

Neil Chenoweth.

1. Dates: The May 29 1999 appears to be a mistake on my part.

May 1999: The emails come from a hard drive which had multiple archives on it, reflecting that the emails were downloaded on different computers — at the office, at home, laptop etc, in different time zones. As a consequence there are multiple copies of the emails which have different times and even days. The Financial Review has attempted to remove multiple copies of the same email. In the process some discontinuity of dates remains.

2. From April 30 to May 6 1999, Avigail Gutman conducted an email exchange with Ray Adams with the subject line “Oz”. Gutman had an Australian informant in Melbourne codenamed Joyce who had obtained a copy of pirate software for Australian Irdeto cards from an electronics hobbyist codenamed “Tooley”. Gutman said that this group was involved with armed criminals. The AFR has traced the group and this appears to be a piece of fantasy on the part of Joyce or Avigail. She cited this as a reason to have a modified version of the software prepared. Adams forwarded the software file to NDS consultant Oliver Koemmerling in Germany, and said that it would be easy for him to rework the software entirely. However it would be so drastically changed that he was concerned that the file could be traced to Koemmerling.

In this context, the words “it may even be to our benefit if these came out on the market first — taking the heat off Joyce and also taking away from Tooley’s unique standing”, raise the question what was the “market” referred to.

On the fact of it, it appears that this software was to be released to the online piracy market. Mr Peled’s interpretation is that Gutman proposed to use the software to alert Irdeto and Irdeto’s clients to the hack. However the doctored software would no longer be the pirate product. It would be the pirate program that Olivber Koemmerling had adapted, and which Adams feared might be traced to him. Essentially this would appear to be a fraudulent misrepresentation.

In a subsequent email the same day, Avigail writes: “A release from Europe sounds good. Here’s the software. It is encrypted for both you and Andy.”

Again the question arises what is meant by “a release from Europe”, with the same interpretations open.

The Andy that Gutman sends the pirate software to is Andy Coulthurst, a British hacker employed by NDS. On April 6 he writes back as part of the same email chain, Subject line “Oz”: “Avigail, The hack on Irdeto is SO EASY. All you need is a modified Nokia with DVB200- or a card logger. 1<sup>st</sup> you log the traffic between a real card (turned off is okay) and extract the following information . . . “

Gutman then proceeds to detail almost farcical attempts to try to obtain old cards from a corrupt Telstra linesman (unfortunately they are having trouble finding one) in order to test the piracy program (which incidentally is also posted on the NDS pirate site thoi.com). The overriding concern is that Foxtel should not be aware of their efforts.

3. The April-May 1999 email exchange is merely a scene setter. The most serious evidence of NDS’s role in promoting piracy lies in its exchanges later in the year and through 2000. They show:

1. NDS and Irdeto together engineered the arrest of Rolf Deubel in Thailand in September 1999. However NDS makes it clear this was not to help Irdeto, and a month later Gutman and Adams were discussing how to engineer Deubel’s release on the grounds that it would further piracy of yet another system, Seca, used by Canal Plus.

2. NDS identified David Cottle as the best prospect to succeed Deubel in developing a hack for Irdeto in Australia.

NDS protected Cottle, dissuading Irdeto from prosecuting him: “We don’t want Cottle in jail until he has a hack for Irdeto.

NDS provided piracy material to Cottle and encouraged him through NDS’s agents to pirate the Seca system used by a Malaysian broadcaster, Astro.

In early 2000 when Cottle ran short of smartcards in the course of developing a pirate card for Irdeto systems in Australia, Gutman and Adams arranged to provide him with a supply of 20-30 blank and programmed smartcards.