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Covert action costs DirecTV millions

# Exposed: undercover blue

Foxtel says it jumps on wrongdoing

## Operation Smartcard

Neil Chenoweth

News Corporation subsidiary NDS operated one of the biggest pay TV piracy operations on record in North America in partnership with the US government, in an undercover operation that went spectacularly wrong.

NDS ran the operation in 1998 with US Customs without telling its biggest client, the US satellite broadcaster DirecTV. The operation cost the broadcaster millions in lost revenue.

After an earlier bungled NDS operation, DirecTV had insisted that NDS agree to a moratorium on running any undercover operation in North America without DirecTV's consent.

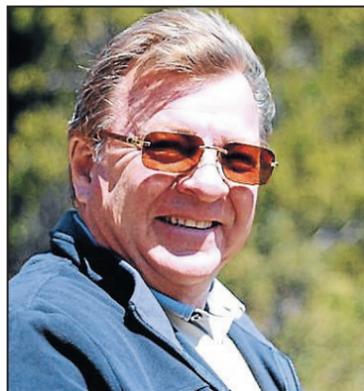
NDS sidestepped this agreement because the operation involved a law enforcement agency, and did not tell DirecTV when it ran out of control.

NDS had a multimillion-dollar contract providing DirecTV with the conditional access system used to control who could access its programs. The system is based upon a set-top box and smartcard issued to customers to unscramble the encrypted broadcast and control which programs could be watched. It is the key to broadcasters' revenue streams and customer management but is also prey to hackers and pirates who break the encryption codes and make and sell black-market smartcard.

Access system companies such as NDS and Canal Plus of France ran security teams targeting the pirates, often in conjunction with law enforcement agencies.

The bad blood between DirecTV and NDS began with an incident in October 1997 when DirecTV security chief Larry Rissler, a former FBI special agent, issued a Search and Detain order through the FBI for German hacker Oliver Kommerling who had been offering pirate cards in Canada.

But Ray Adams, the head of NDS Operational Security for Europe, who



Operational Security US chief John Norris, German hacker Oliver Kommerling and a US counterpart Chris Tarnovsky.

set up the undercover operation, arranged for Kommerling to fly back to Europe through the US, after breaking his computer in pieces and using two separate freight agents to courier them to different addresses in Europe.

Rissler was furious when John Norris, the US chief for NDS Operational Security, told him that Kommerling worked for NDS, leading to the moratorium on NDS running secret operations without DirecTV's consent.

But in September 1998, NDS began a new sting operation in partnership with US Customs out of Blaine, Washington, called Operation Smartcard.

"Smartcard was focused on identifying and prosecuting large distributors of pirated DirecTV, NDS technology within the borders of the United States," Norris testified in a 2008 trial in the US.

It involved selling pirate DirecTV cards through a website. In order to provide material for the sting, NDS provided US Customs with thousands of pirate DirecTV cards that it had developed.

These were sold under the brand Eurocard by US Customs undercover agents who believed the cards could not be copied by pirates, and that they could be killed by an electronic countermeasure after the operation ended.

Both of these assumptions proved to be wrong. When NDS engineers analysed a new brand of DirecTV pirate card called Ring of Steel that appeared on the market soon after, they discovered it was NDS's own software that had been copied by pirates – massively increasing the number of pirate cards sold.

"The hackers were eventually able to dump the technology and sell it as their own," Norris wrote later.

On July 6, 1999, US authorities and the Royal Canadian Mounted Police finished the operation and NDS sent an electronic countermeasure over the DirecTV signal to destroy the Eurocard pirate cards.

Operational Security staff were jubilant as the pirate cards stayed inoperative. "I love it when a plan comes together," Chris Tarnovsky, an American hacker also working undercover for NDS, wrote to Norris on July 12.

But by August 23, North American pirate dealers were reporting they could turn the Eurocards back on.

Norris had believed there was no way to reverse the kill command on the Eurocards. "We were wrong!" he emailed Reuven Hasak, the head of Operational Security in Israel. "It took 6-7 weeks after the July 6 ECM

but now, the hackers have discovered how to repair the Eurocards :- ( This is confirmed - not rumors."

Operational Security was now in the awkward position that it had produced thousands of cards to pirate DirecTV that had been sold by US Customs and which it could not turn off. And the pirates were producing more and more using NDS software.

Earlier that year, a Seattle court had awarded damages to DirecTV against a pirate dealer of \$10,000 for every pirate card sold. Applying the same numbers, the damages bill for Operation Smartcard would be \$US35.77 million for the 3577 pirate cards sold, which would be the largest damages bill ever awarded... if it ever came to court.

A year later, in August 2000, the US Justice Department announced it had charged 11 people in California with piracy after the Operation Smartcard investigation.

DiracTV commended the Customs Service, the FBI and the Justice Department for their "aggressive actions against satellite signal theft."

Security chief Rissler said in a statement the enforcement actions "underscore the importance of protecting the intellectual property rights of DirecTV and our program providers."

## Response

John McDuling and Neil Chenoweth

Foxtel says smartcard provider NDS, which is embroiled in a piracy scandal, is just one of many external service suppliers used by the company and highlighted its own efforts to combat piracy in the industry.

The Australian Financial Review revealed yesterday that a secret unit within Rupert Murdoch's News Corp promoted a wave of high-tech piracy in Australia through its NDS unit that damaged Foxtel, Austar and Optus in the late 1990s.

The piracy cost the Australian pay TV companies up to \$50 million a year and helped cripple the finances of Austar. Foxtel is in the process of acquiring Austar in a \$1.9 billion deal.

In a short statement yesterday, Foxtel – owned 50 per cent by Telstra Corp and 25 per cent each by Murdoch's News Limited and James Packer's Consolidated Media Holdings – noted that there were no allegations of wrongdoing by Foxtel.

"Foxtel has always worked hard and spent significant amounts of money to combat piracy," it said.

"This has included running an extensive court case against pirates and working with the Australian Federal Police, other subscription TV providers including Austar, and advocating with government to enact effective laws to protect Australia's creative industries and legitimate consumers."

The Australian Competition and Consumer Commission is deliberating on final details before approving Foxtel's \$1.9 billion takeover bid for Austar, which said a court hearing to approve the takeover will be held on April 13.

An investigation by the *Financial Review* has revealed a global trail of corporate dirty tricks by a group of former police and intelligence officers within News Corp that devastated its competitors.

The security group was initially set up in a News Corp subsidiary, News Datacom Systems, which was later known as NDS, to battle internal fraud and to target piracy against its own pay TV companies.

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, which were sold TV smartcards by NDS. The documents show NDS sabotaged business rivals, fabricated legal actions and obtained telephone records illegally.

News Corp has 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.

Foxtel said yesterday it used many external service suppliers and "NDS is one of them".

It told the *Financial Review* on Tuesday it had worked with NDS for many years. "The entire basis of our contractual relationship is that NDS provides Foxtel with encryption services to prevent piracy," it said.

# investigation

casting licences says ACMA may find a company unsuitable to hold a licence on a number of grounds, including whether its record "in situations requiring trust and candour" and "the business record of each person who is, or would be... in a position to exercise control of the licence".

Lawyers familiar with broadcast law said yesterday it was unclear how the suitability test might apply in the News Corp case, as the licensee company is Foxtel Cable Pty Ltd, of which News Limited is only a 25 per cent shareholder.

Broadcasting industry sources said the matter would be an important test of the "suitability" provisions of the legislation, which replaced the "fit and proper person test" in the era when Alan Bond owned the Nine Network.

The pay TV piracy operation cost News's competitors millions of dollars a year in lost subscriptions as viewers used fake smartcards to access subscription channels illegally.

The opposition's communications spokesman, Malcolm Turnbull, said yesterday the pay TV piracy allegations were "very serious".

"News International has rejected them. It is isn't possible or appropriate for me to give an off-the-cuff opinion as to where the truth lies. We have courts to determine that, and they should do so promptly."

Greens communications spokesman Scott Ludlam said the piracy allegations were a good reason for the ACCC to delay its decision on Foxtel's proposed takeover of satellite broadcaster Austar.

All relevant material pertaining to the allegations of piracy should be reviewed by the ACCC, he said.

The ACCC declined to comment on the matter yesterday.

British MP Tom Watson said similar claims about pay TV piracy made on the BBC's *Panorama* on Tuesday night Australian time, "if true, are the most serious yet and I am referring the matter to Ofcom, who have a duty to investigate as part of their fit and proper test".

## News Limited

STATEMENT

Wednesday March 28, 2012

News Limited response to the piece by Neil Chenoweth in today's Australian Financial Review about News Corporation and NDS

The story is full of factual inaccuracies, flawed references, fanciful conclusions and baseless accusations which have been disproved in overseas courts.

For example, the notion that alleged NDS actions in Australia were done to undermine Austar so that FOXTEL could bid for it 13 years later are so far-fetched as to be laughable.

The United States Department of Justice, a federal court jury and a federal appellate court have all rejected allegations that NDS was either responsible for TV piracy or for distributing codes to facilitate piracy. Moreover, the United States Court ordered NDS's accuser to pay \$19m to cover NDS's legal fees and costs.

Furthermore, the AFR has been selective in its reporting that NDS "mounted" a baseless campaign against Swiss hacker Jan Saggiori to "silence" him. The only lawsuit that NDS mounted against Saggiori was a lawsuit by DirecTV and NDS designed to protect their intellectual property and stop piracy.

Saggiori admitted, under cross examination, hacking several NDS pay-TV card systems. DirecTV and NDS had taken action against him, along with several others, for assisting in hacking DirecTV's system. Saggiori admitted his role in that plot, and DirecTV and NDS obtained a permanent injunction in that lawsuit.

News Limited and FOXTEL have spent considerable resources fighting piracy in Australia. It is ironic and deeply frustrating that we should be drawn into a story concerning the facilitation of piracy.