

DIRECTV, INC. V. TREWORGY*373 F.3d 1124 (11th Cir. 2004)*

The Eleventh Circuit held that there is no private right of action for “mere possession” of technological devices that are capable of intercepting satellite transmissions in violation of the Wiretap Act, 18 U.S.C. § 2512(1)(b).

DirecTV (DTV) is a satellite television provider with millions of subscribers, who purchase access devices from DTV in order to decrypt the provider’s encrypted satellite transmissions. Some individuals purchase decryption devices from other sources in order to gain access to DTV’s satellite transmissions without paying subscription fees. Treworgy had purchased two such circumvention devices and DTV brought suit, alleging that 18 U.S.C. § 2520(a) creates a private right of action against an individual in possession of such devices in violation of § 2512(1)(b), a criminal provision. The district court held that the statute did not create a private right of action and granted Treworgy’s partial motion to dismiss. The Eleventh Circuit granted an interlocutory appeal.

Although there have been several conflicting district court rulings on whether § 2520(a) creates a private right of action for possession of pirate access devices under § 2512(1)(b), this was the first time a circuit court addressed the issue. The Eleventh Circuit here held that a private right of action exists only for interception and use of electronic communications as described in § 2520(a). To extend this private right of action to “mere possession” of circumventing technologies, the court reasoned, would be to engage in a “tortured” reading of the statute and would contravene its plain meaning. Furthermore, reading the statute to create a private right of action for possession of circumventing technologies would raise constitutional issues, in that “[p]ossession of a pirate access device alone” would present no more than hypothetical harm to defendant DTV, and would thus not satisfy the case or controversy requirement set forth in Article III § 2 of the United States Constitution.