

Research on the Issue of Electronic Evidence in Criminal Procedure

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Abstract: my country's "Criminal Procedure Law" officially stipulated electronic data as one of the eight types of statutory evidence in 2012, and the relevant evidence system has been revised accordingly. As a new type of evidence, electronic data plays an increasingly important role in ascertaining the facts of the case and restoring the true situation of the case. With the continuous development of science and technology, electronic data has penetrated into all aspects of people's lives. Many criminals not only use electronic information technology to commit new crimes, but even use electronic information technology to commit traditional crimes, and want to focus on combating traditional crimes and new crimes. , Will inevitably face a large amount of electronic data, so electronic data is a vital factor in breaking through modern crime. Although my country has promulgated relevant regulations and judicial interpretations on electronic data, the legislation is not in place, leading to many problems in the actual use of electronic data.

1. Introduction

The development of science and technology has affected the exploration and innovation of the rule of law. With the continuous improvement and development of modern science and technology, electronic data has begun to be presented in court as a new type of evidence. Compared with traditional evidence, electronic data has unique characteristics such as diversity, so the status of electronic data in practice is increasing day by day. Based on this, my country's Criminal Procedure Law also explicitly stipulates electronic data as one of the types of statutory evidence, but there is no detailed regulation on the specific application of electronic data, which will lead to inconsistencies in the use of electronic data in judicial practice. Fewer problems.

2. Overview of Electronic Data

2.1 The Concept of Electronic Data

Different scholars at home and abroad have different ways to define the concept of electronic data, and the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued the "Regulations on Several Issues Concerning the Collection, Extraction, Review and Judgment of Electronic Data in Criminal Cases" (hereinafter referred to as The "Electronic Data Regulations") clearly defines the concept of electronic data: electronic data is formed during the occurrence of a case, stored, processed, and transmitted in digital form, and can prove the facts of the case. Electronic data includes, but is not limited to, the following information and electronic files: (1) Information published on web platforms, web pages, blogs, microblogs, Moments, Tieba, Netdisk, etc.; (2) SMS, emails, instant messaging, communication groups Groups and other network application services communication information; (3) user registration information, identity authentication information, electronic transaction records, communication records, login logs and other information; (4) documents, pictures, audio and video, digital certificates, computer programs and other electronic files .

2.2 Characteristics of Electronic Data

As a new type of evidence, electronic data has unique characteristics compared with traditional evidence.

One of the most important characteristics of electronic data that distinguishes it from other types

of evidence is digitization. Electronic data is formed based on digitization and other technical means, and relies on digital technology to exist. Therefore, the continuous development, advancement and popularization of digital information technology has facilitated the practice of electronic data in judicial practice. The use of, has also further promoted the development of electronic data, and better allows electronic data to be used as a vital type of evidence.

Electronic data relies on computer technology and information networks. Its existence and case facts reflected will not be changed due to external factors or artificial will. It is more objective and has a higher proving power.

Electronic data is objective data stored by digital information technologies such as computer networks. In the online world, electronic data is vast, and various forms may belong to one type of electronic data. Through the analysis of these large amounts of electronic data, you can Reconstruct a complete and true crime scene to better understand the facts of the case. At the same time, because of the massive nature of electronic data, it is also difficult to find favorable and accurate evidence from it.

Through certain equipment and technology, electronic data can be copied and pasted into various storage devices. If the equipment used is sophisticated enough, it can even cut and paste the obtained electronic data accurately and accurately, forming a piece exactly the same as the original. In fact, to a certain extent, this also brings certain challenges to the review and judgment of electronic data.

Electronic data can be expressed in a variety of ways and forms. Other traditional forms of evidence and electronic data are available. At the same time, the most important aspect of electronic data is to rely on the use of modern communication technology and computer networks, which can be more direct. It is easier to be extracted and used by people, and it is also a more intuitive and objective restoration of the facts of the cases that have occurred.

Electronic data is intangible. We cannot see or touch, nor can we perceive its existence very intuitively. This leads to electronic data being easily deleted and tampered with, and it is difficult to leave traces of modification. Without knowing it, it may be impossible to restore the original electronic data in the most complete way.

3. Review and Judgment Rules of Electronic Data

A piece of evidence can be presented in court as one of the basis for a verdict only after a reasonable review and judgment, and electronic data as a new type of evidence is no exception. In my country's judicial practice, reviewing evidence mainly relies on the three characteristics of evidence, namely authenticity, legitimacy and relevance. Articles 22-28 of the “Electronic Data Regulations” promulgated in my country are detailed explanations on the review and judgment of electronic data around the three characteristics of evidence.

3.1 Verification of Electronic Data

Article 22 of the “Electronic Data Regulations” is related to the review and judgment of the authenticity of electronic data. To review the authenticity of electronic data is to review whether its content is authentic, whether there are traces of tampering, addition, modification, etc., whether it is stored in the original medium, whether the integrity of the electronic data can be guaranteed, and so on. Because of the characteristics of electronic data, its authenticity is more difficult to examine than other traditional evidence. Sometimes it is often necessary to resort to judicial appraisal or even external equipment or media.

3.2 Review of the Legality of Electronic Data

Article 24 of the “Electronic Data Regulations” stipulates that the legality of collecting and extracting electronic data should be reviewed. According to this regulation, the legality of electronic data requires not only formal legality, but also procedural legality. Legal form means that the entire process of electronic data from obtaining to presentation in court should be presented to the judge in written or reasonable form, while the legality of the procedure requires the process of collecting and

obtaining electronic data. , Legal procedures and legal means must be adopted, both of which ensure the proving ability of electronic data when used as evidence.

3.3 Relevance Review of Electronic Data

Relevance means that the evidence must be related to the facts of the case that it proves. Then the electronic data as evidence must also be related to the facts of the case. At the same time, the size of the relevance of the evidence also determines the evidence ability and proof of the evidence to a certain extent. Magnitude of the force.

4. Problems in the Use of Electronic Data in Criminal Proceedings in My Country

4.1 There Are Deficiencies in the Relevant Laws and Regulations of Electronic Data

Electronic data is a kind of evidence newly established in our country. Therefore, our country's electronic data evidence legislation has not formed a complete legal system. There is no uniform conclusion to the regulations, there are many differences, and a complete legal system of electronic data cannot be formed. In the field of criminal procedure, the "Criminal Procedure Law" simply mentions electronic data as one of the eight major types of evidence, and does not specify specific regulations on this evidence. Although the "Electronic Data Regulations" detailed the rules for the use of electronic data , But it is still relatively broad and general, and the judicial interpretation of part of the electronic data is not in place.

4.2 Lack of Professionals in Electronic Data

Electronic data is highly professional and comprehensive. Therefore, the collection of electronic data, future review and judgment, and processing and analysis require highly professional talents to process. However, at present, many of the staff dealing with electronic data in my country do not have the appropriate skills. Some legal expertise, professional talents and experts in electronic data are also in short supply.

4.3 The Legality of Evidence Collection is in Doubt, and the Legal Rights of Citizens in the Process of Collecting Evidence Are Infringed

my country's Criminal Procedure Law and related interpretations do not independently stipulate the method of obtaining evidence and collecting electronic data, but only state that the method of obtaining evidence similar to other evidence can be used, which will inevitably affect the legality of electronic data collection. question. Electronic data itself has the characteristics of fragility and diversity, which makes it easy to have illegal acquisition and collection methods in the process of collecting and collecting evidence. However, whether such illegal evidence should be excluded is not clear in my country's criminal procedure law. The specific regulations and the illegal evidence exclusion rules established by it also exclude electronic data from the scope of application. This is also a serious problem facing judicial practice.

At the same time, with the continuous advancement of social legalization, my country has already written the respect and protection of the basic rights of citizens into the constitution, but the legalization of electronic data has not kept up. In the process of collecting and obtaining evidence of electronic data, There may be cases of infringement of citizens' legal rights.

4.4 Lack of Unified Standards for Electronic Data Review and Judgment

Due to its unique characteristics, electronic data cannot directly use traditional evidence methods and standards in review and judgment, and the rules for review and judgment of electronic data in my country are relatively scarce, although the aforementioned "Electronic Data Regulations" There are corresponding regulations for the review and judgment of electronic data, and the standards for the authenticity, objectivity, and relevance of electronic data are also explained.

5. Improving Strategies for the Use of Electronic Data in Criminal Proceedings

5.1 Improve My Country's Electronic Data Legislation

With the continuous development of science and technology, as a new type of evidence, the status of electronic data in judicial practice is bound to become more and more important. The number of cases involving electronic data in judicial practice is also increasing. Therefore, it is necessary to improve and establish my country's Electronic data rule system. my country can absorb and learn from the advanced experience of foreign countries regarding electronic data regulations, and explore a path that suits my country's national conditions based on my country's actual conditions. At present, my country's legislation and judicial interpretation are relatively scattered, and there is no systematic regulation of electronic data. Therefore, my country can make corresponding amendments and supplements to the "Criminal Procedure Law" and its judicial interpretation and related rules regarding evidence. Refining and perfecting the relevant content in the "Electronic Data Regulations", and at the same time, it is possible to introduce new specialized judicial interpretations on the use of electronic data evidence, forming a complete electronic data rule system, and standardizing the rationality of electronic data in judicial practice Use it to better highlight the positive value of electronic data in judicial practice.

5.2 Cultivate Talents in Electronic Data and Establish a Professional Technical Consulting Mechanism

Electronic data itself is a highly comprehensive subject, and many of its contents are far from enough to rely on the investigative knowledge mastered by investigators. Therefore, it is possible to set up independent political and legal colleges or judicial colleges across the country. The courses or majors related to electronic data can cultivate a group of professionals in electronic data, and the three parties can also jointly train some internal staff to improve their professionalism in electronic data. At the same time, it can also Introduce foreign talents in this field or absorb and learn from foreign advanced experience in order to better improve professional quality.

With the continuous development of information technology and the Internet, there are more and more requirements for the identification of electronic data, and more and more professional technology is needed to support it. It is particularly important to set up a specialized organization for electronic data, and it is also necessary to establish a special organization for electronic data. Professional technical consultation mechanism, answering questions and providing professional appraisal opinions, etc. that may arise in the process of electronic data review and judgment, explaining the appraisal of electronic data and providing references, which can not only increase the electronic data certification Reliability in terms of force can also further enhance the credibility of judicial judgments.

5.3 Standardize the Collection and Evidence Collection Methods of Electronic Data

First of all, we must standardize the scope of electronic data forensics. Due to the particularity of electronic data, the collection of electronic data often involves highly professional knowledge. However, in my country's judicial activities, the relevant personnel responsible for collecting electronic data may have a problem with electronic data. Insufficient knowledge understanding, but professional technical personnel are excluded from the scope of the main body of forensics, which may lead to unreasonable or unprofessional methods of forensics, which may reduce the ability of electronic data to prove.

Secondly, it is necessary to standardize the procedures for obtaining evidence for electronic data, and establish and improve relevant legislation on the collection of electronic data, so as to better regulate and restrict evidence collection by law.

5.4 Improve and Strengthen the Fixation and Preservation of Electronic Data

Electronic data, as a special kind of evidence, relies on the existence of media such as computer information network technology. It is easy to be lost or difficult to obtain in the future, which will reduce the credibility of electronic data and is not conducive to the rational use of electronic data. Therefore, it is necessary to improve the credible method of fixing and preserving electronic data,

improve the technology and ability of fixing and preserving electronic data, keep the electronic data collected in the investigation and evidence collection process reasonably and properly, and ensure the electronic data through the fixing work of electronic data. The reliability of electronic data effectively enhances the credibility of electronic data.

5.5 Improve My Country's Existing Evidence Rules

The improvement of my country's existing evidence rules is mainly the improvement of illegal evidence exclusion rules. At present, my country's illegal evidence exclusion rules have relatively large defects, and their scope of application is too narrow, resulting in electronic data being excluded from this rule to a certain extent. Outside the scope of application. The illegal evidence exclusion rule itself is a relatively broad and general rule for traditional evidence, and electronic data may not be able to apply this rule because of its unique characteristics and particularities.

Then there is the improvement of the rules of authenticity of evidence. The current authenticity rules of our country only examine the authenticity of the content of electronic data, and do not involve much in the form of evidence. As a dynamic form of evidence, electronic data itself has the characteristics of easy modification and easy destruction, which can easily lead to the destruction of evidence. Therefore, the use of electronic data in judicial practice should also strengthen the review of the authenticity of the electronic data form. , You can refer to the identification rules for other traditional evidence, establish and improve the identification rules for the form of electronic data, assign or hire professional personnel to evaluate the authenticity of electronic data in judicial activities, and issue corresponding reports.

6. Conclusion

With the continuous advancement of technology, electronic data has gradually penetrated into all aspects of people's lives. In the future, electronic data will inevitably be used in the process of hearing cases. As a new type of evidence, electronic data will be used in future criminal proceedings. Judicial practice will also play a pivotal role. Therefore, criminal justice departments must further strengthen their attention to electronic data. However, as far as the current situation is concerned, my country's electronic data rules and regulations are still lacking in many aspects, leading to There are also many problems in its actual application.

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