

***DOE V. GTE CORP.****347 F.3d 655 (7th Cir. 2003)*

The Court of Appeals for the Seventh Circuit held that a web service provider through which a third party sold illegally obtained videotapes was not liable for aiding and abetting the third party's illegal interception and disclosure of oral communications under the Electronic Communications Privacy Act (ECPA).

An unknown party secretly videotaped football players undressing in a locker room at the University of Illinois. The videotapes were then sold on a website hosted by defendants. The defendants did not create or distribute the tapes; the only sales occurred directly between the person who created the videos and visitors to the website. Furthermore, defendants did not receive any direct monetary gain from the sale of the videotapes. Plaintiffs claimed, under §§ 2511 and 2520 of ECPA, that defendants were liable for aiding and abetting an entity that intercepted and disclosed oral communications that violated plaintiffs' privacy. The district court dismissed the complaint under 47 U.S.C. § 230(c), the Communications and Decency Act of 1996 (CDA), which states that a provider of Internet services shall not be held liable for information provided by another information content provider.

The Seventh Circuit examined the claims under the ECPA and affirmed the district court's dismissal of the case. The appellate court held that defendants did not intercept or disclose information as required for liability under the ECPA. Section 2511(1)(c) of the ECPA imposes liability on those who willfully disseminate the contents of unlawfully intercepted communications. The court held that a statute that specifically defines those other than the primary interceptor who can be liable should not be read to create a penumbra of additional but unspecified liability. Furthermore, defendant did not have a desire to promote the success of the sale of videotapes, but, instead, like a phone company or delivery service, was indifferent to the content being transmitted through its service and therefore did not satisfy the ordinary understanding of culpable assistance to a wrongdoer.

Plaintiffs also contended that defendants were liable for "negligent entrustment of a chattel" under the *Restatement (Second) of Torts* § 308 by neglecting to control the conduct of a third person to prevent him from intentionally causing harm to others. Again comparing defendants to a phone company or delivery service, the court held that defendants provided only a communications service and were not required to learn what its customers were doing with the provided service, nor were defendants required to act as "Good Samaritans" if they did learn of harmful actions. Defendants were also not liable for contributory infringement, as the services provided were capable of substantial noninfringing uses and were protected by the safe harbor provisions of the Digital Millennium Communications Act.