

US curtain call on cards for News

The fallout from the phone-hacking revelations could follow Rupert Murdoch to the US.

Paola Totaro LONDON

Three years ago, almost to the day, Jude Law was strutting the stage in London's West End as Shakespeare's sweet prince, Hamlet. The film star swayed even the fiercest British theatre critics and not long after took the Bard's great drama of deceit, intrigue and family power across the Atlantic to Broadway.

Law made global headlines of a different kind in January, winning a \$US200,000 settlement in the *News of the World* scandal, a rather more modern tale of dynastic influence and deeds most foul. Fellow hacking victim, British MP Chris Bryant, described the pay-outs then as "only act four, scene four of a five-act play . . ." telling *The New York Times*, "it's far from over".

For the first time, Rupert Murdoch was facing in the past week the very real prospect that the fallout from the nefarious practices of his now-defunct British red-top tabloid might follow him across the Atlantic, too, damaging the News Corp brand where it owns its most profitable assets, in the US.

Remarking he'd been watching the Leveson inquiry with "great interest", it emerged in Washington that Jay Rockefeller, chairman of the Senate committee on commerce, science and transportation, has now also written formally to Lord Justice Leveson asking if he has uncovered any evidence of questionable practices in America.

"I would like to know whether any of the evidence you are reviewing suggest that these unethical and sometimes illegal business practices occurred in the United States or involved US citizens," Rockefeller wrote.

This could well be a watershed moment for News Corp, the publicly traded company with headquarters in New York. While the American committee might have kept an eye on the work of its Westminster counterparts, a five-page letter from the US Senate raising concerns that US laws may have been broken, obstruction of investigations and the bribing of public officials catapults that casual interest into an entirely new league.

Ironically, the possibility of contagion to the US was first tied to Jude Law when it was reported calls made to him by his assistant, Ben Jackson, had been hacked just after he'd landed at "an airport" now

believed to have been John F Kennedy in New York. If his phone had been connected to a US network, this would have been a breach of US law.

Under US federal laws, the violation of telecommunications' privacy for the purpose of "commercial advantage" carries the potential for five years' prison and 10 for a subsequent event. London's *The Guardian* newspaper, tenacious in its campaign to expose journalistic dark arts at News International, has revealed that there may be other very serious complaints from America.

Mark Lewis, the English lawyer who has been the driving force behind the hacking victims' campaign, announced he's joined forces with an American legal colleague, Norman Siegel, revealing that at least 10 people have made complaints about phone hacking in the US – but not just against *News of the World* but Fox News too.

The two stressed all are unproven allegations so far but there's little doubt that they will be pursued

The firm could face fines of millions of dollars.

with the same vigour applied by British victims.

Officials from the FBI, US Department of Justice and the Securities and Exchange Commission are already thought to be investigating whether illegal payments by journalists on its British tabloids mean News Corp breached the Foreign Corrupt Practices Act, which outlaws bribes to foreign officials. The firm could face fines of millions of dollars and its executives banned from running companies.

Noting all publicly traded US companies must "exercise adequate financial controls over subsidiaries" such as London-based News International, Rockefeller asked for any evidence staff at News Corp's New York headquarters were "aware of these payments and did not act to stop them".

US officials are also looking into whether the mobile phones of relatives of victims of the September 11 terrorist attacks may have been hacked. Rockefeller asked Lord Justice Leveson if there was evidence any Americans were among 5000 "additional potential phone-hacking victims" described to the inquiry by Sue Akers, a deputy assistant commissioner of the Metropolitan Police.



Facing the music . . . Rupert Murdoch and wife Wendi.

Photo Bloomberg
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If someone was trying to "frame" NDS in March 1999, they would first need to know what the Haifa time stamp was – and only NDS knew that.

"My whole team is on site, I get a call: 'Big problem. NDS and DirecTV just launched a raid on Dave Dawson's place, and they just trampled our case completely.'"

On the day that Guggenheim was poised to track down the mystery source of EchoStar piracy, DirecTV and NDS had decided to seize the business to enforce a judgment they had obtained against Dawson months before.

Days later, Menard left Edmonton and moved to Vancouver.

Guggenheim went back to basics. By mid-2000 Guggenheim's informants had told him that Tarnovsky was the engineer behind Menard.

Then the case took a new twist. In August a post office in Texas reported receiving a constant stream of suspicious parcels from Vancouver to a post box which were then diverted to Tarnovsky's address in southern California.

Police searched two of the parcels after a police dog responded to the smell of drugs. Inside the parcels were CD and DVD players, with \$20,000 cash hidden inside each.

Police found a fingerprint of one of Al Menard's employees inside the parcels.

When US Customs contacted Tarnovsky in February 2001, an NDS lawyer told them Tarnovsky had been an NDS employee for years, any programming devices in his home were NDS property and they could not search without a warrant.

Tarnovsky has a theory: "It was all on behalf of EchoStar," he said. "You know, EchoStar finds out that I'm working for NDS, and are friends with Al, so they go . . . to Customs . . . It's so sad. I mean, it was just bogus from day one."

In Guggenheim's eyes the circle now appeared complete. The biggest source of EchoStar piracy – which now totalled 100,000 pirate cards according to Tarnovsky's reports to NDS – was Al Menard reprogramming original EchoStar cards.

Menard was sending parcels of cash hidden in electronic gear to his friend Tarnovsky, who played around with EchoStar code and worked for NDS, which had reverse engineered the EchoStar card, to find the same flaw in the card that Menard's pirate cards used.

Unfortunately for Guggenheim, taking the case to court hit a series of legal obstacles. Eventually EchoStar had to begin over with a fresh lawsuit in 2003. But by that time, the statute of limitations had cut in.

None of the Swiss Cheese posting in 1998 could be used, neither could any of the material Guggenheim had painstakingly assembled

through 1999 and 2000 including his investigations of Discount Satellite.

Some of the testimony by NDS employees contradicted NDS internal emails obtained by the *Financial Review*, to the point where it's reasonable to ask whether the jury was given an accurate picture. Indeed, Hasak, the head of NDS Operational Security, had a previous history, while a senior intelligence agent, of doctoring evidence and orchestrating perjury.

NDS argued that other pirate groups had hacked the EchoStar card or even that Nagra had deliberately sabotaged its own card.

Only two things were left in EchoStar's case: on the eve of Christmas 2000, someone had dumped the entire code for the EchoStar card on a piracy site with detailed instructions on how to make pirate cards.

EchoStar claimed Tarnovsky was the poster. But the jury found the evidence inconclusive.

Second, an email on November 13, 2000, from Norris described Tarnovsky reprogramming an old DirecTV card (called P1) to take EchoStar programming, using software he had downloaded from the internet.

The jury found that in doing this, NDS had breached the US Communications Act and two articles of the California penal code, but awarded nominal damages.

On a fourth count the judge granted a permanent injunction to stop NDS pirating EchoStar's signal, ruling that "the jury's verdict establishes that NDS engaged in illegal conduct in undertaking the P1 Test" and "it is likely that NDS will continue to engage in future testing like the P1 test if not enjoined".

The trial judge awarded legal costs of \$5 million in EchoStar's favour, but on appeal this was reversed, leaving EchoStar to pay \$18.9 million in NDS's legal costs.

The case was over. But the questions remained.

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The EchoStar case

The pay TV companies involved ...



NDS: subsidiary of News Corporation; provider of pay TV conditional access systems and related security services, including to DirecTV



DirecTV: US satellite TV broadcaster owned by Hughes Communications, a subsidiary of GM. News Corp acquired a controlling stake in 2003



Canal Plus: French pay TV broadcaster and conditional access system provider owned by Vivendi. Sells Tele+ Digitale to News in 2003 to form Sky Italia

... and how the events unfolded

- 1 NDS's Black Hat team developed report on how to pirate US broadcaster EchoStar in 1998
- 2 DirecTV reported EchoStar piracy days after Black Hat team completed report.
- 3 NDS employee Chris Tarnovsky linked to EchoStar and Canal Plus codes posted on DR7.com website in 1999.
- 4 By 2001 more than 100,000 EchoStar pirate cards sold, costing EchoStar hundreds of millions of dollars
- 5 Kudelski security chief Alan Guggenheim traced pirate cards to three pirate dealers, including Discount Satellite.
- 6 Pirate cards were programmed in home of DR7 webmaster Al Menard.
- 7 Guggenheim's plan to trap Menard was foiled when NDS and DirecTV raided Discount Satellite.
- 8 Guggenheim believed Tarnovsky provided pirate hack for Menard.
- 9 Tarnovsky told the *Financial Review* he "played around" with EchoStar codes.
- 10 Narcotics squad in Texas found \$40,000 cash inside two parcels posted to Tarnovsky by Menard employee
- 11 Legal delays meant that most of Guggenheim's investigation was beyond the US statute of limitations
- 12 Jury in 2008 rejected claim that Tarnovsky released EchoStar code on Internet in December 2000

SOURCE: FINANCIAL REVIEW