

What the NDS emails say

NDS completely rejects the allegations made by The Australian Financial Review.

Michael Shackleton
Editor-in-Chief
The Australian Financial Review

March 29, 2012

Dear Mr Shackleton:

Despite claiming to have been investigating the matter for four years, it is already apparent that your several recent articles accusing NDS of promoting and facilitating piracy are based on gross misstatements of fact.

Particularly striking primarily on email stolen from NDS, you consistently misrepresent NDS' fight against piracy and its efforts to protect the investments of its clients and the content they carry. You repeatedly mischaracterize conversations about third party pirate devices to suggest that NDS was responsible for those devices. You further mischaracterize NDS' efforts to suggest that NDS encouraged piracy of copyright content while ignoring evidence that NDS was responsible for bringing to justice the sources of that piracy, and you accuse NDS of being a business enforcement actions device even while ignoring publicly available evidence that those who access stolen content are not NDS' customers and would be impacted by such actions.

For example, in the article "Pay TV Piracy Has News," the content, timing, and even content of emails about piracy in Australia is entirely misrepresented. The article simply claims that a certain email could be "disputed" in fact, the email describes how an NDS informant

On March 30, NDS executive chairman Abe Peled issued a public letter addressed to the *Financial Review*, to media organisations around the world, and placed it in a full-page advertisement in the *Weekend Australian Financial Review*.

Mr Peled in the letter calls the *AFR* coverage misrepresentative, unfair, a shocking manipulation and false, based on six examples that he cites.

The *Financial Review* has offered a wealth of details which Mr Peled does not address. At the

same time, Mr Peled's lawyers have sought to remove the thousands of documents that are the basis for the *Financial Review* coverage from public view.

The *Financial Review* rejects Mr Peled's views because of the information contained within the large body of documents which the paper holds. The *Financial Review* has not alleged illegal behaviour by NDS. It merely describes NDS's operations in the words of its own employees. NDS documents speak for themselves.

Rebuttal by NDS

Financial Review response

The email evidence

AFR "falsely claims that Avigail Gutman, proposed to 'sell Operational Security pirate card before the real pirate card could be distributed ... Gutman merely discusses the possible effect of pirates releasing the cards before NDS could provide evidence of the existence of the hack to third parties, presumably including Irdeto."

The emails refer to Ray Adams of NDS arranging to "completely re-write" an Australian Irdeto hack. Gutman responds, "Will the cards that I sent be useful (they are not Foxtel, but Irdeto nonetheless, and it may even be to our benefit if these came out on the market first)." Gutman envisaged the newly rewritten pirate cards to be "on the market first" before the original pirate card. Under Mr Peled's alternative reading, Gutman planned to show the card to "third parties", falsely claiming that this NDS-modified card was the work of pirates.

FROM: AVIGAIL GUTMAN
SENT: 30 APRIL 1999
TO: RAY ADAMS

Hi Ray,

This is good.

The important thing is to make it different enough so that any "flag" in that software pointing to Joyce will be invisible both the German originators and to Tooley's men.

How long do you think this will take?

Will the cards that I sent be useful (they are not foxtel, but Irdeto nonetheless, and 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)

"NDS was instrumental in the capture and criminal prosecution of Rolf Deubel."

Deubel (MadMax) was arrested in a joint Irdeto-NDS operation in September 1999. Gutman Oct 1999: "having him released would help disseminate the seca hack. Avigail Gutman, who headed Operational Security in Asia, suggested Deubel should be released so that he could continue the hack of the Canal Plus system in Asia. Ray Adams: The only assistance given to Irdeto was the Avigail Thailand operation against MadMax. "That was done primarily as Avigail feared that MM was about to become a threat to NDS products in Australia. We are withdrawing from assisting them."

FROM: AVIGAIL GUTMAN
SENT: 14 DEC 1999
TO: RAY ADAMS

Rest assured we are NOT doing any joint action with Irdeto in OZ. This would clash with our business interests (we are currently negotiating a simulcrypt solution for the satellite and the digital-cable there, and other broadcasters might show interest, too. Mindport are not aware of this yet, as far as I know.)

We know that Curle wanted to take action against bond (his intentions were voiced both to me and to peter smart at Foxtel) but - after checking with lawyers - I think the legal case is very very weak

"The hack on Irdeto is so easy" NDS was merely analysing hacks "as part of its legitimate anti-piracy activity"

On May 5, Andy Coulthurst, a British hacker working for Operational Security, emailed Gutman: "Hacking Irdeto is SO EASY! All you need is ..." and he rattled off the details. NDS went to elaborate lengths to "test" the hack for Australian pay-tv cards which it was running on the NDS piracy website thoic.com. Gutman describes the lengths she went to, to hide her activities. Gutman: "I am trying to get more cards (Foxtel this time) - but despite all the stories about crooked installers who will sell you extra cards - I have yet to find them ..."

FROM: AVIGAIL GUTMAN
SENT: 7 MAY 1999
TO: ANDY COULTHURST

I am trying to get more cards (foxtel, this time) - but despite all the stories about crooked installers who will sell you extra cards - I have yet to find them.

Peled: "The lawsuit "mounted" against Jan Saggiari and others had a substantial basis ... Jan Saggiari eventually admitted his role in that plot, and DirecTV and NDS obtained a permanent injunction in that lawsuit."

Saggiari's settlement document, co-signed by News deputy general counsel Genie Gavenchak, specifically excludes any admission of guilt: "Nothing contained herein shall be deemed an admission by the Defendant of any breach or violation of any state or federal laws of the United States of America." In fact, Saggiari's settlement document, co-signed by News deputy general counsel Genie Gavenchak, specifically excludes any admission of guilt: "Nothing contained herein shall be deemed an admission by the Defendant of any breach or violation of any state or federal laws of the United States of America."

NDS OpSec US chief John Norris emailed Adams repeatedly that there was no case against Saggiari: "Just to recap, we included Jan in the lawsuit in hopes it would give you leverage to impact Jan's relationship with Nagra and/or slanderous comments he apparently has made towards NDS, you, Mike, Alex, et al. We (NDS-US and DIRECTV) have no case against Jan although the law suit certainly impacted him somewhat. I think the biggest impact was the concerns his family has on their good name. When and if you can use the lawsuit to your advantage do so as you see fit.

"We ... have no case against Jan," the US executive overseeing the lawsuit, former Army intelligence officer John Norris, told Adams two months after it was served on Saggiari, yet legal proceedings continued for another nine months.

Norris: "RE Jan S. We named Jan only to accommodate your efforts to make his life difficult and to give you leverage."

Adams on inducing Saggiari to sign an injunction: Adams wrote to Norris, "It is all window dressing to continue with the action we have taken against him so far. Adams to Norris: "The plan against Saggiari worked out well. Now that our operation is over we must now avoid any embarrassment or problem to ourselves in settling the case. I suppose the bottom line is that we are now obliged to settle on whatever terms we can muster."

By March 20, 2001, with the case about to be wrapped up, Adams wrote to Norris and Wilsdon: "The plan against Saggiari worked out well."

FROM: JOHN NORRIS
SENT: 7 JUNE 2000
TO: RAY ADAMS

Just to recap, we included Jan in the law suit in hopes it would give you leverage to impact Jan's relationship with Nagra and/or slanderous comments he apparently has made towards NDS, you, Mike, Alex, et al. We (NDS-US and DIRECTV) have no "case against Jan although the law suit certainly impacted him somewhat. I think the biggest impact was the concerns his family has on their good name.

FROM: JOHN NORRIS
SENT: 14 JULY 2000
TO: RAY ADAMS

RE Jan S. We named Jan only to accomodate your efforts to make his life difficult and to give you leverage. If you want us to proceed, we can go through the expense I believe that will require him to spend \$\$\$ on a lawyer (or to ignore us in which case we will get a judgement against Jan in US Federal Court that is enforceable in Switzerland). Let's strategize this one Ray. I don't think the agreements will be completed before I come to Norway but, I need to know what you want us to do with Jan.

Find out more. Read the emails in full only at afr.com