



Court: Wife broke law with spyware

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A wife who installed spyware on her husband's computer to secretly record evidence of an extramarital affair violated state law, a Florida court ruled Friday.

The Florida Appeals Court, Fifth District said that Beverly Ann O'Brien "illegally obtained" records of husband James' online conversations with another woman as the two played Yahoo Dominoes together.

"It is illegal and punishable as a crime under (state law) to intercept electronic communications," wrote Judge Donald Grincewicz on behalf of a three-judge panel.

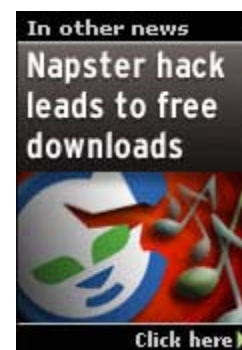
He and the two other judges barred Beverly O'Brien from revealing the contents of the intercepted conversations, and said the chat records could not be introduced as evidence in the unhappy couple's divorce proceedings.

The Florida case highlights growing social friction over the use of [clandestine electronic monitoring software](#), which has become more widespread in the last few years. Businesses may monitor employees' e-mail and instant messaging conversations, and the FBI has used a key logger to snare passwords typed in by an alleged mobster. Some Internet-distributed [malware](#) programs can [log passwords, account numbers and other sensitive information](#).

At issue in this case was whether the use of the spyware, called [Spector](#), violated Florida's wiretapping law. The law says anyone who "intentionally intercepts" any "electronic communication" commits a criminal act. (The case was a civil lawsuit arising out of the divorce proceeding, not a criminal prosecution.)

Beverly O'Brien's lawyers argued that the monitoring didn't fall under the law's prohibitions and was kin to reading a stored file on her husband's computer--which would not be treated as wiretapping.

But Grincewicz concluded that "because the spyware installed by the wife intercepted the electronic communication contemporaneously with transmission, copied it and routed the copy to a file in the computer's hard drive, the electronic communications were intercepted in violation of the Florida Act."



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