

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIRECTV, Inc.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	NO. 04-1938
Bill T. Barker,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Fullam, Sr. J.

July , 2004

DIRECTV, Inc. sues Bill T. Barker for a violation of the Cable Communications Policy Act, 47 U.S.C. § 605(e)(3)(C) (Count I), prohibited interception and disclosure of wire, oral, or electronic communications under 18 U.S.C. § 2511 (Count II), illegal possession, manufacture, and/or assembly of electronic, mechanical or other device or equipment, 18 U.S.C. § 2512 (Count III), willful assembly or modification of devices or equipment, 47 U.S.C. § 605(e)(4) (Count IV), and possession of devices for theft in violation of state law, 18 Pa. C.S. § 910 (Count V). Defendant Barker moves pursuant to Rule 12(b)(6) to dismiss Counts II, III, and IV.

Defendant seeks to dismiss Count II by arguing that the cause of action that exists under 18 U.S.C. § 2520 only applies to private satellite video communication that is not scrambled or encrypted. However, when § 2520 is read in its entirety (with particular focus on subsection (c)), Defendant's interpretation seems contrary to the plain language of the section. A cause of action for Plaintiff's properly pled 18 U.S.C. § 2511 violation exists. Therefore, Defendant's Motion to Dismiss Count II will be denied.

Defendant's Motion to Dismiss Count IV also will be denied because Plaintiff states a claim, despite relying largely on boilerplate allegations.

However, Defendant's Motion to Dismiss Count III will be granted. A plain language interpretation of the statutory provisions and well-reasoned persuasive authority convince me that there is no private cause of action under 18 U.S.C. § 2520 for violations of 18 U.S.C. § 2512. *See DIRECTV, Inc. v. Treworgy*, No. 03-25323, 2004 U.S. App. LEXIS 11673 (11th Cir. June 15, 2004); *DIRECTV, Inc. v. Amato*, 269 F. Supp. 2d 688, 691 (E.D. Va. 2003). Although Judge Surrick came to a contrary conclusion when Defendant moved to dismiss a § 2512 claim in *DIRECTV, Inc. v. Baratta* (E.D. Pa. C.A. No. 03-3265), Plaintiff's since-severed claims (found in "DIRECTV, Inc.'s First Amended Complaint," a pleading different from the original *Baratta* Complaint) proceed independently in this discrete suit. *See United States ex. rel. St. John LaCorte v. Smithkline Beecham Clinical Lab.*, 149 F.3d 227, 231, n.3 (3d Cir. 1998).

In sum, Defendant's Motion will be granted in part and denied in part. An order follows.

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ORDER

AND NOW, this day of July, 2004, upon consideration of Defendant's Motion to Dismiss Counts II, III, and IV of Plaintiff's First Amended Complaint, Plaintiff's Response, and Defendant's Notice of Supplemental Authority, IT IS ORDERED:

1. Defendant's Motion is granted in part; denied in part:
 - a. Defendant's Motion to Dismiss Counts II and IV is DENIED.
 - b. Defendant's Motion to Dismiss Count III is GRANTED. Count III is DISMISSED with prejudice.

BY THE COURT:

Fullam, Sr. J.