

Introduction

DIRECTV has sued or threatened to sue thousands of people who purchased various types of electronic equipment—under a variety of federal statutes. They are sending cease and desist letters with an attached federal complaint they propose to file, alleging that the recipient violated a provision of the Federal Communications Act, 47 U.S.C. § 605(a), a provision of the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(1), and two provisions of the Wiretap Act, 18 U.S.C. § 2511(1)(a) and 18 U.S.C. § 2512(1)(b).

Some sections, 47 U.S.C. § 605(a), 17 U.S.C. § 1201(a)(1), 18 U.S.C. § 2511(1)(a), clearly make it unlawful to receive, without authorization, satellite television signals. However, in many cases, DIRECTV only has facts demonstrating that the targets of these letters and lawsuits purchased equipment that might be used to facilitate unauthorized interception of DIRECTV.

As shown below, mere purchase or possession of any device is not prohibited by 47 U.S.C. § 605(a), 17 U.S.C. § 1201(a)(1), or 18 U.S.C. § 2511(1)(a). These statutory provisions, on their face, do not make it illegal to purchase or possess any device, and no court has ever held that they do. Moreover, while § 2512(1)(b) does make it illegal to possess certain types of devices, the subsection governing private suits under the Wiretap Act, 18 U.S.C. § 2520, prevents private parties from suing someone who merely possesses a banned device, unless the device was actually used to intercept one of the plaintiff's communications. Similarly, while 18 U.S.C. § 2511(1)(a) makes it illegal to endeavor to intercept a satellite TV signal, the subsection governing private suits under the Wiretap Act prevents private parties from suing someone who merely attempted to receive a signal without authorization.

Questions Presented:

- 1) Can a person violate 47 U.S.C. § 605(a), 47 U.S.C. § 605(e)(4), 17 U.S.C. § 1201(a)(1), or 18 U.S.C. § 2511(1)(a) merely by purchasing or possessing any device?
- 2) Is there a civil cause of action under 18 U.S.C. § 2512(1)(b) and 18 U.S.C. § 2520 against a person who merely possesses a device primarily useful for the purpose of surreptitiously intercepting wire, oral, or electronic communications?
- 3) Is there a civil cause of action under 18 U.S.C. § 2511(1)(a) and 18 U.S.C. § 2520 against a person who merely endeavors to intercept a wire, oral, or electronic communication?

Short Answers:

- 1) A person does not violate 47 U.S.C. § 605(a), 47 U.S.C. § 605(e)(4), 17 U.S.C. § 1201(a)(1), or 18 U.S.C. § 2511(1)(a) merely by purchasing or possessing any device.

2) There is no civil cause of action under 18 U.S.C. § 2512(1)(b) and 18 U.S.C. § 2520 against a person who merely possesses a device primarily useful for the purpose of surreptitiously intercepting wire, oral, or electronic communications

3) There is no civil cause of action under 18 U.S.C. § 2511(1)(a) and 18 U.S.C. § 2520 against a person who merely endeavors to intercept a wire, oral, or electronic communication?

Discussion:

I. A person does not violate 47 U.S.C. § 605(a), 47 U.S.C. § 605(e)(4), 17 U.S.C. § 1201(a)(1), or 18 U.S.C. § 2511(1)(a) merely by purchasing or possessing any device, regardless of its potential or primary uses

A. Sections 47 U.S.C. 605(a) and (e)(4)

Neither 47 U.S.C. § 605(a), 47 U.S.C. § 605(e)(4), 17 U.S.C. § 1201(a)(1), nor 18 U.S.C. § 2511(1)(a) prohibit the purchase or possession of any device, regardless of its nature or potential uses.

47 U.S.C. § 605(a) provides in pertinent part that: “No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto.”¹ The plain language of this provision makes clear that it prohibits unauthorized reception, and assistance in unauthorized reception, not the possession of devices that might be used to accomplish this end. Any other interpretation would run counter to the statute’s plain meaning. The

¹ The complete text of the subsection reads as follows: “Except as authorized by chapter 119, Title 18, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.” 47 U.S.C. § 605(a).

Supreme Court has stated repeatedly that statutory “analysis begins with the language of the statute. And where the statutory language provides a clear answer, it ends there as well.” *See, e.g., Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999) (internal citations and quotations omitted). Thus, the statutory language itself should resolve the question of whether §605(a) prohibits possession of devices.

The language of 47 U.S.C. § 605(e)(4) is equally clear in this regard. It provides in pertinent part that: “Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for any other activity prohibited by subsection (a) of this section, shall be fined not more than \$500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both.” The plain language of this statute makes clear that a violation occurs only when a person manufactures, assembles, modifies, imports, exports, sells, or distributes, not when a person purchases or possesses. This language is so clear-cut that it alone should establish conclusively that the statute does not prohibit possession.

Courts interpreting §605(a) and § 605(e)(4) have confirmed that the statute does not prohibit purchase or mere possession. The Court in *TWC Cable Partners v. Conzo* was explicit about the fact that a violation of § 605(a) entails actual interception of a signal. “In order to establish violations of 47 U.S.C. §§ 553(a)(1) and 605(a), plaintiff would have to show that defendant intercepted or received communications offered over plaintiff’s cable system through the use of equipment capable of receiving satellite cable programming.” 1997 WL 1068670 at 2 (E.D.N.Y. 1997) (holding, in a case involving modified cable TV descramblers, that when the plaintiff sufficiently alleged actual interception, the Court could not grant the defendant judgment on the pleadings). The Sixth Circuit similarly held that “Section 605...is violated only when a person both intercepts and divulges a communication.” *Smith v. Cincinnati Times-Star*, 475 F.2d 740, 741 (6th Cir. 1973) (holding that defendant newspaper was not liable under § 605 for merely divulging the contents of a communication intercepted by another party).

Moreover, in *V Cable Inc., v. Guercio*, a case involving alleged possession of modified cable television descramblers, the Court observed, “[a] perusal of the statutes underlying the present action [§605(a), §605(e)(4) and 47 U.S.C. § 553] indicates that it is not a crime, nor a basis for a civil claim, for an individual to purchase or possess pirate descrambling devices, even if it appears that possession is with the intent to distribute.” 148 F.Supp.2d 236, 242 (E.D.N.Y. 2001). In that case, the plaintiffs presented the court with evidence demonstrating purchase and possession of many modified cable television descrambler devices, but could not produce any evidence that the defendant actually used the devices to view cable he had not paid for. Nor could the plaintiff produce any evidence that defendant sold a device to somebody in plaintiff’s cable market, the only possible act which is both prohibited under § 605 and which would give that plaintiff standing to sue. Consequently, the court held that the defendant could not be held liable for violating this subsection. *Id.* at 243-45. Thus, in sum, federal courts have been clear

that 47 U.S.C. § 605(a) and (e)(4) do not prohibit mere purchase or possession of a device.²

B. Section 1201(a)(1)

The part of the Digital Millennium Copyright Act (“DMCA”) under which DIRECTV has sued [or threatens to sue], 17 U.S.C § 1201(a)(1), also prohibits only actual circumvention, not the purchase or possession of any object. This subsection reads: “No person shall circumvent a technological measure that effectively controls access to a work protected under this title.” Thus, the plain language of the statutory provision makes clear that it only prohibits actual circumvention; interpreting it to prohibit anything more would run counter to this plain meaning. As the DMCA was enacted recently, there is little existing caselaw on §1201. However, at least one court has explained that, as one would expect from the statutory language, § 1201(a)(1) prohibits “*the act* of circumventing access control restrictions.” *U.S. v. Elcom Ltd.*, 203 F.Supp.2d 1111, 1119 (N.D.Cal 2000) (emphasis added). Indeed, while a different section of § 1201(a)—not cited by DIRECTV—does regulate devices, as opposed to the act of circumventing access controls, this other provision likewise does not prohibit the purchase or possession of any device. It prohibits only manufacture, import, provision, trafficking in, and the offering to the public of, certain devices useful for circumventing copyright protections. §1201(a)(2).³ This provision’s detailed enumeration of acts that cannot be taken with respect to a device, combined with omission of purchase or

² In *Guercio*, the court also declined to find liability to the plaintiff—V Cable—on the ground that the plaintiff was not an aggrieved party. V Cable had alleged sale, as well as use, of cable TV interception devices, in violation of § 605(e)(4). Although the court observed that the large number of devices purchased by the defendant indicated he intended to resell them, it also noted that there was no other evidence—“such as unexplained bank deposits”—of resale. Yet for the Court, the question of whether this evidence demonstrated sales to some random person was irrelevant, as the plaintiff produced no evidence of sales within its market area. Hence, even if the defendant had been violating the law by selling devices, the plaintiff had not established that defendant’s activities caused harm to it, and the plaintiff therefore had no right to recover damages from the defendant. *Id.* at 243-44.

For cases involving possession, and not sale of devices, this indicates that not only will a defendant who merely purchased a device have failed to commit any statutory violation for which an element is actual interception of a signal, but a television company whose signal has not been intercepted will not be an aggrieved party with standing to sue the defendant for violation of any statute; the plaintiff will have suffered no harm which could give him standing to sue. This provides another reason why a plaintiff—like DIRECTV—who cannot prove actual interception would be unable to sue device purchasers for violating § 605, § 1201(a)(1), § 2511(1)(a), or even § 2512 (discussed at more length below).

³ 17 U.S.C § 1201(a)(2) reads:

(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that--

(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

possession from that list, indicates that Congress did not intend the DMCA to ban mere purchase or possession of devices.

C. Sections 18 U.S.C. 2511

Finally, the text of 18 U.S.C. § 2511(1)(a), part of the Wiretap Act, also prohibits only interception of electronic communications, not purchase or possession of devices. It provides that a person violates the law if he “intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.” As with other statutes at issue in this case, § 2511(1)(a) has been held to mean just what it says, and not more. “[S]ection 2511 prohibits the interception of electronic communications.” *U.S. v. Lande*, 968 F.2d 907, 909 (9th Cir. 2002). That § 2511 does not govern possession is unsurprising, given the context of this subsection; the very next subsection of title 18—which is also part of the Wiretap Act—deals explicitly with possession. Thus in sum, one cannot violate § 2511 simply by possessing a device.

II. There is no civil cause of action under 18 U.S.C. § 2512(1)(b) and 18 U.S.C. § 2520 against a person who merely possesses a device primarily useful for the purpose of surreptitiously intercepting wire, oral, or electronic communications.

Section 18 U.S.C. 2520 does not authorize a private right of action against a person who merely possesses a given device, even if possession of the device is unlawful under 18 U.S.C. § 2512(1)(b). Section 2512(1)(b) makes it unlawful to “manufacture[], assemble[], possess[], or sell[] any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.” Thus, possession of certain devices may constitute a violation of §2512.

However, not all violations of § 2512 can form the basis for a civil action against the responsible individual. 18 U.S.C. § 2520 governs when civil actions for violations of the Wiretap Act—including 18 U.S.C. § 2511 and 18 U.S.C. § 2512—are authorized. Section 2520 provides, in pertinent part, that “any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.” Thus, the plain language of this statute makes clear that only parties who have actually had a communication intercepted may bring a civil action; a party cannot bring a civil action against a person simply because that person has a device which could enable him or her to intercept the first party’s communication.

Courts have repeatedly disallowed civil suits for violations of § 2512. For instance, in *Ages Group LP v. Raytheon Aircraft Co.*, the District Court held that no civil claim lies unless a plaintiff shows not only that a defendant possessed illegal surveillance equipment, but also that the defendant illegally intercepted communications. 22 F.Supp.2d 1310 (M.D. Ala 1998). In this case, a bidder on a government contract sued a competitor and a detective agency hired by the competitor,

alleging that they illegally used devices placed in parked cars to intercept conversations occurring in the plaintiff's office building. *Id.* at 1313-14. The plaintiff sued under two sections of the Wiretap Act. It alleged a civil claim for illegal interception of communications, in violation of § 2511, and a civil claim for violation of § 2512(1)(b), based on the detectives' possession of equipment primarily useful for illegally eavesdropping on conversations inside buildings. *Id.* at 1315. The court held that the plaintiff could not make a civil claim for violation of the Wiretap Act if the detectives just violated § 2512(1)(b).

Section 2520 provides that any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of the statute may recover in a civil action....Therefore, even if [the plaintiff] showed that there is a material question of fact as to whether [a defendant] possessed equipment which it knew or reasonably should have known was designed primarily for surreptitious acquisition of communications under § 2512, [the plaintiff] must also create a question of fact as to whether communications were intercepted, disclosed, or intentionally used. In other words, a plaintiff does not have a private right of action against a defendant based on evidence that the defendant possessed surveillance equipment within the meaning of the statute. While proof of possession of equipment used to intercept oral communications could certainly be part of [the plaintiff's] proof that oral communications were intercepted, possession of equipment will not support a separate claim against [a defendant]. 22 F.Supp.2d at 1315 (internal quotations and citations omitted).

However, the *Ages* court refused to grant the defendant summary judgment on the Wiretap Act claims, as the plaintiff had produced evidence of a series of facts—including the fact that the detectives were seen by eyewitnesses using eavesdropping equipment in a parked car outside the plaintiff's building—that were sufficient to support a finding that the detectives actually eavesdropped on the plaintiff's communications. *Id.* at 1315-19.

Similarly, the Fourth Circuit dismissed a civil suit under § 2512 in *Flowers v. Tandy Computer Corp*, 773 F.2d 585, 588 (4th Cir. 1985). The Fourth Circuit concluded: “we find no merit in appellees' assertion that section 2520 expressly provides a private cause of action for violations of the criminal proscriptions of section 2512.” 773 F.2d at 588. In that case, the Court of Appeals overturned a verdict holding the manufacturer of a device that intercepts telephone calls liable under § 2512 to a person whose calls were illegally intercepted. Here, the plaintiff did not lack a cause of action because of the need for her communication to have been intercepted for her to be an aggrieved party under § 2520—there was no dispute that actual interception had taken place. *Id.* at 586-87. Rather, the problem was that under the version of § 2520 applicable at that time, a cause of action lay only against a person who “intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications,” *id.* at 587n.1 (quoting 18 U.S.C. § 2520), not against any party who violates the Wiretap Act, as § 2520 permits today. Because sale of a

device—like possession and purchase—does not fall within the definition of “intercept[ion], disclos[ure], or use[.]” of a communication, or “procure[ment]” thereof, there would be no cause of action under the Wiretap Act for sale of a device. Thus, *Flowers* stands for the proposition—a proposition considerably more general than *Ages* holding that no private cause of action lies for possession—not every violation of § 2512 gives rise to a private claim.

In *Flowers*, the Fourth Circuit was also careful to note that not only is a cause of action for violations of § 2512 not explicitly provided by the statute, there is no implied cause of action for violation of that subsection. The *Flowers* court noted first that “It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. . . . Congress has expressly provided a criminal sanction against the wiretapper and his agents; we must be wary of reading into the statute a further private civil remedy against the seller of a device primarily useful for wiretapping.” 773 F.2d at 589. It then went on to conclusively rule out the possibility of an implied cause of action. “[I]mplied causes of action are disfavored and should be found only where a statute clearly indicates that the plaintiff is one of a class for whose benefit the statute was enacted and there is some indication that Congress intended such a cause of action to lie.” *Id.* (citing *Cort. v. Ash*, 422 U.S. 66, 78 (1974)). Neither prong is satisfied in the case of § 2512. First, “Section 2512 appears to have been designed for benefiting the public as a whole by removing such devices from the market. Section 2511 which makes criminal the actual practice of wiretapping, is more properly aimed at protecting the particular victim.” *Id.* Second, the *Flowers* court found that “Congress clearly recognized that civil liability provides a deterrence to complement the deterrent effect of criminal penalties when it enacted the Omnibus Crime Control and Safe Streets Act of 1968. . . . That Congress did not go further and expressly provide in § 2520 for such a cause of action against sellers and manufacturers strongly suggests an intent not to provide such an action by implication in § 2512.” *Id.* (internal quotations and citations omitted). Thus, there is no implied right to bring a civil action for violations of §2512.

Although there are decisions that have criticized the *Flowers*’ court’s holding that no civil cause of action can ever be brought for violations of § 2512, these decisions do not quibble with the notion that actual interception is necessary to assert a private claim for violations of the wiretap act. See *Oceanic Cablevision, Inc. v. M.D. Electronics*, 771 F. Supp. 1019 (D. Neb. 1991); *DirectTV v. EQ Stuff*, 207 F. Supp. 2d 1077 (C.D. Cal. 2002). *Flowers*, in contrast to *Ages* and the instant case, dealt with the vendor of a device, not its possessor; it also addressed what parties could be sued for violating the Wiretap Act, not what was necessary for a plaintiff to be an aggrieved party for the purposes of filing any suit under the act. The cases of *Oceanic Cablevision* and *EQ Stuff* likewise address the permissibility of suits against vendors of devices primarily useful for eavesdropping. *Oceanic Cablevision*, on which *EQ Stuff* relies, suggests that post-*Flowers* revision of § 2520 has eliminated the statutory limitation on who an aggrieved party can sue; now, the *Oceanic* Court states, a plaintiff that qualifies as an aggrieved party under § 2520 can sue any entity whose violation of the statute is responsible for the interception. *Oceanic Cablevision*, 771 F. Supp. at 1026-27. Moreover, that Court observed that § 2512 had been amended to include a

prohibition on the sale of devices primarily useful for surreptitiously intercepting communications. *Id.* at 1028-29. Hence, the Court held that an aggrieved party—a party whose communication has been intercepted—can sue the vendor of a device that intercepted its communication; in *Oceanic*, this meant that a cable operator could sue a vendor of pirate cable descrambler boxes for violating §2512. *Id.* at 1029. *Oceanic* therefore is not contrary to the principles established above (1) that only an aggrieved party can sue for a violation of the Wiretap act, and(2) that only parties whose communications actually have been intercepted, disclosed, or intentionally used are aggrieved parties under §2520. *EQ Stuff*, a case against parties who sold equipment that can be used to intercept DIRECTV, also fails to call this proposition into question. In denying the defendant’s motion to dismiss for failure to state a claim, the court simply held that § 2520 “applies to § 2512.” *E.Q. Stuff*, 207 F. Supp. 2d at 1084. Therefore, this decision merely indicates agreement with the proposition that when the plaintiff is an aggrieved party, it can sue for violations of § 2512. And actual interception or divulging of a communication by the plaintiff is necessary to make any plaintiff an aggrieved party. Thus, neither *Oceanic Cablevision* nor *EQ Stuff* indicate that a party whose communication has never been intercepted would be able to sue anybody for activities that violate § 2512, including possession or sale of a device.

Most significantly, a District Court recently rejected an attempt by DIRECTV to assert a civil claim against device purchasers under § 2512. In this case, DIRECTV asserted that the defendants had “purchased and used,” devices that “are designed to permit viewing of DIRECTV’s television programming” without authorization. *DIRECTV v. Thacker*, No. 6:03-cv-239-Orl-28DAB at 3 (M.D.Fla Apr. 15, 2003) (memorandum order dismissing claims brought under § 2512). However, while asserting that the devices were “used,” DIRECTV did not assert that the devices were used to intercept DIRECTV. *Id.* Observing that § 2520 requires actual interception to support any civil claim under the Wiretap Act, the Court concluded that “these accusations alone would not support a civil cause of action under 18 U.S.C. § 2512. *Id.* Consequently, the Court dismissed DIRECTV’s § 2512 claim pursuant to Rule 12(b)(6).

This case is extraordinarily helpful to defendants, given that DIRECTV was a party. As such, the judgment has a preclusive effect on DIRECTV in all other cases, preventing it from asserting that a civil claim for mere purchase of a device lies under § 2512. Even if DIRECTV appeals the decision in *Thacker*, it will be collaterally estopped from bringing §2512 claims—without alleging actual interception—unless and until it wins the appeal. Charles Allen Wright, Arthur Miller and Edward Cooper, 18A Fed. Prac. & Proc. Juris.2d § 4433n.12 (“A pending appeal [from a federal court judgment] does not prevent the application of collateral estoppel or res judicata.”)

In sum, there is no private right of action, either express or implied, for violations of § 2512 that consist of mere possession. The plain language of the statute makes clear that there is no express right of action, and the existence of alternative remedies explicitly provided for by Congress makes clear that Congress did not intend to create an implied civil cause of action. Courts reviewing attempts to bring civil claims under § 2512, including one attempt by DIRECTV, have agreed with this conclusion. Therefore, while possession of certain devices may violate §2512(1)(b),

without evidence of actual interception, a plaintiff would not be permitted to seek damages against the possessor under §2520.

III. There is no civil action under 18 U.S.C. § 2511(1)(a) and 18 U.S.C. § 2520 against a person who merely endeavors to intercept a wire, oral, or electronic communication.

The absence of a private cause of action for endeavoring to intercept signals stems from the same statutory language that precluded an action for mere possession of a device. Section 2511(1)(a) makes it a violation of federal law to “endeavor[] to intercept... a wire, oral, or electronic communication,” among other things. However, § 2511(1)(a) is part of the same chapter of the U.S.C. as §2512, and private causes of action under 2511(1)(a) are therefore governed by §2520, as are private actions to enforce § 2512. As was mentioned above, section 2520 gives a private right of action to “any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter.” And this language makes clear that only persons whose communications have actually been intercepted have a private cause of action against the interceptor. *Ages Group*, 22 F.Supp.2d at 1315 (internal quotations and citations omitted) (“Section 2520 provides that any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of the statute may recover in a civil action.... In other words, a plaintiff does not have a private right of action against a defendant based on evidence that the defendant possessed surveillance equipment within the meaning of the statute.”). Someone who sent a communication that another merely endeavored to intercept would therefore not be covered by § 2520’s authorization to sue. Hence, there is no private right of action against a person who tries to surreptitiously intercept a satellite television signal, but fails to do so.

