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## 1050. Scope of 18 U.S.C § 2511 Prohibitions

Section 2511 of Title 18 prohibits the unauthorized interception, disclosure, and use of wire, oral, or electronic communications. The prohibitions are absolute, subject only to the specific exemptions in Title III. Consequently, unless an interception is specifically authorized, it is impermissible and, assuming existence of the requisite criminal intent, in violation of 18 U.S.C. § 2511.

Section 2511(1)(a) is a blanket prohibition against the intentional interception, endeavor to intercept, or procurement of another person to intercept or endeavor to intercept any wire, oral, or electronic communication.

Section 2511(1)(b) is applicable only to oral communications. It is less pervasive than the prohibition against the interception of oral communications contained in Section 2511(1)(a) and was included because of a question "concerning the constitutionality of Section 2511(1)(a) as it relates to oral communications." See S.Rep. No. 1097, 90th Cong., 2d Sess. 92 (1968); *United States v. Burroughs*, 564 F.2d 1111, 1115 (4th Cir. 1977). The Criminal Division recommends that Section 2511(1)(b) should be charged in cases involving interception of oral communications. However, although the interception of an oral communication may violate both 2511(1)(a) and (b), a person may be convicted of only one offense under the section. See S.Rep. No. 1097, 90th Cong., 2d Sess. 93 (1968).

Section 2511(1)(c) and (d) of Title 18 provide additional penalties for the disclosure and use of illegally intercepted communications. The use or disclosure must be accompanied by knowledge or reason to know that the information concerned was obtained through an interception which violated 18 U.S.C. § 2511(1). The knowledge element can be satisfied either when the subject has actual knowledge or when the occurrence of the element "can reasonably be foreseen." *Pereira v. United States*, 347 U.S. 1, 9 (1954).

Section 2511(1)(e) was added as one of the miscellaneous provision in the Violent Crime Control and Law Enforcement Act of 1994. It specifically prohibits (i) intentional disclosure of the contents of a wire, oral or electronic communication, intercepted by certain authorized procedures, (ii) knowing or having reason to know that the information was obtained through interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly interfere with a duly authorized criminal investigation.

Once the contents of an intercepted communication have become "public information" or "common

knowledge," disclosure or use of the contents of the communication is no longer prohibited. See S.Rep. No. 1097, 90th Cong., 2d Sess 93 (1968).

[cited in [USAM 9-60.200](#)]

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