

COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ATARI CORPORATION,) Case No. C-89-0824-FMS
Plaintiff,) San Francisco, California
vs.) Wednesday, March 11, 1992
NINTENDO OF AMERICA, INC.;) 8:00 A.M.
NINTENDO CO., LTD.,) JURY TRIAL
Defendants.)

VOLUME XIX
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FERN M. SMITH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff Atari: WILLIAM L. JAEGER
MICHAEL N. KHOURIE
LAURI DONAHUE
ANN JULIUS
TIMOTHY F. PERRY
Khourie, Crew & Jaeger
One Market Plaza
Spear Street Tower, 40th Floor
San Francisco, CA 94105
(415) 777-0333

For Defendant Nintendo: JOHN J. KIRBY, JR.
THOMAS G. GALLATIN, JR.
ROBERT J. GUNTHER, JR.
Mudge, Rose, Guthrie, Alexander
& Ferdon
180 Maiden Lane
New York, NY 10038
(212) 510-7987

WILLIAM E. TRAUTMAN
Brobeck, Phleger & Harrison
One Market Plaza
Spear Street Tower
San Francisco, CA 94105
(415) 442-0900

1 Sega after that. So you had to go with Nintendo if you wanted
2 to be in the marketplace.

3 Q. All right. Now there was discussion about your hand-held
4 Lynx system which you acquired from Epyx, correct?

5 A. Yes.

6 Q. Do you believe that's been a successful product in the
7 marketplace?

8 A. It is becoming more successful now.

9 Q. And why do you have that belief?

10 A. Well, our sales are expanding. I'll give you an example,
11 in 1990 I think we sold about 60,000 systems in the U.S. In
12 1991 it's 120,000 systems. In 1992, we're projecting over
13 300,000 systems and we're getting broader distribution now.
14 As the machine is selling better and we're getting more
15 software titles on it, more current software titles, the
16 retailers are carrying the machine in more areas now. We've
17 opened up new retailers.

18 Q. All right. There's been a lot of reference to a David
19 Ahl, who at one time was the publisher of Explorer magazine.
20 I take it after Mr. Ahl's employment was terminated, that
21 Atari has continued to publish the Explorer magazine. Is that
22 correct?

23 A. Yes, that is.

24 Q. All right and we've handed -- we have marked some of the
25 exhibits, A-1224 and A-1226, some of the recent versions of

1 Atari Explorer and since Mr. Ahl has left the company, Atari
2 has continued to publish the Atari Explorer, is that correct?

3 A. Yes, we have.

4 Q. All right. Now you were not given an opportunity to
5 explain why Mr. Ahl's services were terminated. Can you
6 please tell us the basis on which his services were ter-
7 minated?

8 A. It built up. The first instance happened after the
9 Atarian magazine was stopped. We got invoices into head-
10 quarters in Sunnyvale from a company called Seal Beach Company
11 for I think about \$26,000 and I did not know who that company
12 was. So I asked one of the people in the office to find out
13 who is Seal Beach Company in New Jersey.

14 So that individual went ahead and did a search and
15 couldn't find that company's existence. So that person called
16 Mr. Ahl and asked him who was Seal Beach Company, and we found
17 out either from Mr. Ahl or somebody else in the office, that
18 Mr. Ahl and Betsy Staples owned that company, and it was
19 basically a computer and a floppy disk drive and a monitor,
20 and it had the mailing list of the Atarian on it and for those
21 services, that the mailing list was on that computer, David
22 Ahl was trying to charge Atari \$26,000 on the side. Not
23 letting us know that it was his personal company.

24 Q. Did you think there was something inappropriate about
25 that relationship?

1 A. Oh, absolutely. Major conflict of interest.

2 Q. And did you tell Mr. Ahl that?

3 A. Either I did or one of our other people did, yes.

4 Q. All right and at the time you had your disagreement with
5 Mr. Ahl about the Atarian magazine, was he the one that
6 possessed the subscriber list to that magazine?

7 A. Yes. Seal Beach Company would not give it back to Atari.
8 So we could not get the list.

9 Q. And --

10 A. And I would not be held blackmail.

11 Q. All right. You say blackmail, was he demanding some sum
12 of money from Atari in order to get -- in order for Atari to
13 be able to get that subscriber list?

14 A. Yes.

15 Q. Do you recall what the amount of money was that he
16 wanted?

17 A. I remember the \$26,000 number. I don't know if he tried
18 to bring the number down or not after that.

19 Q. Okay. Do you remember, the Atarian only came out about
20 three times, is that correct?

21 A. It was three times.

22 Q. Do you remember approximately how many subscribers you
23 had to that magazine?

24 A. I think it was either 1500 or 1800 subscribers, somewhere
25 in that range.

1 Q. Now you were shown a -- what Mr. Kirby referred to as a
2 hostage note. A request to pay a bill I think for about
3 \$32,000 to a printing company for the Explorer. Do you
4 remember that?

5 A. Yes, I do.

6 Q. And the name of that company was Mack Printing, is that
7 correct?

8 A. Correct.

9 Q. And was that bill paid?

10 A. Yes it was paid.

11 Q. And is Mack Printing still printing the Atari Explorer
12 magazine today?

13 A. Yes, it is.

14 Q. Now, Mr. Kirby marked a letter dated 1990 from an
15 attorney representing Epyx regarding an allegation that there
16 was some delinquent payment due to Epyx by Atari Corp., and
17 I believe you've testified that there's been no lawsuit filed
18 over that.

19 Can you explain to us the payments that were in fact made
20 by Atari to Epyx for the Lynx system?

21 A. Yes. It gets kind of complicated but I'll try to explain
22 it. In the June time period of 1989 was when we acquired the
23 Lynx system from Epyx.

24 I think that Atari Corp. paid \$1 million to Epyx to
25 acquire the hardware rights to the Lynx.