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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

DIRECTV, INC.,

Plaintiff,

v.

CASE NO: 8:02-cv-1346-T-26MAP

MICHAEL JAMES, TRISTAN JULIAN,  
JURGEN KUESTER, BRIAN MEGAR,  
PAUL MONDELLO, STEVE MORAN,  
MIKE MUSCARELLA, THOMAS SLEDD,  
DEREK SMITH, ROBERT SMITH,  
MICHAEL MONTONARO, MICHAEL  
TARABOKIJA, PHILLIP GROVENSTEIN,  
CONNIE BARRETT, and BARBARA  
SPEARS,

Defendants.

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**ORDER**

Before the Court are the Motions to Dismiss filed by the Defendants Sledd and Julian (Dkts. 10 & 12) and supporting Memoranda of Law (Dkts. 11 & 13). After carefully considering the Defendants' submissions, together with the well-pleaded allegations of the Plaintiff's complaint (Dkt. 1), the Court concludes that the motions must be denied.<sup>1</sup>

As to Count I, the Plaintiff has more than adequately pleaded a cause of action under 47 U.S.C. § 605(a) by clearly and precisely alleging that the Defendants have received or assisted

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<sup>1</sup> Given this conclusion, the Court does not need a response from the Plaintiff.

others in receiving, without authorization, the Plaintiff's **satellite** transmissions of television programming. Moreover, the Court, after viewing the **allegations** of the complaint in the light most favorable to the Plaintiff, does not find that it is self-defeating as contended by the Defendants to the extent that the face of the complaint demonstrates an "insuperable bar to relief" as to Count I.

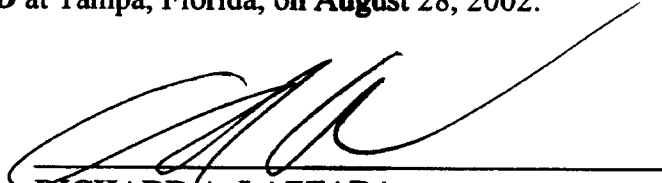
As to Counts II and III, it is obvious from a fair reading of the complaint that the foundation for these counts is in actuality 18 U.S.C. § 2520(a), which creates a private cause of action in favor of "any person whose wire, oral, or electronic **communication** is intercepted, disclosed, or intentionally used in violation of this chapter . . ." Again, after viewing the allegations of the complaint in the light most favorable to the Plaintiff, the Court concludes that these two counts state a cause of action under the statute because, contrary to the Defendants' contentions, the Plaintiff has in fact alleged that by use of the **Pirate** Access Devices, the Defendants "intentionally intercepted, . . . DIRECTV's **satellite** transmission of television programming," see paragraph 45, and that the Defendants **knew** or had reason to know that such devices rendered "them primarily useful for the purpose of **surreptitious** interception of DIRECTV's satellite transmissions of television programming . . ." See paragraph 49. Of course, the Plaintiff will have to establish by competent proof that these Defendants, as well as the other Defendants, actually engaged in the claimed violations as alleged. See Peavy v. WFAA-TV, Inc., 221 F. 3d 158, 168-169 (5<sup>th</sup> Cir. 2000).

Accordingly, it is ordered and adjudged as follows:

- 1) The Motions to Dismiss (Dkts. 10 & 12) are denied.

2) The Defendants shall file their answers and defenses, if any, to the Plaintiff's complaint within 15 days of the date of the entry of this order.

**DONE AND ORDERED** at Tampa, Florida, on August 28, 2002.



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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

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CW

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