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SATELLITE T.V. PROVIDER MUST ALLEGE INTERCEPTION TO STATE CLAIM

***DirecTV Inc. v. Treworgy*, 204 WL 1317849 (11th Cir. June 15, 2004)**

The United States Eleventh Circuit Court of Appeals held that a satellite television provider could not sue individuals under the Electronic Communications Privacy Act who merely possessed a device that could descramble the satellite television provider's signals. The Appellate Court held that *DirecTV* must allege that defendants actually used the devices to steal television signals in order to state a cause of action. This is the first appellate decision on this issue and a set back to *DirecTV* which has over 1800 similar suits pending in Florida federal courts alone and thousands more throughout the country.

The suit alleges violation of 47 U.S.C. § 605(a) which prohibits the unauthorized interception of electronic communications. While *DirecTV* alleged unauthorized interception and a separate count for possession of privacy equipment, Michael Treworgy, a Florida resident, moved to dismiss the possession claim arguing that ECPA does not provide for a private right of action for alleged violations of § 2512(1)(d). The district court agreed and dismissed that count and certified it for appeal to the 11th Circuit. *DirecTV* had contended that a private right of action for unlawful possession of pirate access devices was provided for by Congress under § 2512. The Eleventh Circuit held that "[p]ossession of a pirate access device alone, although a criminal offense, creates nothing more than conjectural or hypothetical harm to DTV."

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