

# Discussion on the Application of Electronic Evidence in Criminal Procedure and Suggestions for Improvement

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## Abstract

Network equipment is used to complete some behaviors in daily life continuously in the context of the Internet era. The data information provided by network equipment has become important evidence in China's judicature with the increasing network cases. However, it restricts the process of criminal cases due to the network equipment data information with deficiencies to a certain extent. Therefore, this article analyzes the definition of electronic evidence, the shortcomings, and the corresponding solutions, by which to help the relevant staff.

## Keywords

Criminal Proceedings; Electronic Evidence; Applicable Issues; Suggestions for Improvement.

## 1. Introduction

China has entered the information age at present, in which although criminal, civil, and administrative laws and regulations have stipulated that electronic equipment can be used as legal evidence, this link has not been improved so that people have no clear division of electronic evidence. In addition, electronic evidence has the characteristics of the times, network, information, and so on, which is different from traditional evidence. It will bring a lot of difficulties to judicial practice to some extent, so it is necessary to solve this problem as soon as possible to support effective information for the smooth progress of justice.

## 2. Comprehensive Analysis of Electronic Evidence

### 2.1. The Concept of Electronic Evidence

Nowadays, our country mainly thinks that electronic evidence is the product of technology under the background of informationization, which can save evidence in electronic equipment in the form of code, and at the same time, it can be transmitted, copied and pasted while proving a case.

### 2.2. Characteristics of Electronic Evidence

(1) Persistence. The essence of electronic evidence is consistent with traditional evidence, and both can be used as evidence of cases. But there are also differences. Electronic evidence can develop continuously according to the changes of the times. Under the background of the Internet age, the continuous improvement of the scientific and technological level also drives the development of electronic evidence. Electronic evidence has been preserved from CD-ROM to electronic equipment. There are also various storage modes, such as photos, videos, and recordings. Judicial practice should constantly adapt to the times and improve its behavior level at the same time. [1] (2) Virtuality. The existing form of electronic evidence is different from that of traditional evidence. Generally, electronic evidence cannot be touched, and it can only be seen or heard through the medium of electronic equipment. (3) Vulnerable to interference. Electronic evidence is different from traditional evidence because of the continuous progress

of science and technology. Electronic equipment is easily controlled by human beings. E-mail and chat records can be modified, deleted, and forged, which greatly reduces the authenticity of electronic evidence. Electronic evidence is generally stored in electronic devices. If the security of these electronic devices is excellent, they will be attacked by viruses, which will lead to obstacles in the system and affect the preservation of content. Therefore, electronic evidence must be confirmed and tested in judicial practice.

### **3. Shortcomings of Electronic Evidence in Criminal Proceedings**

#### **3.1. Difficulty in the preservation**

Electronic evidence is also continuous according to the above. The preservation methods of electronic evidence are constantly changing with the development of electronic technology. For example, traditional electronic evidence takes CD and disk as the main preservation methods. Modern electronic evidence is mainly stored by electronic devices, but there are still problems in reading. With the development of the times and the renewal of equipment, the traditional preservation methods are gradually eliminated. In addition, electronic evidence exists in electronic devices. If the security is not outstanding, it will be very easy to be invaded by viruses and hackers, which will reduce the accuracy of electronic evidence. [2]

#### **3.2. Insufficient Accuracy**

The accuracy of electronic evidence is the most difficult factor to overcome in judicial evidence collection, which is mainly reflected in three aspects: First, the accuracy of the subject. Because our country network real-name authentication of this constitution is not perfect in the network activities such as online chat cannot accurately identify the other party in the network chat due to the subject is not clear and produce many cases of disputes. The second, the accuracy of the content. Electronic evidence is easy to be forged, and modifications such as WeChat chat records can be easily modified through technology, which makes it difficult for judicial practice. Third, the identification method is not perfect. Judicial practice generally identifies whether electronic evidence is forged according to court arguments and equipment records. The court will let the people involved carry electronic evidence to the notary office for identification when cases involving network activities are involved. However, it is difficult for the parties to protect their rights and interests because of the time and money of notarization fees.

#### **3.3. Difficulty in Obtaining Evidence**

The difference in the difficulty of obtaining electronic evidence between the Civil Procedure Law and the Criminal Procedure Law is mainly reflected in the following aspects: Whoever is the general subject will obtain evidence in the Civil Procedure Law. But now the Internet is developing rapidly and the infringed subject's awareness of safeguarding rights is not strong enough, and the awareness of preserving evidence is lacking. At the same time, it is difficult to restore it to its original appearance once the evidence is deleted. In addition, the development enterprises of electronic servers put the server equipment in each person's electronic equipment through the network, which is far away from the main body and difficult to communicate. However, electronic evidence is generally stored in the server, which makes it difficult for the subject to obtain their electronic evidence, and also makes it difficult for the subject to obtain evidence in civil disputes, so that the subject cannot safeguard his rights and interests in time. However, the difficulty of electronic evidence in criminal proceedings is generally the lack of professional ability of evidence collection organization. With the continuous development of science and technology, forging and modifying the technology of electronic evidence is getting higher and higher, which requires investigators to constantly improve their professional skills, comprehensive understanding of professional knowledge, and timely grasp the required electronic evidence in complex information. However, the

number of staff with Internet technology and investigation technology is small in the actual process of evidence collection, which increases the difficulty of electronic evidence collection.

## **4. Measures to Optimize Electronic Evidence Collection**

### **4.1. Optimizing the Legislation of Electronic Evidence Rules**

China has not optimized the legislation of electronic evidence collection rules at present. We must optimize in essence to improve the legislation of electronic evidence collection rules to fundamentally guarantee the rights and interests of the subject. Clear provisions on the classification and division scope of electronic evidence allow the judicial practice to carry out its work effectively according to legislation. In addition, the types of electronic evidence are increasing and changing with the development of the times. It is necessary to amend and supplement relevant laws in time so that judicial practices have laws to follow, to reduce the adverse effects caused by the lag of laws and improve the effectiveness of judicial work.

### **4.2. Build A Professional Team with High-quality Talent**

There is a shortage of talents with both Internet technology and investigation ability according to the above. More and more cases involving electronic evidence require a large number of professionals at present, so it is necessary to strengthen the training of professionals. First, we can make use of theoretical courses in colleges and universities to comprehensively increase the popularization of professional knowledge. Secondly, we can carry out the corresponding training work in judicial organs or relevant departments, and use actual cases as the main training content, followed by a timely assessment to strengthen the professional ability of staff and strengthen the timeliness and accuracy of electronic evidence collection.

### **4.3. Cultivate the Concept Of Proof for Network Service Providers**

In the context of the Internet era, most of the electronic evidence is stored in the server of the network service provider, which is difficult for users to obtain electronic evidence. Therefore, it is necessary to cultivate the concept of proof of network service providers. Relevant regulations can be set up to make the network service reasonable. Suppliers can actively cooperate with case investigation and actively provide electronic evidence and other relevant information. For example, judicial practice can't confirm the authenticity and validity of the evidence provided by both parties in the WeChat lending dispute. We can judge the authenticity of electronic evidence by using the evidence of network service providers to save the time and money of the parties so that judicial practice is fair and effective and not misled by false evidence. It can be punished accordingly if the network service provider does not cooperate, to strengthen the efficiency of forensics. [3]

### **4.4. Strengthen the Innovation of Preservation Methods**

Nowadays, networks generally use distributed storage, encrypted calculation, accurate transmission, and other methods to form regional chains. However, the data information in the regional chain can be accurately positioned so the electronic evidence has the characteristics of unmodifiable and undisturbed, which ensures the accuracy of electronic evidence at the same time. However, the use of regional chain storage will increase the cost of network service providers so that servers are constantly replaced. Therefore, improving the innovation of preservation methods is the fundamental method to safeguard the rights and interests of both parties.

### **4.5. Optimize Forensics Methods**

We should obtain the relevant information of electronic evidence according to relevant regulations in the process of collecting electronic evidence to prevent the destruction of

electronic evidence. First, we must improve the legality of evidence collection methods without fraud, forgery, and other means to obtain electronic evidence. It is also an important factor to maintain fairness in judicial practice at the same time; Second, ensure the rationality of evidence collection methods. It is difficult to obtain electronic evidence, which requires forensics personnel to have high technology to ensure the accuracy of forensics; Third, we must ensure the accuracy of electronic evidence collection. The main reason why electronic evidence is difficult to be used in judicial practice is that it cannot ensure whether electronic evidence is true and effective. Therefore, it is necessary to identify electronic evidence to be an effective basis for judicial practice to ensure the authenticity of electronic evidence. The work of forensics personnel should be controlled to protect the privacy rights and interests of others from infringement in the process of obtaining evidence.

## 5. Conclusion

Electronic evidence is the product of the Internet era and constantly appears in the process of judicial practice. The legislation of electronic evidence rules in China is not clear enough. Therefore, this article has carried on the research from the essence and proposed the corresponding solution to the electronic evidence existence insufficiency. At the same time, I also hope that China can establish the relevant electronic evidence rules legislation system under the circumstances of continuous optimization of the law so that judicial practice has laws to follow to improve the effectiveness of judicial practice and safeguard the rights and interests of our people.

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