

## Nautical Data International

### Press Release

#### Nautical Data International Announces

#### Update on \$68 Million Copyright Infringement Law Suits Against C-Map and Navionics

St. John's, NL - Nov 15, 2004 Nautical Data International, Inc (NDI) a Canadian Marine information company based in St. John's, Newfoundland, is announcing the recent dismissal by the Federal Court of Canada of motions brought by C- Map USA Inc. (C-Map) and Navionics Inc. (Navionics), heard on November 8, 2004, in Toronto.

In the motion, C-Map and Navionics sought to strike the portions of NDI's Statements of Claim relating to the claims of infringement of the copyright in certain hydrographic charts owned by the Government of Canada. C-Map and Navionics alleged that NDI did not have standing to sue in respect of these works. The Court found that the material facts pleaded by NDI in the Statement of Claim, and disclosed in the Particulars provided by NDI to C-Map and Navionics satisfied the requirements of the *Copyright Act*.

Further, C-Map and Navionics sought the production of the entire license agreement that NDI has with the Government of Canada. NDI asserted that it had disclosed all relevant portions of the agreement that were necessary to enable C-Map and Navionics to prepare their respective Statements of Defence. The Court agreed with NDI and found that the relevant portions of the documents had been provided to permit C-Map and Navionics to prepare a Statement of Defence.

Finally, C-Map and Navionics were seeking further information in the form of particulars from NDI. The Court found that the further particulars sought were either not relevant or were clearly evidence, which is more properly adduced at a later stage.

C-Map and Navionics were not successful in obtaining any of the relief they sought, and costs were awarded to NDI. Indeed, the Court found that NDI established its proprietary right in the Crown copyright and that it has standing to bring the action for infringement. Statements of Defences must now be delivered by each of C-Map and Navionics by the end of November.

NDI commenced copyright infringement actions at the end of June 2004, against each of C-Map and Navionics, relating to nautical charts made by the Canadian Hydrographic Service (CHS) and NDI. The Statements of Claims, which provide the foundation for the actions, have been filed in the Federal Court of Canada under T-1219-04 for C-Map and T-1220- 04 for Navionics. Interested parties can obtain copies from their nearest Federal Court Registry Office.

NDI is seeking damages in its infringement actions, pursuant to the *Canadian Copyright Act*, that may comprise the licencing fees that NDI should have received as well as any profits realized by the infringers as a result of their infringing activities. In the alternative, NDI is seeking statutory damages, which could amount to as much as \$68 million per infringer.

Nautical Data International, Inc.

Nautical Data International Inc. ... the DigitalOcean® Company. Your Source for Canadian Marine Data and Electronic Charts. DigitalOcean® charts are officially released by the Canadian Hydrographic Service (CHS)

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For Immediate Release

**NDI BUSINESS WILL CARRY ON, AND NDI CONTINUES TO SUPPORT ITS LICENCEES**

St. John's, NL, Canada, January 9, 2005. Nautical Data International, Inc. ("NDI") has an ongoing agreement (the "Agreement") with the Department of Fisheries and Oceans ("DFO") - the Canadian Hydrographic Service ("CHS"). The Agreement gives NDI the sole worldwide right and license to use, and sublicense the use of, any data owned by Canada and maintained by the Canadian Hydrographic Service to produce Products and Product Updates, to integrate these Products with other products or services and to distribute them directly or through third party distributors and value added resellers.

A dispute has arisen between CHS and NDI, and DFO has purported to terminate the Agreement, but NDI has taken legal advice that the Agreement remains in full force and effect.

NDI remains committed to work with CHS and DFO to ensure continued distribution, services and support to Canadian boaters and users of the Canadian digital charts without interruption. Business will carry on, and NDI shall continue to support its licensees, distributors, dealers and customers.

NDI is the sole worldwide distributor of the official Canadian electronic navigation charts and other digital nautical information under a multi-year agreement with the Government of Canada. In partnership with the Canadian Hydrographic Service, NDI has successfully developed a comprehensive digital cartography database comprised of thousands of nautical charts and other marine information covering navigable Canadian waters and coastal zones.

A privately held Canadian company based in St. John's, Newfoundland, NDI distributes its CHS certified data products under the brand DigitalOcean® for recreational boating, sports fishing, and commercial navigation purposes as well as for other non-navigation applications.

## **NAVIONICS AND C-MAP DEFEND FAIR ACCESS TO CANADIAN NAVIGATION INFORMATION**

Safety of navigation in Canadian waters may be at risk, as Nautical Data International (NDI) is demanding exorbitant royalties on digital charts.

While most boaters don't use NDI digital charts, the company claims an exclusive relationship with the Canadian Hydrographic Service (CHS), which forces anyone else wishing to make digital charts to obtain a license from NDI. From this dominant position, NDI demands royalties and fees on other companies' digital charts, which are some three times higher than those charged in any other country.

Navionics and C-MAP have agreements with, and pay royalties to, Hydrographic Services all over the world. Neither company uses NDI products or services, deriving navigation information instead from official CHS paper charts (which are created and updated with Canadian taxpayer dollars). For several years however, both companies have been trying to negotiate reasonable commercial terms with NDI's CEO, Mr. Mohammad Al Zaibak, who operates out of Toronto. Additionally, Navionics and C-MAP have tried to negotiate with the CHS directly. However, NDI has refused to compromise, while the CHS claims that they are unable to grant licenses independent of NDI, and have no control over NDI's commercial terms.

Now, NDI has broken off negotiations and resorted to legal action. As a result, Navionics and C-MAP will not only refute NDI's assertions, but also challenge NDI's commercial practices via all appropriate legal channels. This challenge is essential to guaranteeing Canadian boaters' affordable access to the navigation information that their tax dollars have already paid for.

Until all legal actions are closed, Navionics and C-MAP are paying into escrow royalties on the sales of Canadian navigation information, calculated on the same terms used elsewhere in the world.

Navionics and C-MAP thank the many boaters, members of the public, of the Canadian marine industry and the political interests, who have voiced their opposition to how the NDI-CHS arrangement affects Canadians, and their support of this campaign for fair access to the public asset of navigation information.

Navionics & C-Map

## **Summary of the Canada – NDI Agreement for Marketing and Distribution of Electronic Charts and Other Digital Nautical Data Products (the “ Agreement”)**

On October 25, 1993, Canadian Hydrographic Services (“CHS”), of the Department of Fisheries and Oceans and Nautical Data International, Inc. (“NDI”) entered into an agreement for the marketing and distribution of electronic charts and other digital nautical products (“1993 Agreement”). On April 1, 1998, CHS and NDI entered into the Canada – NDI Revised Agreement (“1998 Revised Agreement”), which was later amended and restated by an Amending Agreement dated June 1, 2000 (“2000 Amending Agreement”).

CHS is part of the Science Sector of the Department of Fisheries and Oceans. It has the sole authority in Canada to produce nautical charts for Canadian territorial waters pursuant to the *Charts and Nautical Publications Regulations 1995* and of the *Canada Shipping Act*. NDI is a corporation incorporated in the Province of Newfoundland with its head office at St. John's, Newfoundland.

The Parties entered into the Agreement primarily for the purposes of marketing, distribution and publication of CHS electronic charts and other digital nautical products that contain CHS data (“Products”) for Canadian territorial waters. NDI was granted a sole world-wide right and licence to (a) use the CHS Data to produce Products and Product Updates; (b) integrate these Products with other products or services; and (c) distribute the same directly or through third parties to whom a sub licence is granted.

Products that are CHS Certified include (a) BSB charts – distributed on CD or individually, including computer-generated images that are replicas of the paper navigation charts (“raster”); and (b) S57 ENCs – this type of vector or “smart” data can be looked at as a database of information whereby each item or object displayed has attributes or information associated with it that can be assessed to describe what that object is.

NDI will provide domestic client services, information and promotional material in both French and English.

A Management Board, currently consisting of three CHS representatives (Dominion Hydrographer, Director of Hydrographic Planning and Applied Research, and Laurentian Regional Director), three NDI representatives (CEO of NDI, Chairman of the NDI Board, and a Director) and an independent member, has been established to ensure the success of the CHS – NDI collaboration.

NDI shall provide quarterly and annual reports to the Minister on such matters as financial statements and royalties. The Minister may inspect or audit any NDI records related to the Agreement.

NDI will charge licence fees and royalties as approved by the Management Board, which shall establish revenue targets for NDI. The Management Board will also review the users and prices on an annual basis to ensure that prices that are determined both by market-driven forces and prudent business practices and based on a reasonable return to both Parties.

NDI is to pay Canada royalties based on specific classifications. CHS shall receive a percentage of gross revenue depending on how the production of particular products has been funded: fully funded by NDI, jointly funded by CHS and NDI or fully funded by CHS.

The Agreement expires on March 31, 2008, unless terminated, extended or renewed. The Agreement shall automatically be renewed for a further five-year period if NDI meets certain performance criteria.