

### *2703(f) Requests*

- Preservation of evidence for 90 days
- Request by US "governmental entity"
- Provide ISP with: IP address/email/screen name date, time and time zone of relevant activity
- Can be renewed once

### *Grand Jury Subpoena*

- Computer subscriber information
- GJS = name, address, telephone, cc#, install address (cable and DSL service), MAC address, service
- Information obtained from GJS cannot be shared

### *2703(d) Court Orders*

- Subscriber and transactional information
- No GJS (6e) restrictions
- Signed by Federal judge, "specific and articulable facts" standard (low legal standard)
- May share information with state/local/foreign law enforcement agencies

### *Search Warrant*

- Issued by Federal Judge
- Probable Cause standard
- Full content

## *Pen Register/Trap & Trace*

- Capture network traffic information to/from subject's IP address (header info only: source IP, destination IP, date, time, port/protocol)
  - Ex: use Trap & Trace/Pen Register to determine who is accessing subject's FTP site
- Issued by court
  - low legal standard required
  - Reviewed every 60 days
  - Can be extended

## *Consensual Monitoring*

- Full keystroke monitoring
- Consent exception under T-III wiretap
- System banner: no expectation of privacy, consent to be monitored, info can be turned over to LE, etc...

## *Title III Wiretap*

- "live" data and voice communications
- Requires extensive approval process (DOJ OEO). Must show other less intrusive techniques already been tried or are unlikely to succeed or are too dangerous
- Probable Cause (highest legal standard)
- Obtain court order in district where monitoring occurs

## *2702 Request – Emergency Situations*

- 18 USC 2702(c) Voluntary ISP Disclosure Due to Imminent Danger
- ISP may release subscriber and content to law enforcement if "an emergency involving immediate danger of death or serious physical injury"

## 9/11 Effect - USA Patriot Act

- Felony to hack into computer used in furtherance of national security or national defense
- 2702 Emergency Requests
- Legal Subpoena expanded
- Sentencing increased

## USA Patriot Act cont'd

- Share with DOJ for criminal prosecution
- Permits "roving" surveillance
- FISA orders changed to allow intelligence collection for a significant purpose rather than the primary purpose
- Authorizes pen register and trap and trace orders for email as well as telephone conversations



## *How Does the FBI Collect Electronic Evidence?*

### **International**

### *MLAT Process*

- M – Mutual
- L- Legal
- A- Assistance
- T- Treaty

### *MLATs with USA*

Anguilla, Antigua/Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Brazil, British Virgin Islands, Canada, Cayman Islands, Cyprus, Czech Republic, Dominica, Egypt, Estonia, Greece, Grenada, Hong Kong, Hungary, Israel, Italy, Jamaica, Korea (South), Latvia, Lithuania, Luxembourg, Mexico, Montserrat, Morocco, Netherlands, Panama, Philippines, Poland, Romania, St. Kitts-Nevis, St. Lucia, St. Vincent, Spain, South Africa, Switzerland, Thailand, Trinidad, Turkey, Turks and Caicos Islands, Ukraine, United Kingdom, Uruguay

### *MLAT Benefits*

- Criminal Matters only
- Improve effectiveness of judicial assistance to streamline and facilitate evidence sharing between USA and other nations
- Power to summon witnesses, compel production of evidence, issue search warrants and serve process

### *MLAT Process*

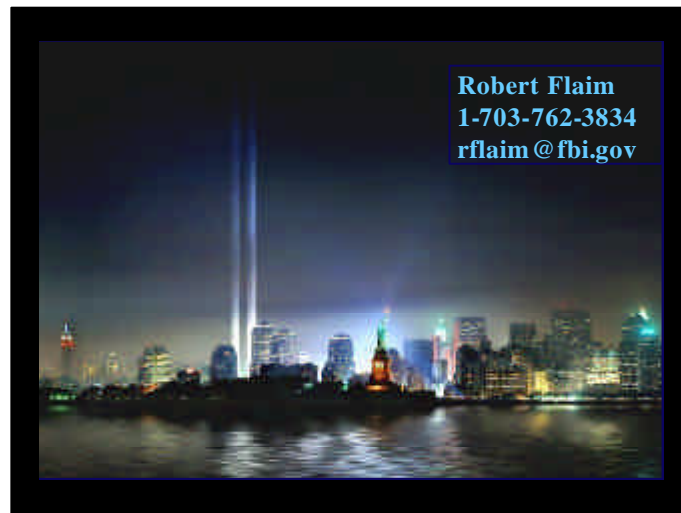
- US Department of Justice (DOJ) receives request from foreign justice department and/or US Department of State (DOS)
- If DOS – passes to DOJ
- DOJ passes request to regional United States Attorney's (USA) Office
- Assistant USA will draft either search warrant or 2703(d) Order

### *MLAT Process – cont'd*

- DOJ will have FBI or other agency swear out affidavit and serve order on ISP
- ISP provides information to FBI
- FBI returns warrant to AUSA
- AUSA passes information to DOJ
- DOJ sends information to foreign justice department

### *MLAT Process – cont'd*

- "24/7" feature – direct DOJ contact to preserve evidence, i.e., 2703(f) Request
- Inform local FBI Legal Attaché (Legat)
- Non-US crime US DOS will designate AUSA a "Commissioner"
- Commissioner can issue subpoenas and compel response for foreign justice department



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