnovsky was involved, and he also, at that point,  
4           said he believes he was also involved in Nagra piracy.

5           Q     And then he also told you that Mr. Tarnovsky posted the  
6           EchoStar code, correct?

7           A     That's what he said, yes.

8           Q     Now, so we know in 2001 that you're told that  
9           Mr. Tarnovsky's involved in Canal+ hacking and posting, and  
10          Mr. Tarnovsky is involved in Nagra or EchoStar hacking and  
11          posting of the EchoStar code. Did you -- after  
12          September 2001 when you learned that information, did you  
13          ever inform the plaintiffs of that information that you were  
14          told?

15          A     No, I did not believe him at that point.

16          Q     Thank you.

17                 Now, did you tell anybody to go investigate  
18          Mr. Tarnovsky's hacking of the EchoStar system and the  
19          posting of the EchoStar code on the internet?

20          A     I talked to Reuven right after that conversation, after  
21          that dinner conversation, and informed him about the new  
22          allegation that Oliver made, and he told me that he had  
23          investigated Mr. Tarnovsky --

24          Q     Now, this new allegation --

25                         THE COURT: Excuse me.

1                   And Oliver is Oliver --

2                   THE WITNESS: Oliver Kommerling. Sorry, your  
3 Honor.

4 BY MR. WELCH:

5 Q       So the first allegation that you had to investigate was  
6 Mr. Tarnovsky receiving the cash, correct?

7 A       That investigation was in 2001, yes.

8 Q       And then you had to investigate him for posting the  
9 Canal+ code and posting the EchoStar code, correct?

10 A       He was investigated about the Canal+ posting.

11 Q       Okay. And at no time did you fire him between -- okay,  
12 you learned about it in 2001. You've already investigated  
13 him about the cash. You know about these additional  
14 allegations, or the statements that -- where he admitted  
15 involvement in piracy and posting. You didn't fire him  
16 until 2007, approximately three or four days before his  
17 deposition, correct -- correct?

18 A       Which is -- to which are you referring is correct?

19 Q       That you -- you knew about those things, but you didn't  
20 fire Mr. Tarnovsky until three days before his deposition?

21 A       We had no reason to believe that Mr. Tarnovsky did any  
22 wrong -- anything wrong at that point.

23 Q       Why did you fire him?

24 A       When certain evidence was produced to us in 2007 in  
25 connection with this trial, it raised the question about his

1     trustworthiness at that point, at which point Reuven  
2     informed me of a decision to fire him immediately.

3     Q     Is Mr. Hasak a very good investigator?

4     A     I believe so.

5     Q     And did you task Mr. Hasak to investigate  
6     Mr. Tarnovsky?

7     A     Yes, Mr. Hasak was investigating that whole episode  
8     over the time.

9     Q     How did Mr. Hasak, if he is such a good security  
10    investigator, miss the Hays County narcotics report that has  
11    all this information that links Mr. Tarnovsky to the cash?

12    A     He did not have it.

13    Q     So he just didn't follow up on that, huh?

14    A     I can't comment on how he would have gotten it or -- I  
15    know that the moment it was brought to our attention, he was  
16    fired.

17    Q     Okay. We know in the tax return, Mr. Tarnovsky's tax  
18    return, which is Exhibit 782, there is an entry on there for  
19    approximately \$7,500 that he received from Mr. Menard in  
20    2000, cash. Were you aware that Mr. Tarnovsky in the year  
21    2000 received this \$7,500?

22    A     No.

23    Q     You would have wanted to know that, correct?

24    A     Well, obviously, now I would have wanted to know that  
25    if it has anything to do with this allegation.



1 Q Would you have wanted somebody to tell you that from  
2 NDS Americas?

3 A I relied on Reuven to conduct the operation of security  
4 activities 100 percent, since Reuven was a man of impeccable  
5 integrity and a very good professional.

6 Q Okay. You knew that Mr. Tarnovsky and Mr. Kommerling  
7 were friends or acquaintances, correct?

8 A No, they met each other for the first time at this  
9 event in Israel where they had a big crowd.

10 Q And when was that?

11 A I think it was in -- sometime in the Summer of 2001.

12 Q Okay. Now, I want to talk to you about you first  
13 learned of EchoStar's claims in September of 2002, correct?

14 A Yes.

15 Q In September 2002, you knew that EchoStar believed that  
16 NDS was behind the hacking of its system, correct?

17 A Yes.

18 Q Okay. And at the time that EchoStar moved to intervene  
19 in the Canal+ litigation, EchoStar had made a bid for  
20 DirecTV, correct?

21 A Yes.

22 Q Okay. And that bid was unsuccessful, that transaction  
23 was not able to close, correct?

24 A Well, I think it was opposed by the government.

25 Q Do you know if Mr. Murdoch -- if you can -- you can

1 look at your notes, which are 2059.

2 A What is 2059?

3 Q 2059 is your relevant time line prepared by you and  
4 your attorneys.

5 A Yes.

6 Q Go to the last page. Do you see the October 2002?

7 A Yes.

8 Q Does that refresh your recollection that Mr. Murdoch  
9 lobbied the FCC to block EchoStar's purchase of DirecTV?

10 A Well, I believe it was known that News Corp opposed  
11 that merger.

12 Q And News Corp actually lobbied FCC against that merger,  
13 didn't it?

14 A As many other organizations did.

15 Q Is the answer "yes"?

16 A The answer was "yes."

17 Q Okay. So News Corporation ends up getting the  
18 successful bid in April 2003, correct?

19 A News Corp made a bid in 2003, yes.

20 Q So would you agree with me that there is no way -- if  
21 EchoStar filed its claims in September of 2002, there is no  
22 way that this lawsuit or these claims could be in any way  
23 retaliation for Murdoch and News Corporation obtaining  
24 DirecTV?

25 A No.

1 Q Is my statement correct that it's not retaliation?

2 A No, I said I don't agree with your statement.

3 Q You think that if they filed a lawsuit six months  
4 before you get to -- the winning bid, that that's somehow  
5 retaliation for you getting the winning bid?

6 A This lawsuit was filed in June, six days before  
7 EchoStar lodged an objection to the FCC for the acquisition  
8 of -- by News Corp of DirecTV, and this lawsuit was cited as  
9 one of the reasons why the FCC should not approve DirecTV  
10 being bought by News Corp, shares of DirecTV being bought by  
11 News Corp.

12 Q But these very same allegations were lodged in  
13 San Francisco nine months earlier, weren't they?

14 A Correct.

15 Q I want to go back and talk about NDS's marketing, okay?

16 THE COURT: And you mean -- by "the same  
17 allegations," you are referring to Canal+?

18 MR. WELCH: The allegations that were --

19 THE COURT: This has to be unclear to the jury.

20 MR. WELCH: Okay.

21 BY MR. WELCH:

22 Q EchoStar moved to intervene in the Canal+ litigation,  
23 correct, in September of 2002?

24 A That was -- that was in September 2002.

25 Q And EchoStar's claims as part of that motion to

1 intervene were that NDS was involved in the hacking and the  
2 posting of the EchoStar code, correct?

3 A Correct.

4 Q And that was of EchoStar's code, correct?

5 A That was the EchoStar claim.

6 Q Okay. Going back to NDS's marketing efforts. I just  
7 want to be clear on this. One of the things that your  
8 marketing people do when they are talking to incumbent  
9 customers or potential customers is they tell these  
10 customers that your competitors' systems are hacked,  
11 correct; yes or no?

12 A As I pointed out earlier, our marketing people provide  
13 information to the sales or account management people, and  
14 they are the ones that deal with the subject, and if,  
15 indeed, the subject of piracy comes up, they provide  
16 information on piracy from -- available from public  
17 information.

18 MR. WELCH: Mr. Ferguson, could you show him page  
19 150, lines 11 through 15.

20 THE COURT: All right, Counsel.

21 BY MR. WELCH:

22 Q I am going to read the question, if you could read --

23 THE COURT: Counsel, there is no -- there's no  
24 reason to read it. He doesn't differ with his answer. So  
25 reask the question if you think there is a difference.

1 BY MR. WELCH:

2 Q Do your marketing people tell potential customers that  
3 your competitors' systems are hacked if they are hacked?

4 A They provide that information.

5 Q Thank you.

6 Now, I want to go to this document issue. You are not  
7 aware of any evidence that any of the plaintiffs -- the  
8 documents that I'm talking about are the Ray Adams hard  
9 drive documents, okay? You are not aware of anything that  
10 EchoStar or NagraStar did with these documents outside of  
11 this litigation, are you, sir?

12 A No.

13 Q And you cannot tell the jury one dollar's worth of  
14 damage -- I am talking about quantifying damages here. You  
15 cannot quantify any damages that NDS has suffered related to  
16 this hard drive and the documents on it, can you?

17 A Well, the information that has been disclosed can cause  
18 potential significant harm to NDS. It had a lot of  
19 information that had nothing to do with this litigation. It  
20 was very detailed technical information about the P3, about  
21 P4, which could in -- to the wrong people provide a shortcut  
22 for technology that we spend a couple of years developing at  
23 the cost of 15 to \$20 million.

24 Q I am not talking about potentials here. Can you tell  
25 me any damages that you have quantified that somebody has

1 put pen to paper related to the Ray Adams documents; there  
2 is none, is there?

3 A As I said, if the information was provided to people  
4 that can use it to have a shortcut, then it provides a lot  
5 of information that cost us money, as I said, on the order  
6 of 15 to \$20 million to develop that technology, that  
7 know-how and those insights.

8 Q Did you ever task anybody to go out and perform an  
9 investigation into who Nipper was; you never did that, did  
10 you?

11 A I did not.

12 Q You understand that's kind of the central point of this  
13 litigation, correct?

14 A Well, obviously, it's part of that litigation.

15 Q Okay.

16 A We spent a lot of money to find out who Nipper was.

17 Q And it's your view you don't know who Nipper is,  
18 correct?

19 A I believe that our lawyers will identify who Nipper  
20 was.

21 Q You don't have any clue who Nipper is, do you?

22 A I obviously have not done personally any investigation.

23 Q And nobody within NDS has told you who Nipper is,  
24 you're just relying on these lawyers, correct?

25 A Yes, I'm relying on the lawyers and their investigators

1 and -- and a lot of effort expended on identifying who was  
2 behind the two postings, and I believe that one was clearly  
3 identified as having nothing to do with NDS.

4 Q Now --

5 A The other one, I believe, was being identified as well.

6 Q I want to talk to you about the successful steps in  
7 piracy, okay?

8 A Successful?

9 Q In other words, to be -- to have a successful pirate  
10 operation, you have to go through certain steps, correct?

11 A I don't know. I've never been involved in anything  
12 like that.

13 (Laughter.)

14 BY MR. WELCH:

15 Q Would -- would you agree with me that the steps in  
16 successful piracy are, number one, you have to reverse  
17 engineer the product; number two, you have to extract the  
18 keys; number three, you then design pirate tools; and number  
19 four, you distribute the pirate tools? Would you agree with  
20 me those are the keys to a successful hack and a successful  
21 pirate job?

22 A I don't know. I think it depends on the particular  
23 card and on the particular system.

24 Q Would you agree with me that if somebody did those four  
25 steps, that would be a successful hack?

1 A As I said, I don't know.

2 Q Have you ever given a presentation related to the  
3 hacking of proprietary information?

4 A No.

5 Q You never have?

6 A A presentation --

7 Q Of any type of proprietary information?

8 A I'm sorry.

9 Q Of proprietary information, you've never given a  
10 presentation about the hacking of proprietary information or  
11 intellectual property?

12 A I'm not sure what you are talking about.

13 Q Mr. Ferguson, could you give him Exhibit 2063.

14 This is a presentation prepared by NDS, correct?

15 A This is a presentation prepared by me, actually.

16 Q Okay. And if you could go to -- I'll find it --  
17 page 6, 2063-6.

18 And this is a page entitled "Attack template," correct?

19 A Correct.

20 Q And this relates to intellectual property in the  
21 hacking of consumer electronic devices that contain  
22 intellectual property, correct?

23 A This was a keynote presentation at the international  
24 broadcasting convention in which I talked about the dangers  
25 that new technologies like ubiquitous broadband and other



1 new consumer electronics present to content, which is why  
2 the title, "Can Content Remain King?"

3 Q And you are in the -- News Corp is in the content  
4 business, correct?

5 A Among others, yes.

6 Q If you could go to this -- the first section on the  
7 bottom, it's got various things, and it has a "stage zero";  
8 do you see that?

9 A Yes.

10 Q And the first thing is "hacking," correct?

11 A Yes.

12 Q And the first step is "reverse engineer," correct?

13 A Yes.

14 Q The next thing in "hacking" is "extract keys," correct?

15 A Correct.

16 Q And you have different types of keys in conditional  
17 access. You have box keys, and you have card keys, correct?

18 A It depends on the -- on the individual conditional  
19 access system.

20 Q And the EchoStar system had box keys and conditional  
21 access keys, correct?

22 A This particular presentation actually was focusing on a  
23 more general consumer electronic, I believe it's software as  
24 well as hardware, and so on.

25 Q Okay. The next thing in a successful hack is "design

1 pirate tools," correct?

2 A Correct.

3 Q And a pirate tool would be a reprogrammer in  
4 conditional access?

5 A In this particular case, actually, I was -- I was  
6 talking about the DVBS, which was as you -- if you look at  
7 the continuing presentation, was presented as the biggest  
8 source of piracy for movies, and so on.

9 Q But a hack is a hack, correct? There are steps to a  
10 hack. Whether it's consumer electronics or it's conditional  
11 access, you go through the same methodology, don't you?

12 A Well, there are certain elements that are similar,  
13 obviously.

14 Q Okay. And so far we've gone through reverse engineer,  
15 extract the keys and design pirate tools, correct?

16 A Correct.

17 Q And the pirate tools would be a reprogrammer, correct?

18 A A reprogrammer could be a pirate --

19 Q Are you aware that Christopher Tarnovsky built a  
20 reprogrammer for NDS called the Stinger?

21 A The Stinger, as far as I know, was a tool that we built  
22 to assist law enforcement agencies in prosecuting pirates.

23 Q It was a reprogramming device that could be used to  
24 reprogram cards, correct?

25 A I believe it was built to assist law enforcement

1 agencies and our intelligence operations to identify  
2 illegitimately or illegally programmed cards.

3 Q And the next step is to distribute those pirate tools  
4 to the pirate community, correct?

5 A Correct.

6 Q And the conditional access area, that would be a  
7 successful hack, wouldn't it, if you could reverse engineer  
8 it, extract the keys, build a device, and have that device  
9 distributed throughout a pirate distribution network such as  
10 Al Menard's, correct?

11 A Well, it depends on the nature of the hack to what  
12 extent it would sustain any electronic countermeasures or if  
13 it was --

14 Q Let's talk about just a hack in the first place before  
15 we even get to electronic countermeasures.

16 A Uh-huh.

17 Q That would be a successful hack, wouldn't it?

18 A That would be a successful compromise, yes.

19 Q Thank you.

20 Now, I want to talk about DirectTV, and then I think I'm  
21 going to be done.

22 In the Summer of '98, if we go from the Summer of '98  
23 to the Summer of '99, when you had the one-year extension,  
24 you were able to increase your card sales by 41 percent,  
25 correct? We can look at the IPO if you need to.

1 A Well, it's quite possible this was a period when Sky  
2 Digital just launched. We launched a number of other  
3 platforms, so I don't remember exactly what it was  
4 attributable to.

5 Q Okay. Now, I want to focus on '99, okay. In August  
6 '99, we have the four-year deal.

7 Are you aware of PrimeStar?

8 A Yes.

9 Q Okay. Could you tell the jury what PrimeStar is?

10 A PrimeStar was a medium power satellite platform set up  
11 by the cable companies in the United States, or a joint  
12 venture to offer satellite paid TV to areas that were not  
13 covered by cable, and therefore, was a competitor to both  
14 DirecTV and EchoStar at the time.

15 Q Okay. If we go to the August '99 time period, you have  
16 what would be normal subscriber growth, okay? Let's take  
17 DirecTV, and it's just going to go through normal growth;  
18 are you with me?

19 A Yes.

20 Q Okay. In 1999 after you entered into the contract,  
21 DirecTV didn't just experience normal growth, it experienced  
22 exponential growth, because it obtained the PrimeStar  
23 subscribers, correct?

24 A Well, as a --

25 Q We can look at --

1 A It's not exponential. It obviously was increased  
2 growth. PrimeStar had 2 million subscribers, which over  
3 time were replaced by DirecTV subscriptions.

4 Q Could you turn to page 55, your IPO, which is  
5 Exhibit 2060.

6 A Page?

7 Q Page 55.

8 Do you see where it talks about PrimeStar?

9 A Yes.

10 Q And I'm going to read it to you. It says, "As of  
11 June 10th, '99" --

12 Do you find that, Clint?

13 THE WITNESS: Yes.

14 BY MR. WELCH:

15 Q "As of June 10th" --

16 THE COURT: Well, just a moment, Counsel. The  
17 jury can't follow. Where are you?

18 MR. WELCH: I don't have the exact in front of me.

19 THE COURT: Well, walk over to the gentleman over  
20 there and blow it up for the jury.

21 BY MR. WELCH:

22 Q The first -- the first paragraph under "DirecTV  
23 operations."

24 THE COURT: Well, walk over there and find it.

25 MR. WELCH: Did you find it, Clint?

1 BY MR. WELCH:

2 Q It says "As of June 10th, 1999, DirectTV" --

3 THE COURT: No, Counsel, I'm not going to have  
4 this take place. The jury can either follow it or they  
5 can't.

6 MR. WELCH: I'll read it for --

7 THE COURT: If they can't follow it, get it off  
8 the screen.

9 MR. WELCH: I'll read it from his screen.

10 THE COURT: No. You are going to blow it up.

11 MR. WELCH: Can you blow it up, Clint.

12 THE COURT: If it's important enough to put up on  
13 the board, you are going to blow it up and find it.

14 MR. WELCH: It says "As of June 10th" -- I'll tell  
15 you what, can you just read it to us.

16 THE WITNESS: Can I read this?

17 THE COURT: That's not the point. Apparently, I'm  
18 not communicating. I want the jury to be able to see these  
19 diagrams if they go up on the board. Otherwise, they are  
20 not going up. Blow that up.

21 MR. WELCH: Can you blow that up any better,  
22 Clint.

23 That's the biggest we can get it, your Honor,  
24 without it bleeding over.

25 THE COURT: Now that's blown up.

1 (Laughter.)

2 MR. WELCH: May I go ahead and read it, your  
3 Honor?

4 THE COURT: Go ahead.

5 BY MR. WELCH:

6 Q "As of June 10th, 1999, DirecTV U.S. subscribers were  
7 using approximately 6.8 million Smart Cards that we have  
8 supplied. With its recent PrimeStar acquisition, DirecTV  
9 has added approximately 2 million subscribers. Over the  
10 next 18 months, DirecTV will offer to migrate all of  
11 PrimeStar's subscribers to DirecTV's high-power satellite  
12 service, which uses our conditional access system."

13 Do you see that, sir?

14 A Yes.

15 Q Do you agree with me that the August 1999 four-year  
16 extension made that possible for you to obtain the PrimeStar  
17 subscribers and have them utilize the NDS system through  
18 DirecTV?

19 A Of course.

20 MR. WELCH: I have no further questions, your  
21 Honor.

22 (Interruption in the proceedings.)

23 THE COURT: All right. Counsel, this is  
24 cross-examination by Mr. Snyder.

25 MR. SNYDER: On behalf of NDS, yes. Thank you,

1 your Honor.

2 THE COURT: On behalf of NDS.

3 CROSS-EXAMINATION

4 BY MR. SNYDER:

5 Q Good afternoon, Dr. Peled.

6 A Good afternoon.

7 Q Doctor Peled, do you have a Ph.D?

8 A Yes, I do.

9 Q Could you briefly describe for the jury your  
10 educational background?

11 A Well, I have a BSc and -- a bachelor in science and  
12 master's in science degree from the Technical Institute of  
13 Technology, and I have a master's and a Ph.D from Princeton  
14 University, all in electrical engineering. The Ph.D was in  
15 a specialty called digital signal processing.

16 Q Do you have any noteworthy publications, Dr. Peled?

17 A Well, I've written the first textbook on digital signal  
18 processing, and it was quoted with my professor at  
19 Princeton. It was published by John Wiley in 1976, and I  
20 have authored numerous scientific papers.

21 Q Dr. Peled, do you hold any professional honors or  
22 designations?

23 A I am a fellow of the Institute of Electrical and  
24 Electronic Engineers.

25 Q Okay.



1 A I was a member of the Computer Science and  
2 Telecommunications Board of the National Academy of Sciences  
3 for about 40 years.

4 Q Approximately what percent of engineers are awarded  
5 the -- the distinction "fellow" of the IEEE?

6 A I believe it's approximately 1 percent.

7 Q Dr. Peled, before you joined NDS, could you briefly  
8 describe for the jury your professional experience?

9 A Well, I joined the IBM research in the Watson Research  
10 Center in New York as a research scientist in 1974 after  
11 finishing Princeton. And until 1980, I worked in various  
12 research capacities in the area of digital signal  
13 processing, including spending two years in Israel with the  
14 IBM Science Center in Israel.

15 And in 1980, I moved into research management, and my  
16 last position with IBM was from 1985 to 1993 as vice  
17 president of IBM's global research division, was  
18 responsibility for all research activities and software  
19 systems, communications, essentially everything that was not  
20 hardware, which included five labs, three outside of the  
21 United States.

22 Q Dr. Peled, while you were at IBM, did you become  
23 familiar with their reverse engineering activities?

24 A Only peripherally. IBM did have a separate facility  
25 for reverse engineering of competitive products.

1 Q Okay. And what was the purpose of IBM's reverse  
2 engineering of competitive products?

3 A Well, it's a common practice in the industry to  
4 understand the competitive makeup of products, and is done  
5 in every industry, I believe, not just high tech.

6 Q And Dr. Peled, you joined NDS in 1995?

7 A Correct.

8 Q How did you come to join NDS?

9 A I was recruited by Greg Clark, who was, at that time,  
10 the chief technology officer of News Corp.

11 Q And did you join NDS as its CEO?

12 A I joined NDS as the CEO. There were a number of  
13 transformations in the companies that eventually became NDS.

14 Q Dr. Peled, when you joined NDS, what was the  
15 relationship between NDS and News Corp?

16 A NDS was a wholly owned subsidiary of News Corp.

17 Q Okay. And at the time that you joined, what -- can you  
18 describe for the jury the relationship between -- the  
19 operational relationship between NDS and News Corp.

20 A Well, it was a separate stand-alone company, and  
21 clearly, News Corp had an interest in its success.

22 Q Okay. Does -- what role does News Corp play in making  
23 decisions for NDS?

24 A We do have an annual review of our budget and our plan  
25 for the year, and that review -- the accomplishments of the

1 previous year are reviewed, and the budget and plan for the  
2 next year is reviewed and approved, typically.

3 Q Okay.

4 A That's the typical operational engagement we have.

5 Q And other than that annual review, is -- does News Corp  
6 have any other involvement in the operations of NDS?

7 A News Corp gets, of course, monthly reports from the  
8 financial side of the business, but operationally, no, we  
9 are very independent.

10 Q Now, you -- earlier this morning, there was some  
11 discussion about the NDS board of directors. Does  
12 Mr. Murdoch sit on the NDS board of directors?

13 A No.

14 Q Has Mr. Murdoch ever sat on the board of NDS?

15 A No.

16 Q Does Mr. Murdoch have any role in the operational  
17 decisions at NDS?

18 A No.

19 Q Has that always been true?

20 A Yes.

21 Q Now, this morning you mentioned a loan that -- a  
22 \$200 million loan that News Corp had granted to NDS; do you  
23 recall that?

24 A Yes, as part of our restructuring prior to the IPO, we  
25 did have a -- when we went public, we did have a loan of

1 \$200 million to News Corp.

2 Q And was that loan created in the process of making the  
3 company ready to go public?

4 A Yes, there were various assets that were neither part  
5 of News Corp that were all consolidated under NDS Group, PLC  
6 in order to go public.

7 Q So that loan was a necessary part of getting all of the  
8 approvals, et cetera, for it to go public?

9 A It was part of the process of going public.

10 Q And when was that loan repaid?

11 A That loan was repaid over the next few years. I don't  
12 remember exactly, but we had the repayment schedule. It was  
13 all fully repaid.

14 Q Okay. Does NDS sometimes use News Corp services?

15 A Yes, NDS has a management services -- management  
16 services contract with News Corp, and we use a number of  
17 News Corp services as appropriate.

18 Q Does -- can you give the jury a couple of examples of  
19 those kinds of News Corp services that it would use?

20 A Well, for example, internal audit is used. We use  
21 internal audit. We get support on litigation from News Corp  
22 lawyers. We often get payroll services. We get pension  
23 services from different entities of News Corp.

24 Q And does NDS pay for those services?

25 A Of course. They are all reimbursed cross-charges

1 across the companies.

2 Q Now, as a -- does the relationship between NDS and News  
3 Corp have any impact on NDS's sales?

4 A Well, News Corp is obviously quite active in the area  
5 of paid TV, and it's -- to some extent, we compete for  
6 business where News Corp is the owner. Sometimes they are a  
7 majority owner, sometimes they are a minority owner. All of  
8 those are done arms' lengths. And approvals for such, since  
9 we've been public, obviously go to our audit committee, and  
10 if the other company is also a News Corp-related entity, it  
11 goes to their audit committee as well --

12 Q Does NDS --

13 A -- for approval.

14 Q Does NDS sell to competitors of News Corp?

15 A Yes.

16 Q Did you ever discuss with anyone at News Corp NDS's  
17 ability to sell to News Corp competitors?

18 A When I was first recruited to run NDS, I pointed out  
19 that in my view, the ability of NDS to compete in the open  
20 marketplace is essential to us being a competitive  
21 technology company, and I received the reassurance that NDS  
22 would be allowed to sell, not only to News Corp related  
23 companies or companies that News Corp has no business with,  
24 but also to News Corp competitors.

25 Q Has anyone at News Corp ever attempted to interfere

1 with NDS's ability to sell to competitors?

2 A Never.

3 Q Has anyone at News Corp ever suggested to you that it  
4 would be good if NDS's competitors were hacked?

5 A No, definitely not.

6 Q Has anyone from News Corp ever suggested to you that it  
7 would be good if some competitor of a News Corp company were  
8 hacked or pirated?

9 A No, the same answer, definitely not.

10 Q Has anyone from News Corp ever suggested that NDS  
11 should participate in the piracy of any system whatsoever?

12 A Never.

13 Q Now, Dr. Peled, when you joined NDS, did you adopt a  
14 particular strategy for the future of the company?

15 A Well, of course. I joined NDS. I saw it as a major  
16 challenge. I thought that it was the dawn of digital  
17 television. I learned about our technology, about the state  
18 of the market, the issues that customers have, and the  
19 result, I adopted the business strategy and the technology  
20 strategy.

21 In the technology area, it was clear to me that our  
22 Achilles' heel was the chip used in the Smart Card. Given  
23 my prior experience, broad experience in research with IBM,  
24 I believe that we could do a much better job in there. I  
25 was very unsatisfied with the performance of the company to

1 that point, and I proceeded to invest considerable amounts  
2 of money, hundreds of millions of dollars in research and  
3 development on a three-pronged approach specifically on the  
4 security side.

5 One is to upgrade our technological capabilities  
6 through the design of unique silicone chips that would be  
7 difficult to compromise certainly raise the bar  
8 considerably; second, to set up an operation of intelligence  
9 activity to understand the threat and be able to combat it,  
10 and so the corporation with law enforcement agencies to  
11 combat piracy in the market.

12 Q Now, you said that you were dissatisfied with the state  
13 of NDS's technology when you arrived. What do you mean by  
14 that?

15 A Well, I mean, it was quite clear that the chips that we  
16 were using, which were typically off the shelf, were not  
17 secure enough and were compromised quickly. And while it  
18 may have been the case that the original concept was that  
19 operators will change cards on a periodic basis, when it  
20 came to it, they clearly did not like it, and I felt that we  
21 could do a much better job. I embarked on a strategy of  
22 zero piracy, and I'm proud to say that we have achieved that  
23 within a few years.

24 Q Okay. How has improving NDS's technology improved  
25 NDS's competitive position?

1 A Well, I -- I'm a big believer -- coming, obviously,  
2 from research, I'm a big believer in the -- in the fact that  
3 if you spend a lot of money on research and development  
4 effectively, you are going to benefit from it, and so we  
5 immediately -- I actually doubled the research and  
6 development team. I hired people with experience in  
7 silicone design. We also decided to try and find people  
8 that understand the methods of attack, and we got some  
9 brilliant people that were ex-hackers involved, because it  
10 was clear to me that these people think out of the box, and  
11 that our engineers had to understand that in order to be  
12 able to design chips that will withstand such attacks.

13 Q How much -- just to give the jury some sense, how much  
14 did NDS spend on R and D last year?

15 A Last year our revenues were 700 and a little bit  
16 million, and we spent on the order of 25 percent, so that  
17 will be 170 million, give or take.

18 Q How does that compare to NDS's competitors?

19 A Well, I think that in the -- I started with that right  
20 away, and in the early days, I was always asked when we  
21 first went public by analysts that covered some of our  
22 competitors, why is NDS spending three times as much on  
23 research and development as our competitors. So I believe  
24 that we early on started outspending our competitors,  
25 because we believe that we will open a technological gap,



1 which indeed we did.

2 Q And is part of that money spent on designing custom  
3 chips, as opposed to using off-the-shelf chips?

4 A In the security arena, that was obviously the key  
5 focus, was to design custom chips. And not only that, but  
6 to have different unique chips from different manufacturers  
7 for different customers so that if there is a compromise of  
8 one of them, it doesn't -- it's not like a -- affecting  
9 other customers, and that has turned out to be very  
10 successful.

11 Q Is NDS unique in providing custom chips to each  
12 customer?

13 A And as far as I know, among our Smart Card competitors,  
14 definitely. I don't know exactly what Motorola and  
15 Scientific Atlanta do.

16 Q Is it more expensive to design a custom chip for each  
17 customer?

18 A Well, clearly. Designing a custom chip is typically an  
19 investment of anywhere from 10 to \$20 million, depending on  
20 the complexity of the chip, including special, non-recurring  
21 engineering that we pay to the semiconductor facility. So  
22 that, yes, obviously cost us money, but it was money I  
23 believe well spent.

24 Q Now, there was some testimony this morning, Dr. Peled,  
25 about the P4 chip. What is the P4 chip?

1 A The P4 chip is the chip that we developed for DirectTV  
2 starting after August '99 as part of the new conditional  
3 access supply agreement.

4 Q And approximately how much did NDS spend develop -- in  
5 R and D developing the P4 chip?

6 A I can't be precise, but I said it was a more complex  
7 chip, so I would say on the order of 15 to \$20 million.

8 Q All right. Now, one of the things that you mentioned,  
9 Dr. Peled, as part of increasing the technological effort,  
10 was hiring former hackers?

11 A Yes, we did hire two people that were considered quite  
12 brilliant, and I think they indeed were -- as I said, these  
13 are people that are self-educated. They don't think like  
14 educated engineers that would never think of putting --  
15 applying a 30-volt signal to something that's supposed to  
16 get 3 volts and see what happens, or just put a marker over  
17 a pin, and I thought that that thinking was absolutely  
18 essential in order to develop chips that would withstand  
19 attacks. I might add that in the security arena, this is  
20 quite common, because -- and I know that in the banking  
21 arena, people have been used that had, you know, prior were  
22 penetrating security, and so on. So I thought that it is a  
23 necessary element of our upgrading the technology.

24 Q Now, Dr. Peled, the jury has heard a fair amount of  
25 testimony about the Haifa research center. Whose decision

1 was it to create the Haifa research center?

2 A It was my decision.

3 Q Why did you make that decision?

4 A Well, as I said, one of the critical elements was to  
5 understand the methods of attack, be able to attack our own  
6 chips during the design in a kind of arm's length  
7 relationship, which is why we set it up separate from our  
8 normal research and development facilities so that we limit  
9 the exchange of information, and indeed, have a tension  
10 between the two.

11 Q And what do you mean by "a tension between the two"?

12 A Well, obviously, there can't be exchange of  
13 information, and they were, you know, trying to penetrate  
14 the chips that were developed by our engineers in Jerusalem.  
15 On the other hand, we had to be able to capture the know-how  
16 that arrive from both reverse engineering our own chips, as  
17 well as competitor chips, and translate these into what we  
18 call the cookbook. The cookbook specifies the design  
19 methods, the pitfalls that engineers should look for when  
20 designing securer chips.

21 Q Dr. Peled, you mentioned reverse engineering of  
22 competitor chips. Whose decision was it to reverse engineer  
23 competitor chips at the Haifa research center?

24 A I instructed, when we set up the lab, the charter that  
25 we gave them in order to really understand mistakes that

1 people make. I said we should also reverse competitive  
2 chips.

3 Q Did you ever identify any specific chips that should be  
4 reversed engineered?

5 A No. As I said, I was not involved in the daily  
6 operation of the -- of the facility.

7 Q Did you ever -- have you ever received any reports of  
8 the specific work done at the Haifa research center?

9 A No.

10 Q Have you ever discussed with them which specific chips  
11 or projects they would do at the Haifa research center?

12 A No. It was managed locally.

13 Q Now, Dr. Peled, you mentioned that you had a three-part  
14 strategy. What was the second part of your strategy?

15 A The second part was to set up an intelligence gathering  
16 operation, both field, as well as internet research, so that  
17 we know the enemy and understand the threat and try and  
18 identify it.

19 Q How much attention was NDS paying to intelligence or  
20 operational security when you joined the company?

21 A Well, there was some. It was subcontracted out to an  
22 outside investigative firm, and I thought was quite weak.

23 Q And -- and how did you change that emphasis?

24 A I hired Mr. Hasak, who had an outstanding background in  
25 intelligence in the Israeli Secret Service where he was

1 deputy head. Another factor in Mr. Hasak, that he was a  
2 person of impeccable integrity whose integrity was tested in  
3 the most difficult of circumstances where he was a  
4 well-known figure in Israel, where he was not prepared to  
5 participate in a cover-up, gave up his career, which a next  
6 step would have been the head of the Secret Service, and  
7 actually cause the government to fall as a result of that --  
8 his unwillingness to participate in a cover-up of an illegal  
9 act inside the Secret Service.

10 Q And did Mr. Hasak's background give you confidence in  
11 his integrity?

12 A Definitely.

13 Q Do you still have confidence in Mr. Hasak's integrity?

14 A Yes, Mr. Hasak is a person of outstanding integrity.

15 Q Now, I'd like to spend a moment talking about some of  
16 the specific things that you did to improve, or that NDS did  
17 to improve its operational security.

18 Did -- was NDS the first conditional access company to  
19 have an anti-piracy program?

20 A I can only refer to Smart Card-based companies. I  
21 believe the general instrument, which is now Motorola, had  
22 the secure -- had an equivalent of an operational security  
23 team, as I believe that Scientific Atlanta in the United  
24 States. I don't believe that any of our competitors at that  
25 time had such activity.

1 Q Was NDS the first Smart Card company to recruit  
2 professional security and intelligence people?

3 A I believe so.

4 Q Was NDS the first Smart Card company to take an active  
5 role in anti-piracy organizations?

6 A I believe so.

7 Q Was NDS the first Smart Card company to lobby for  
8 anti-piracy legislation?

9 A Yes, we were very active in this area, and still are.

10 Q As part of the upgrade in intelligence and operational  
11 security, did NDS work with pirates and former pirates?

12 A Yes.

13 Q Why?

14 A Well, I mean, I think that in order to penetrate pirate  
15 networks, you can't particularly waltz in with a Ph.D and  
16 say, "I'm a pirate." I think he would be found out.

17 Q Has -- has NDS's increase or increased focus on  
18 intelligence and operational security had benefits?

19 A Yes, I believe that both our customers appreciate the  
20 support we give them, and it has resulted in a fair number  
21 of successful prosecutions, and I think we contributed to it  
22 being a deterrent in the industry.

23 Q Now, what was the third part of your three-pronged  
24 business strategy for NDS?

25 A Cooperation with law enforcement agencies.

1 Q Yes --

2 A This is all. I should just clarify on the security  
3 side, because obviously we had -- conditional access and  
4 security were roughly half of our business.

5 Q Has NDS increased its cooperation with law enforcement?

6 A Yes.

7 Q Okay. Has that improved NDS's competitiveness?

8 A Yes, I believe that our customers view very favorably  
9 our willingness to support them. You know, satellite piracy  
10 or cable piracy is not exactly a high priority. Typically,  
11 it was law enforcement agencies, and therefore, we felt not  
12 only did we have to educate them, which we did proactively  
13 in the United States and other countries, but also, to  
14 prepare the case sufficiently so that they can prosecute it  
15 without spending too many resources, and we spend a fair  
16 amount of money on that.

17 Q Have those efforts helped other participants in the  
18 Smart Card business?

19 A Yes, we have often -- well, at least in two cases I  
20 know we have prosecuted the pirates that pirated systems  
21 supplied by our competitors and even not -- involving a  
22 customer of ours. We've also cooperated with a competitor  
23 to, again, put the pirates out of business.

24 Q Now, Dr. Peled, this morning when you were being asked  
25 some questions by the plaintiffs' attorney, you mentioned

1 that after reviewing other systems when you came on board at  
2 NDS, that you concluded that NDS's system was superior; do  
3 you recall that?

4 A Yes.

5 Q Could you explain to the jury what you meant by that?

6 A Well, the conditional access is really a system which  
7 involves the ability to send out encrypted signals, and then  
8 in the Smart Card, to decide whether or not you're  
9 authorized to view that. The system approach of NDS is  
10 quite unique versus every other Smart Card competitor,  
11 because instead of -- every other competitor uses what is  
12 called "key base distribution," so the key to the crypt, the  
13 content, is itself encrypted and sent out to the set-top  
14 box. NDS had a unique patented system in which we do not  
15 send out a key, but we send out -- there is an algorithm  
16 that locally in the set-top box generates that key. It  
17 sounds a bit like magic, because it's called a zero proof  
18 algorithm, so there is zero information that they send, but  
19 the -- the set-top box knows how to generate the key  
20 locally.

21 Now, that has several benefits. The two principal ones  
22 are, first, that the entitlements, that is -- you know, you  
23 have to send every Smart Card. You have to tell it whether  
24 or not it can decode HBO or Showtime or whatever. These  
25 entitlements take bandwidths, and in the NDS system, that



1 bandwidth is fixed and is actually quite small. It's much  
2 less than half of a standard definition television channel,  
3 whereas in the other systems, that bandwidth is proportional  
4 to the number of set-top boxes out there that you're trying  
5 to entitle and obviously grows. So if you have a lot of --  
6 millions of boxes you are giving up, you may be giving up  
7 two or three television channels.

8         The second one had to do with the way that you can  
9 recover should the card be compromised from piracy, because  
10 now, if all you can do is distribute keys, then if the card  
11 is compromised, then you have to send a new key, but that  
12 key can be intercepted. And you already know the new key  
13 before you put it into effect, whereas in the  
14 algorithm-based approach, you actually send out a new little  
15 algorithm, and now, the pirate has to extract that code  
16 again and figure out what is the new algorithm. That's why  
17 we typically gave customers -- in our contract, we would  
18 promise that a pirate device could not see television more  
19 than half of the time because, you know, half of the time it  
20 would take to recover from the previous electronic  
21 countermeasure. So these were two very clear functional  
22 advantages.

23 Q     Dr. Peled, focusing on -- on your last point, the jury  
24 has heard a lot of testimony about hacked systems versus  
25 unhacked system. If a system is hacked, does that mean that

1 any pirate can watch television anytime?

2 A Well, no, because obviously there are electronic  
3 countermeasures that are being done. And as I said, you  
4 know, the NDS system architecture or concept enables it to  
5 recover much more gracefully from piracy by indeed being  
6 able to, half of the time, if you were running electronic  
7 countermeasures, not be able to watch television, which  
8 minimizes, obviously, the piracy.

9 Q Dr. Peled, when you said that you concluded that the  
10 NDS system was superior, did you also conclude that its  
11 cards were superior?

12 A No, clearly not. I mean, I thought that we did a very  
13 poor job on the Smart Card itself, as I said, and I felt  
14 that we have to spend a fair amount of money to improve our  
15 capabilities in that area by being able to design custom  
16 chips that will not be compromised, and I am -- you know,  
17 I'm pretty proud to say that every chip we have designed  
18 after '99 has never been compromised at this point, and we  
19 are on 86 million boxes out there, and none of our cards  
20 currently is compromised in 50 systems around the world.

21 Q Dr. Peled, I'd like to switch gears a little bit and  
22 ask you about a few transactions in particular.

23 Do you recall a proposed transaction involving a  
24 satellite service for News Corp called A Sky B and the  
25 proposed merger with EchoStar?

1 A Yes.

2 Q Okay. What was A Sky B?

3 A News Corp decided to launch a satellite platform in the  
4 United States. It was actually in cooperation with MCI, who  
5 at the time was a partner in launching the satellite, and  
6 supposedly to launch the service.

7 Q And what was the proposed transaction between A Sky B  
8 and EchoStar?

9 A At the time, there was concern that, obviously, having  
10 too many satellite platforms, you know, is -- is going to  
11 mean that we'll all lose money, and there was a proposed  
12 merger between EchoStar, who had just started at that  
13 time -- this was I think in '96, in the Fall of '96 -- with  
14 the proposed launch of A Sky B.

15 Q What role did you play in those discussions?

16 A Well, I think News Corp was, at that point, very  
17 satisfied with our performance in B Sky B, which at that  
18 point, had three-and-a-half million subscribers. We had  
19 very advanced plans to launching a digital service, which  
20 included, not only, you know, standard digital quality, but  
21 also advanced interactive application and advanced  
22 electronic program guide. And News Corp made one of the  
23 conditions of the merger on which, you know, given that they  
24 were going to spend billions of dollars investing in a  
25 launching of a satellite platform in the United States, that

1 NDS technology should be used as long as it is as good and  
2 as, I believe, cost-effective as the Nagra technology, which  
3 had just started at that point in EchoStar.

4 Q Did News Corp and EchoStar complete the A Sky B deal?

5 A No.

6 Q Why not?

7 A Well, I don't, obviously, know all the reasons, but one  
8 of the reasons why that was given is that EchoStar did not  
9 give adequate consideration to the use of NDS conditional  
10 access system.

11 Q And what was Mr. Ergen's objection to using NDS's  
12 conditional access system?

13 A Well, I would say that his primary objection was price.  
14 He was very focused on inexpensive, inexpensive, very low  
15 price.

16 Q Okay. And how do you know that Mr. Ergen was focused  
17 on price?

18 A Well, I spent three hours on a plane ride with him from  
19 New York to Denver, and we never got beyond talking about a  
20 royalty of \$1.50 per box, which he refused to pay. The next  
21 day we had a full day meeting, and again, you know, we --  
22 whenever we wanted to bring up the functional advantages,  
23 and so on, Mr. Ergen was very focused on price. He used  
24 also as an argument, I believe, that would have been  
25 overcome, that we were at that time compromised in DirecTV,

1 and the Nagra system we just helped launch and had 250,000  
2 subscribers, to DirecTV's two-and-a-half million, was not  
3 yet compromised.

4 Q And why do you see -- why do you say that that argument  
5 would have been overcome?

6 A Because if we would have agreed to a very low price,  
7 I -- I believe that we could have made a deal.

8 Q And do you believe that you would have been able to do  
9 a deal if the price were right even though NDS was hacked?

10 A Correct.

11 Q Had NDS been able to obtain business, or was NDS,  
12 before it became fully secure, able to obtain business even  
13 though it was hacked?

14 A Yes.

15 Q Can you give the jury some examples of that.

16 A Well, I mean, you know, we got platforms all around the  
17 world. Korea -- in SkyLife in Korea, Yes in Israel,  
18 Madritel, you know, a number of platforms around the world.

19 Q Now, following the failure of the A Sky B merger, did  
20 anyone at News Corp tell you that NDS should hack or pirate  
21 the EchoStar system in retaliation?

22 A Never.

23 Q Did anyone as News Corp tell you that NDS should  
24 somehow foster piracy of EchoStar in retaliation?

25 A Never.

1 Q Did the failure of that deal create some motive for NDS  
2 to hack EchoStar?

3 A No.

4 Q Why not?

5 A Well, I mean, I believe that this was a period in which  
6 we were extremely busy, number one. Number two, we don't  
7 engage in illegal conduct.

8 Q Now, after the merger with EchoStar fell apart, did  
9 News Corp attempt to acquire another satellite platform?

10 A DirecTV.

11 Q Okay. Was News Corp successful in acquiring DirecTV?

12 A Well, on the first round, EchoStar, in the final  
13 stages, came in with an offer that DirecTV accepted over the  
14 News Corp offer and of in the, I would say, 90th minute of  
15 the game.

16 Q Okay. So EchoStar and DirecTV then had an agreement to  
17 merge?

18 A Correct.

19 Q Did anyone at News Corp ever suggest to you that that  
20 created some kind of motive to hack or pirate the EchoStar  
21 system?

22 A No.

23 Q Did anyone at News Corp ever suggest to you that NDS  
24 ought to pirate the EchoStar system as a result of that  
25 agreement?

1 A No.

2 Q Did that agreement create some motive for NDS to want  
3 to pirate the EchoStar system?

4 A No.

5 Q Now, did the EchoStar DirecTV merger go through?

6 A No, it was not approved by the government.

7 Q Okay. And when did the government announce that it was  
8 not going to approve the merger?

9 A I believe it was announced in October of 2002.

10 Q Okay.

11 A But it was becoming quite clear leading up to that.

12 Q In the August, September time?

13 A Definitely.

14 Q Were there any financial consequences to EchoStar from  
15 that merger not going through?

16 A I believe EchoStar paid a \$600 million breakup fee to  
17 DirecTV.

18 Q When it became known in August or September of 2002  
19 that that merger was not going to be approved, did EchoStar  
20 do anything?

21 A EchoStar filed their motion to intervene in the Canal+  
22 litigation.

23 Q Do you believe that those events are related?

24 A I have no basis on which to determine that.

25 Q Now, after that deal fell apart, did DirecTV -- I'm

1       sorry, did News Corp obtain an interest in DirecTV?

2       A       Yes, News Corp made an offer for the shares in DirecTV.

3       Q       Okay. Now, before News Corp acquired an interest in  
4       DirecTV, was DirecTV an NDS customer?

5       A       Yes.

6       Q       And when did that relationship begin?

7       A       Well, DirecTV became the customer of NDS in 1992.

8       Q       Has -- has NDS always been DirecTV's conditional access  
9       provider?

10      A       Yes.

11      Q       Has NDS had to renew that contract over time?

12      A       Yes.

13      Q       And I believe you testified earlier that there was a  
14      renewal in 1998?

15      A       Yes, and in '99.

16      Q       Okay. During those negotiations in 1998 and 1999, did  
17      DirecTV ever tell you -- well, let me take a step back.  
18      What was your role in those negotiations?

19      A       Well, there were negotiations at different levels.  
20      When things needed executive intervention, I myself got  
21      involved in the discussions.

22      Q       So you participated personally in those discussions?

23      A       Yes.

24      Q       At any time, did DirecTV notify NDS that DirecTV was  
25      talking to NDS's competitors about a competitor becoming



1 DirecTV's conditional access provider?

2 A No.

3 Q Did DirecTV ever notify NDS that it was seeking some  
4 other bids or proposals?

5 A No.

6 Q Did DirecTV notify NDS that it was sending out requests  
7 for information?

8 A No.

9 Q At any time, did DirecTV discuss replacing NDS with  
10 NagraVision?

11 A No.

12 Q Did anyone from DirecTV even discuss or mention  
13 NagraVision or NagraStar during those discussions?

14 A Not to me.

15 Q As a result -- if I understand correctly, NDS and  
16 DirecTV did, in fact, do a one-year extension in 1998?

17 A Well, just for clarification, NagraStar and the  
18 NagraVision joint venture with EchoStar, NagraStar clearly  
19 supporting a direct competitor of DirecTV. I think it's  
20 quite hard to believe that they would use that so that their  
21 competitor has detailed information about the subscriber  
22 acquisitions and all that.

23 Q Now, we talked a little bit earlier about the -- the P4  
24 card. That was a card for DirecTV?

25 A Yes.

1 Q When was that card put into service?

2 A In April of 2002.

3 Q Okay. And at that time, did DirecTV replace the  
4 previous cards?

5 A No.

6 Q Was -- when NDS introduced the P4 card, was the  
7 information about that card confidential?

8 A Yes.

9 Q Would -- would it harm NDS if that information were  
10 disclosed?

11 A Obviously, this is -- I mean, the details about the P4  
12 card are highly sensitive.

13 Q Would it harm NDS if information about the P4 card got  
14 into the hands of its competitors?

15 A Of course.

16 Q In what way?

17 A Well, it could present a shortcut for a competitor  
18 about the various design decisions that we made, insights  
19 into how and why we made them, which would have shortcut a  
20 lot of research and development that they would have done --  
21 would have had to do themselves and not maybe necessarily  
22 successfully.

23 Q Now, when NDS introduced the P4 card in April of 2002,  
24 did DirecTV swap all of its existing cards?

25 A No.

1 Q Did NDS try to convince DirecTV to do that?

2 A Well, we suggested that it would be a good idea to  
3 replace the -- the P3 card with P4 cards.

4 Q And -- but DirecTV decided not to?

5 A Well, it's their decision. I mean, contractually, and  
6 as I testified earlier, it's a business decision that the  
7 operator makes based on their philosophy.

8 Q Did they tell you why they made that decision?

9 A No.

10 Q Now, at some point, there was a complete card swap for  
11 DirecTV for the P4 card; is that correct?

12 A Yes.

13 Q And that was in 2004?

14 A Yes, it started right after there was a management  
15 change in DirecTV in the end of December when News Corp  
16 became the significant shareholder. And I think News Corp,  
17 having by that point experienced our effective zero piracy  
18 strategy in other platforms and in general, their belief  
19 that that's the right way to do it, that immediately  
20 affected a changeover of the remaining P3 cards. That could  
21 have been done at any point after April 2002.

22 Q And when you say it could have been done at any point  
23 after April 2002, what do you mean?

24 A Well, I mean, it does take time to replace a large  
25 number of cards, but it could have been done probably within

1 a year or so.

2 Q Now, when -- let me change gears for a moment,  
3 Dr. Peled.

4 You were asked several questions about allegations by  
5 Mr. Kommerling involving the Canal+ technology; do you  
6 recall that?

7 A Yes.

8 Q And those were conversations you had with  
9 Mr. Kommerling in the late Summer and Fall of 2001?

10 A Yes.

11 Q What was Mr. Kommerling's relationship with NDS at that  
12 time?

13 A Well, we -- we had a joint venture. We established a  
14 laboratory to provide security evaluation services to secure  
15 chips. The idea was that -- you know, we did have fairly --  
16 we set up a whole new lab in the UK, and that had state of  
17 the art equipment, and the idea was to offer these services,  
18 not only to ourselves, but to other companies looking for  
19 secure chips. The --

20 Q I'm sorry, please finish.

21 A Please.

22 Q Did ADSR have any contracts?

23 A The first contract of ADSR was with Canal+  
24 Technologies.

25 Q So at the time that you had these conversations with

1 Mr. Kommerling, who was Mr. Kommerling primarily working  
2 with as a customer?

3 A With Canal+ Technologies.

4 Q Now, after you heard these allegations from -- from  
5 Mr. Kommerling, what did you do?

6 A Well, every time Mr. Kommerling made an allegation, I  
7 immediately talked to Reuven Hasak, my head of operational  
8 security, and I was assured that there was no evidence for  
9 that. In addition, as I said, in the Summer of 2001, it  
10 became apparent that there was something else going on.

11 Q And when you say it was apparent that there was  
12 something else going on, what do you mean?

13 A Well, Oliver Kommerling, Ray Adams started increasingly  
14 suggesting that Canal+ Technologies is intent on merging  
15 with NDS and leveraging these allegations to extract a -- a  
16 higher merger value, perhaps destroy NDS. It depended on,  
17 you know, the day that they were discussing it. I, in  
18 parallel, started getting approaches from bankers, in  
19 particular, Lehman Brothers at the time, suggesting that  
20 there is interest in a merger between Canal+ Technologies  
21 and NDS.

22 Q Now, at some point, did Canal+ file a lawsuit against  
23 NDS?

24 A In March of 2002.

25 Q And did you conduct any, or did you have NDS conduct

1 any additional investigation as a result of those -- that  
2 lawsuit?

3 A Well, the moment the lawsuit was filed we retained  
4 outside counsel, and we asked outside counsel to conduct a  
5 thorough investigation in NDS to what extent there was any  
6 activity that was illegal by any of the people involved.  
7 They also retained an investigative agency headed by a  
8 gentleman I happened to know from my days at IBM, Dick  
9 Callahan, who had a tremendous reputation as an  
10 investigator. He was the head of security for IBM at the  
11 time. And there was a thorough investigation that reported  
12 back to our audit committee approximately six weeks later, I  
13 believe, that they found no evidence of any wrongdoing by  
14 any of the people, and they had a very extensive -- they  
15 visited Israel. They visited all our facilities involved in  
16 these allegations, interviewed everybody, and concluded that  
17 there was no evidence to support any of these allegations  
18 after extensively questioning people.

19 Q Now, Mr. Welch asked you earlier this morning about the  
20 resolution of that litigation. Can you -- was that  
21 litigation resolved?

22 A Yes, it was settled.

23 Q And can you describe for the jury the circumstances of  
24 how that was resolved?

25 A So we have to go back to the period in 2002. At that

1 point, Vivendi had committed to purchase from News Corp the  
2 paid TV operation from News Corp, Intercom Italia, the paid  
3 TV operation in Italy known as Stream, for roughly a billion  
4 dollars.

5 It is also, at that time, actually a week before they  
6 filed their lawsuit that Vivendi announced the largest loss  
7 in corporate -- French corporate history, about \$13 billion.  
8 And it became evident that Vivendi did not have enough money  
9 to go through this transaction.

10 The result was that after a few months of negotiations  
11 in October of 2002, News Corp agreed to actually buy Telepiu  
12 from Vivendi for about 900 million euros, and there was  
13 outstanding litigation between Stream and Telepiu, as well  
14 as this litigation. And as part of the transaction, they  
15 agreed to settle all mutual litigations.

16 Q So did the transaction -- was the transaction driven by  
17 the desire to resolve the Canal+ litigation?

18 A No, I don't think that News Corp would make billions of  
19 dollars of investments simply to help a small company on  
20 that scale like NDS at the time. It is more like buying a  
21 bank to get a cheaper loan for your car.

22 Q Now, Dr. Peled, there's also been some discussion of  
23 litigation between NDS and DirecTV. Are you familiar with  
24 that litigation?

25 A Yes.

1 Q Did NDS investigate those allegations?

2 A Well, there was the first lawsuit that was filed, which  
3 was really a question -- a dispute on performance on the P4  
4 contract, which was settled very quickly. There was a  
5 second lawsuit that was filed that had a longer range of  
6 allegations. Clearly, all of those were investigated. They  
7 were also connected to the same allegations that were  
8 investigated by the U.S. attorney initially in San Diego,  
9 down in Los Angeles, and again, there was no evidence found  
10 of wrongdoing and --

11 MR. WELCH: I am going to object.

12 THE COURT: Sustained. I am going to strike it.  
13 Strike the answer.

14 BY MR. SNYDER:

15 Q Dr. Peled, did NDS --

16 THE COURT: You're to disregard that entire  
17 answer. Strike --

18 MR. SNYDER: Sorry, your Honor.

19 BY MR. SNYDER:

20 Q Did NDS resolve its litigation with DirecTV?

21 A Yes, in -- after the announcement of the acquisition of  
22 News Corp shares and DirecTV, NDS and DirecTV entered into a  
23 mediation process, which resulted in successful agreement,  
24 mediation agreement, which incidentally included a royalty  
25 payment from DirecTV for our intellectual property in their



1 new card, and that mediation agreement settlement was  
2 subject to the closing of the contract between News Corp and  
3 DirecTV.

4 Q Okay. Have you heard the allegation, Dr. Peled, that  
5 News Corp purchased DirecTV in order to resolve the  
6 litigation with NDS?

7 A Well, I repeat my point, you know, News Corp spent 6 or  
8 \$7 billion on that. I don't believe that they -- News Corp  
9 would make such a business decision simply to get NDS an  
10 additional hundred million dollars of revenue.

11 Q Now, when News Corp had an agreement in principle to  
12 purchase an interest in DirecTV, did EchoStar oppose that?

13 A Yes, as I said, EchoStar filed its -- this current  
14 lawsuit against NDS, and approximately a week later filed an  
15 opposition with the FCC citing NDS involvement of piracy as  
16 one of the reasons why the FCC should not approve a purchase  
17 of DirecTV shares.

18 Q Now, Dr. Peled, you are familiar with Chris Tarnovsky?

19 A Yes.

20 Q Did you play any role in hiring Mr. Tarnovsky?

21 A No.

22 Q Did you approve of his hiring?

23 A Yes.

24 Q Was Mr. Tarnovsky paid for his services by NDS?

25 A I believe initially he was paid through HarperCollins.

1 Q Why was that?

2 A Well, from what I understand -- I wasn't involved in  
3 setting it up, but from what I understand, Mr. Tarnovsky's  
4 role initially was to be undercover. And it was -- it would  
5 have endangered him, because many of these people that he  
6 associate with are not particularly nice people to have a  
7 connection to NDS that would have been discoverable, and as  
8 a result, it was arranged to pay him through a sister  
9 company.

10 Q Is it unusual for NDS to pay one of its employees  
11 through another News Corp company?

12 A No. We've done it for people in Germany. We've done  
13 it for people in the U.S., initially, that were paid by Fox.

14 Q Okay. Under what circumstances does NDS pay its  
15 employees through another News Corp company?

16 A Well, there may be different reasons, and the reason,  
17 like in Germany, we didn't have a company set up at that  
18 point in Germany.

19 Q Does NDS ultimately pay for those employees?

20 A Of course, this is done as a cross-charging between  
21 companies.

22 Q Okay. While Mr. Tarnovsky was an NDS employee, did you  
23 have any interactions with him?

24 A I met him once where he made the presentation of a very  
25 interesting idea for a secure CPU. This was after his cover

1 was blown, and he had to, really, be involved in other  
2 technical work. It was at the breakfast meeting in  
3 New York.

4 Q Okay. And -- and what did you say in response?

5 A I thought that it was a very interesting idea. I  
6 recommended that he present it to Perry Smith, our chief  
7 security officer, and he did present it to Perry, who also  
8 thought that it was very -- a very interesting idea that  
9 could lead to new results, and we -- the project was  
10 ultimately approved, and Perry Smith supervised it.

11 Q Now, before you had that meeting -- well, withdrawn.

12 At any time, did you discuss with Mr. Tarnovsky NDS's  
13 competitors?

14 A No.

15 Q Did you know that Mr. Tarnovsky had been involved in  
16 piracy?

17 A Before he joined them, yes.

18 Q Did you know that he had any interactions with pirates  
19 after he became an NDS employee?

20 A Well, obviously his role was to communicate with  
21 pirates and gather information about piracy.

22 Q Okay. At some point, did you become aware of an  
23 allegation that Mr. Tarnovsky had been involved in piracy  
24 while working for NDS?

25 A Yes.

1 Q How did you become aware of that?

2 A Reuven called me about it.

3 Q And what did Reuven -- this is Mr. Hasak?

4 A Mr. Hasak, sorry.

5 Q And what did he say to you?

6 A Well, he said that there was an incident, and that  
7 there was an allegation that he was involved in piracy in  
8 DirecTV, that he had -- he had flown out. He called me  
9 already from California, had flown out to California  
10 personally to investigate it, and that he found no basis for  
11 it.

12 Q Okay. Now, later when you were talking to  
13 Mr. Kommerling, did you understand that Mr. Kommerling was  
14 accusing Mr. Tarnovsky of being involved in EchoStar piracy?

15 A In September of 2001, he told me that -- yes.

16 Q Was that the first time you had heard any allegation  
17 that Mr. Tarnovsky was involved in EchoStar piracy?

18 A At that dinner, yes.

19 Q And what did you do in response?

20 A Again, I immediately called Reuven -- Mr. Hasak,  
21 sorry -- to relay this new allegation.

22 Q And what did Mr. Hasak tell you?

23 A He told me that, you know, this was a continuing  
24 evolution of something that was happening between, first of  
25 all, the big crowd that they had, the drunken event in which

1 they exchanged information, and Oliver Kommerling and Ray  
2 Adams up to something in connection with Canal+ and trying  
3 to discredit Chris Tarnovsky.

4 Q Okay. Did you believe Mr. Kommerling's allegations?

5 A No.

6 Q Did Mr. Hasak believe Mr. Kommerling's allegations?

7 A No.

8 Q Now, Mr. Tarnovsky was terminated last year, correct?

9 A Correct.

10 Q Were you consulted before he was terminated?

11 A I believe I was consulted -- I was told after he was  
12 terminated.

13 Q Okay. And who told you about it?

14 A Reuven told me about it, Mr. Hasak told me about it.

15 Q Did he explain to you why Mr. Tarnovsky was terminated?

16 A Yes.

17 Q Okay. Did his termination have anything to do with  
18 facilitating EchoStar piracy?

19 A No.

20 Q What -- why did Mr. Hasak -- or what did Mr. Hasak tell  
21 you about the reason Mr. Tarnovsky was terminated?

22 A Well, in a lot of these relationships, it's really  
23 based on trust, and even the smallest breach of trust in NDS  
24 is a reason for termination. And he told me that, you know,  
25 the new evidence that came up, he lost his trust in

1 Mr. Tarnovsky at that point.

2 Q Now, you also asked some questions about Mr. Menard.  
3 Have you ever met Mr. Menard?

4 A No.

5 Q Before Mr. Menard was retained as an NDS consultant,  
6 were you told about it?

7 A Yes.

8 Q Okay. Did you approve of him being hired as a  
9 consultant?

10 A Well, it was done in very close consultation with  
11 counsel. The reason we felt we needed him, there was, at  
12 the time, a leak on the internet of extremely confidential  
13 documents that were involved in the DirecTV litigation, and  
14 Mr. Menard had some unique capabilities of identifying where  
15 such material came, which was the reason we retained him,  
16 and indeed, he was able to identify the source of that leak.

17 Q And was that why Mr. Menard was hired, even though he  
18 had run one of the largest pirate websites?

19 A At that point, he was no -- no longer running that  
20 website.

21 Q Okay. And do you -- were you involved with Mr. Menard  
22 while he was an NDS consultant?

23 A No.

24 Q Were you consulted or informed when the decision was  
25 made not to renew Mr. Menard's contract?

1 A No.

2 Q Who made that decision?

3 A I believe it was Reuven Hasak, Mr. Hasak.

4 Q Okay. Just a few more questions, Dr. Peled.

5 Would it be possible for someone at NDS to order  
6 Mr. Tarnovsky to pirate the EchoStar system without you  
7 being aware of it?

8 A Well, I would expect that no such decision, first of  
9 all, would be made in the first place. And second, if given  
10 that it's such an important decision, I would be told about  
11 it.

12 Q Okay. Would it require your approval?

13 A Of course.

14 Q Has anyone ever suggested such a thing to you?

15 A No.

16 Q Have you ever approved of any such a plan?

17 A No.

18 Q Have you ever suggested to anyone at NDS that they  
19 should facilitate the piracy of the EchoStar system?

20 A No.

21 Q Would you do such a thing?

22 A Never.

23 MR. SNYDER: No more questions, Dr. Peled. Thank  
24 you.

25 THE COURT: Why don't we take a brief recess, and

1 then we'll start with redirect.

2           You are admonished not to discuss this matter  
3 amongst yourselves, nor form or express any opinion  
4 concerning this case.

5           Have a nice recess. We'll come and get you in  
6 about 20 minutes.

7           Dr. Peled, if you'd like to step down.

8           THE WITNESS: Thank you.

9           THE COURT: We'll see you in 20 minutes.  
10 Counsel.

11           (Recess.)

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2 CERTIFICATE

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

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