

美國空軍電腦犯罪偵查手冊（三）

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CHAPTER 4 -- PEN REGISTERS AND TRAP AND

TRACE DEVICES: 18 U.S.C. § § 3121 - 3127

Introduction

Pen registers and trap and trace devices were not discussed in Chapter 2 (Wiretaps) since they do not access the content of the communication. Trap and trace devices, much like Caller ID, are used to identify the incoming or calling number. Pen registers, also called Dialed Number Recorder (DNR) are used to identify the numbers being dialed out from a monitored telephone. According to the Supreme Court in *Smith v. Maryland*, 442 U.S. 735, 745-46 (1979), use of pen registers is not constrained by the Fourth Amendment. However, several statutes and policies have been enacted since this decision to control their use.

Detailed Analysis

The requirements for installation of a pen register are set forth in Title III of the ECPA, which was codified at 18 U.S.C. §§ 3121-3127. Under 18 U.S.C. § 3121, "no person may install or use a pen register or a trap and trace device

第四章—電話撥號音訊攔截器、電話來源追蹤器：

聯邦法第 3121 - 3127 條

簡 介

電話撥號音訊攔截器以及電話來源追蹤器未曾在監聽的規範中被討論，因為這兩項設備的功能並非存取通訊的內容。電話來源追蹤器（Trap and trace devices）類似來電顯示，通常被用來確認電話來源或是來電者的電話號碼。而電話撥號音訊攔截器（Pen registers），又稱為電話撥號音記錄器，通常用來監控電話機於撥號時產生音訊以確認其所撥的號碼。依據最高法院的判決 *Smith v. Maryland*, 442, U.S., 735, 745-46, 1979，使用電話撥號音訊攔截器並未侵犯憲法第四修正案（人身、財產保護）。但是自此之後，因而制定使用管制的法律與政策。

細節分析

有關電話撥號音訊攔截器的裝設規定在電子通訊隱私權保護法案（ECPA）第三標題，經立法明訂於聯邦法第 3121-3127 條。第 3121 條規定：「任何人非經法院命令許可，不得對他人裝設任何電話撥號音訊攔截

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without first obtaining a court order..., " unless he/she falls within one of the three exceptions. The first two exceptions allow service providers to use such devices in the normal course of their business to ensure proper operation and use ((b)(1)-(2)). The third exception, (b)(3), requires the consent of the user of that service.

If you want to use either a pen register or a trap and trace device and do not have the consent of the user, you must first obtain a court order. To obtain such an order, you must show the federal judge or magistrate that the "information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation." (See 18 U.S.C. § 3123(a).) In emergency situations, which involve "immediate danger of death or serious bodily injury to any person or conspiratorial activities characteristic of organized crime" and where there is not adequate time to obtain a court order, a pen register or trap and trace device may be installed without a court order. Even then, however, 18 U.S.C. § 3125 requires that an order must be obtained within 48 hours of installation.

Note: When using a pen register, if a central station speed dialer is used, only the numbers used to activate the speed dialer will be recorded. For example, in a speed dialer the pen register may record the number 30, which only accesses the telephone company speed dialer. The pen register never records the actual number being dialed by the speed dialer. In that case, a subpoena for the telephone company records would be required. On the other hand, when the speed dialing numbers are contained in the phone, the phone itself must be seized to determine

器與電話來源追蹤器」。然而有三項例外情形。第一、二項是針對電信業者，允許業者在業務正當合理的情形下，為確保其通訊設備正常運作，得裝設此類器材。（第 3121 條 (b)(1)－(2) 項），第三項例外情形則是經由使用電信設備者的同意。

調查官如有必要使用這些器材，卻又無法取得當事人的同意時，則必須獲得法院的許可命令。聲請此項命令，調查官必須向聯邦法院法官或是簡易治安法庭的法官說明，裝設監控器材及使用目的，係為持續實施犯罪偵查工作（參閱聯邦法第 3123 條 a 項）。在特殊緊急狀況下，尤其是「對於任何人產生立即的危險、身體或生命重大的危害，或者是犯罪組織的重大陰謀」，且無充裕時間向法院聲請命令時，裝設此類器材無須先行獲得法院命令。但是依據聯邦法第 3125 條規定，裝設後四十八小時內應向法院補行聲請。

注意：使用電話撥號音訊攔截器時，如當事人透過電信總機所提供的快速撥號功能時，攔截器僅能記錄第一次的撥號。例如當事人撥出 30 二碼，透過業者的設備可以快速的撥出當事人所預先設定的號碼，攔截器僅能記錄 30 二碼，而無法記錄總機所撥出的號碼，這時必須向法院聲請傳票要求電信業者提供通聯記錄。另一方面，如電話機本身所提供的快速撥號裝置，這時必須扣押電話機

what phone numbers were actually dialed. Unless the investigator knows that the speed dialing numbers are non-volatile (independent power or backup batteries), the numbers should be read by the investigator as soon as possible under the exigent circumstances doctrine.

Special Military Considerations

In Chapter 1, Section D of DoD 0-5505.9-M, the use of pen registers and trap and trace devices is split into those installed in the United States and those overseas. While the DoD Manual requires that all devices installed in the U.S. meet the requirements of the above-listed federal statutes (18 U.S.C. § 3122-3123), it mandates additional procedures for those overseas.

To request approval for the use of non-consensual pen registers and trap-and-trace devices, AFOSI prepares a request in accordance with DoDD 5505.9 and sends it to SAF/GC for approval to seek a court order. If SAF/GC approves, AFOSI agents can then request that the local AUSA apply to the appropriate court, in accordance with 18 U.S.C. 3122, for an order authorizing the nonconsensual pen register or trap-and-trace operation. AFI 71-101, Vol. 1, paragraph 3.3.4 & 3.3.4.2. The Commander of AFOSI may give emergency approval to seek a court order for requests for non-consensual pen registers and trap and trace devices. A written record of each emergency request, including a justification for the emergency action, must be sent to SAF/GC within 72 hours of the emergency approval.

To conduct consensual trap-and-trace operations of a US Government owned or leased line

以明瞭實際所撥出的號碼。因此，調查官如認定電話機記憶的撥號易於滅失時（例如電話機是依靠一般電源或電池供應電源），而調查官又必須儘速的查明該撥號，此時即可運用上開的緊急條款。

軍事上的特別考量

國防部令第一章第四節 0-5505.9-M 條款規定，對於美國本土或是海外機構應裝設電話撥號音訊攔截器與電話來源追蹤器，而裝設時必須符合聯邦法的規定。對於海外機構則另定管理程序規範。

如裝設非經當事人同意，特調處的調查官必須依據國防部令 5505.9 所規定的聲請書，送交空軍總部的總顧問核可後向法院聲請許可命令。如總顧問核可，特調官即可要求駐在地的調查官透過適當法院，依據聯邦法第 3122 條的規定聲請裝設許可與使用許可（空軍訓令第一輯 71-101，第 3.3.4 與 3.3.4.2 款）。空軍特調處處長在緊急的狀況下得先行核定特調官的聲請書，循法院系統獲得法院的許可命令。但須於 72 小時內敘明緊急作為的正當理由並將相關報告送交總顧問核覆。

在美軍基地的電話線路上，該線路不論為政府機關所有或租用，執行的電話撥號音

on a military installation, the requesting AFOSI office submits a request to the installation commander. AFI 71-101, Vol. 1, paragraph 3.3.4.4. To conduct consensual trap-and-trace operations of a residential line on a military installation, the AFOSI, in coordination with the local JA, obtains the written consent of the user(s). In the CONUS, written consent from the user to the servicing telephone company is normally all that is required. Paragraph 3.3.4.4.1

In overseas cases which target persons subject to the UCMJ, we must still meet the requirements of 18 U.S.C. § 3122-3123 plus, we must also convince a specially assigned military judge that "the contemplated use of a pen register or trap and trace device does not violate the law of the host country, any applicable SOFA, or any other agreement with the host country." If the target is not subject to the UCMJ and prosecution in the United States is not anticipated, the overseas installation and use of such devices is permitted only in accordance with the laws of the host country, any applicable SOFA, or any other agreement with the host country.

訊攔截與電話來源追蹤的勤務時，調查官應先經當事人同意後，再行向基地指揮官提出申請（空軍訓令第一輯 71-101，第 3.3.4.4 款）。如果該線路屬於住戶所有，則應會同軍法官，先行取得住戶的同意書。凡是在美國本土上執行該項勤務，不論是針對用戶或是電信業者，都需的取得書面的同意（空軍訓令第一輯 71-101，第 3.3.4.4.1 款）。

海外機構，尤其受統一軍法典管轄之人員，執行該項勤務必須符合聯邦法第 3122-3123 條的規定，同時必須向承辦軍法官敘明，使用該項器具在消極意義上並沒有違反駐在國的法律、雙方的軍事合作條款或是其他條約協議事項。如監控對象非屬軍法管轄，也無法引渡回國受審的情形時，裝置與使用上開器具時必須積極的符合駐在國的法律、雙方的軍事條款以及條約協議事項。