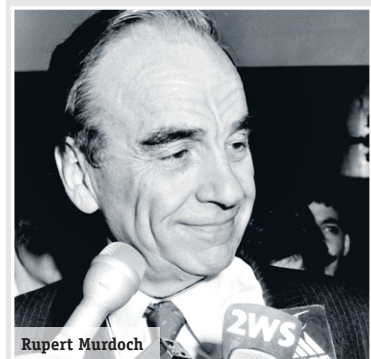


# PAY TV PIRACY

## THE ROAD TO \$US5 BILLION

Key dates in the NDS story



### FEB 1988

Rupert Murdoch sets up News Datacom (NDS) in Israel with \$US3.6m. Weizmann Institute has 20% share.

### FEB 1989

Launch of Sky Television in the UK, using NDS smartcards to prevent unauthorised viewing of the satellite TV service

### NOV 1990

News Corp debt crisis: Murdoch merges Sky with rival BSB to form BSkyB. NDS introduced to all services

### 1990-1991

Michael Clinger runs News Datacom as CEO despite US arrest warrant outstanding for stock fraud.

### 1992

Rupert Murdoch persuades General Motors to use NDS for its planned DirecTV satellite television service

### MID-1995

News counsel Arthur Siskind supervises investigation into continuing fraud of NDS by Michael Clinger. Murdoch hires former Israeli Army signals officer Abe Peled as CEO and former Shin Bet deputy head Reuven Hasak as security chief

### OCT 1995

Foxtel launches on cable in Australia using NDS

### 1996

Hasak sets up Operational Security unit to fight piracy of NDS cards at BSkyB and DirecTV under former Scotland Yard commander Ray Adams (Europe), ex-US Army intelligence officer John Norris (US) and later Avigail Gutman (Asia Pacific)

### OCT 1996

Israeli police raid News Datacom offices in Haifa, Jerusalem, with warrant to hold Rupert Murdoch and others for questioning after Clinger reveals tax fraud



# Free to air: dirty tricks

It was established to protect News Corp's pay TV interests, but the secretive organisation soon turned its attention to damaging the company's competitors, writes **Neil Chenoweth**.

A secret unit within Rupert Murdoch's News Corporation promoted a wave of high-tech piracy in Australia that damaged Austar, Optus and Foxtel at a time when News was moving to take control of the Australian pay TV industry.

The piracy cost the Australian pay TV companies up to \$50 million a year and helped cripple the finances of Austar, which Foxtel is now in the process of acquiring.

A four-year investigation by *The Australian Financial Review* has revealed a global trail of corporate dirty tricks directed against competitors by a secretive group of former policemen and intelligence officers within News Corp known as Operational Security.

Their actions devastated News's competitors, and the resulting waves of high-tech piracy assisted News to bid for pay TV businesses at reduced prices — including DirecTV in the US, Telepiu in Italy and Austar. These targets each had other commercial weaknesses quite apart from piracy.

The Australian Competition and Consumer Commission is still deliberating on final details before approving Foxtel's \$1.9 billion takeover bid for Austar, which will cement Foxtel's position as the dominant pay TV provider in Australia.

News Corp has categorically denied any involvement in promoting piracy and points to a string of court actions by competitors making similar claims, from which it has emerged victorious. In the only case that went to court, in 2008, the plaintiff EchoStar was ordered to pay nearly \$19 million in legal costs.

The issue is particularly sensitive because Operational Security, which is headed by Reuven Hasak, a former deputy director of the Israeli domestic secret service, Shin Bet, operates in an area which historically has had close supervision by the Office of the Chairman, Rupert Murdoch.

The security group was initially set up in a News Corp subsidiary, News Datacom Systems (later known as NDS), to battle internal fraud and to target piracy against its own pay TV companies. But documents uncovered by the *Financial Review* reveal that NDS encouraged and facilitated piracy by hackers not only of its competitors but also of companies, such as Foxtel, for whom NDS provided pay TV smart cards. The documents show NDS sabotaged business rivals, fabricated legal actions and obtained telephone records illegally.

### The email trail

The actions are documented in an archive of 14,400 emails held by former Scotland Yard Commander Ray Adams who was European chief for Operational Security

between 1996 to 2002. The *Financial Review* is publishing thousands of the emails on its website at URL afr.com.

The email archive, which News Corp has previously sought to suppress, provides a unique insight into the secret side of Rupert Murdoch's sprawling global empire — it reveals an operational arm that has generated multi-billion dollar windfall profits for the company.

The emails support claims by the BBC *Panorama* program, aired in the UK on March 26, that News sought to derail OnDigital, a UK pay TV rival to News's BSkyB, that collapsed with losses of more than £1 billion in 2002, after it was hit by massive piracy, which added to its other commercial woes.

While News has consistently denied any role in fostering pay TV piracy, the Adams emails contradict court testimony given by Operational Security officers as well as statements by News lawyers in the past three weeks.

In addition to the controversy over OnDigital and Austar, the actions of Operational Security have triggered five separate unsuccessful legal actions by pay TV companies around the world, each claiming damages of up to \$US1 billion.

Covert operations in Australia were directed by the head of Operational Security for Asia Pacific, Avigail Gutman. At the time Gutman was based in Taiwan, where her husband Uri Gutman was the Israeli consul, before she was promoted to be a Group Leader based in Jerusalem.

### Battle of the boxes

In 1999, the battle to control the set-top box in Australia was at its height. The country's first pay TV service, Australis Media, had collapsed in May 1998 leaving Foxtel, owned by Telstra, News Corp's wholly owned Australian subsidiary News Ltd and Kerry Packer's Consolidated Media, to pick up its satellite customers. At the same time News Ltd under Lachlan Murdoch focused on controversial strategies to rationalise the pay TV industry and bring it under News's control.

At the time, Australia had no effective laws against pay TV piracy. None of the actions that followed would be illegal, senior lawyers told the *Financial Review*.

On Monday, NDS issued a comprehensive statement denying any role in promoting piracy or providing competitors' codes for use in piracy. A full version of the statement can be found online at broadbandtvnews.com.

Back in 1999, Telstra was involved in a poisonous dispute with News, which it accused of double dealing, and in July 1999 Telstra executives drew up a board submission that recommended legal action to force News to sell its 25 per cent stake in Foxtel.

Internal Telstra documents tabled in the Kerry Stokes C7 court case in 2006 said News Ltd "had breached, in Telstra's belief, its contractual obligations in respect of programming and its good faith obligations by seeking to benefit its own financial interests to the detriment of Foxtel".

Telstra's then chief executive



Ziggy Switkowski testified in 2006 that he had decided not to submit the paper to the board but noted: "There is no doubt in my mind that executives from all three shareholders often came to negotiations with a degree of emotion and ferocity that wasn't helpful."

With the internet in its infancy, the set-top box of the pay TV service was seen as the key to controlling future media, through the interactive and expanded services the box could offer.

The key to the set-top box — and the heart of any pay TV business — is the conditional access system. The broadcaster issues paying customers with a smartcard that is inserted into the set-top box to decrypt the satellite or cable signal fed into the customer's home. The system also manages the entire customer record base. It's the nerve centre for the business — but if the encryption is broken and the smartcard is hacked, the pay TV operator is wide open to piracy. It can no longer control who watches its broadcasts and loses its revenue stream.

When it established Foxtel in Australia, News used its own conditional access provider, its Israel-based subsidiary NDS. But the smart card NDS provided Foxtel was similar to NDS cards that had already been pirated elsewhere.

Only a handful of companies

offered conditional access services for pay TV — NDS's chief rivals were Nagra, owned by Kudelski in Switzerland; Seca, owned by Canal Plus in France; and Irredo, owned by Mindport in South Africa.

By the mid-1990s, NDS had become the glue holding Rupert Murdoch's global pay TV empire together providing conditional access services to Foxtel, BSkyB and STAR (in Asia). It also had big contracts with other broadcasters such as GM's DirecTV in the US. But the NDS conditional access system was also the most widely pirated and was in danger of being driven out of business.

### Hunting the pirates

Operational Security was set up as a secret unit within NDS with the active involvement of the Office of the Chairman at News. Initially when Reuven Hasak was hired in 1995, the goal was to help News sue Michael Clinger, a former NDS chief executive who had defrauded the company.

The target then became pay TV pirates and hackers — and Operational Security proved ruthless at prosecuting pirates attacking News Corp systems.

It's an unusual step for a media company to set up its own security service and it was perhaps an indication of how desperate the

**Lee Gibling built thoi.com into the world's leading piracy site where hackers could download programs, swap codes and ask other hackers for help.**

