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ATTORNEY GENERAL OPINION NO. 92- 80

The Honorable August Bogina, Jr.
State Senator, Tenth District
5747 Richards Circle
Shawnee, Kansas 66216

Re: Criminal Procedure--Search and Seizure--Authorized
Installation or Use of a Private Trap and Trace
Device; Telephonic Devices

Synopsis: A "caller ID" service provided by a telephone
company to a customer who subscribes to the service
is essentially a trap and trace device which
enables the person receiving the phone call to view
the telephone number of the incoming call prior to
answering the phone. Such devices are generally
prohibited without a court order under K.S.A.
22-2525. However, as caller ID service is provided
only at the customer's request, it would fall under
the exception to the prohibition in K.S.A.
22-2525(c) as the user of the service has clearly
consented and indeed subscribed to such service.
Therefore, a caller ID service would not violate
Kansas law. Cited herein: K.S.A. 22-2525; 22-2529.

* * *

Dear Senator Bogina:

As senator for the tenth district of the state of Kansas, you
requested our opinion as to whether providing or using a
"caller ID" service would be in violation of Kansas law, in
particular K.S.A. 22-2525. In your letter you provide a
description of caller ID as being a service and equipment

provided by local telephone companies to subscribing customers which would allow the customer to check the calling party's telephone number prior to answering the call. The purpose of providing such information is apparently to assist in screening unwanted calls or prioritizing calls from several sources.

An essentially similar service has been utilized by the telephone companies at the request of customers and law enforcement agencies with court orders for a number of years, wherein a "trap and trace device" is placed on a line and the numbers from incoming telephone calls are collected. This practice was first statutorily regulated in Kansas in 1988. K.S.A. 22-2529 defines a trap and trace device as "a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted."

In our opinion the caller ID service that you describe falls in the definition of trap and trace device and as such would be subject to the limitations prescribed by statute, in particular the general prohibition contained in K.S.A. 22-2525 which states:

"(1) Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under K.S.A. 22-2527.

"(2) The prohibition of subsection (1) shall not apply with respect to the use of a pen register or a trap and trace device by a provider:

"(a) Relating to the operation, maintenance and testing of an electronic communication service to the protection of the rights or property of such provider or to the protection of users of that service from abuse of service or unlawful use of service;

"(b) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire

communication or a user of such service from fraudulent, unlawful or abusive use of service; or

"(c) when the consent of the user of such service has been obtained.

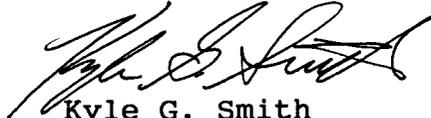
"(3) Whoever knowingly violates subsection (1) shall be guilty of a class C misdemeanor."

Any person who subscribes to and pays for an additional service such as caller ID presumably consents to it's installation and use. As such, the exception contained in subsection (c) would exempt providing or using caller ID from the prohibition contained in this statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kyle G. Smith
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RTS:JLM:KGS:jm