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Research on the Rules of Electronic Data Evidence Authentication

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Abstract

As a new type of evidence, electronic data has been fully confirmed in the legislative aspects of the three major procedural laws. However, there are still some problems in the judicial level, such as the lack of unity of meaning, the uncertainty of attribution and the lack of certification standards. The lack of certification standards is the most intractable problem. In this paper, the author uses the method of theoretical research and empirical research to analyze the judicial application of electronic data evidence, the existing problems, the causes and the corresponding solutions. The author suggests that the electronic data authentication specification should be set up as soon as possible, and the concrete practical work of the judges should be guided from two aspects of principles and rules, so that the concept of judicial standardization and the concept of free heart proof of judges are fully played in the field of electronic data evidence application.

Key words: Electronic data; Empirical analysis; Evidence authentication; Rule principle

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INTRODUCTION

As of May 1, 2015, the new revised Administrative Procedure Law promulgated and implemented, the

three major procedural laws have all completed the work of electronic data as a new type of evidence. Accordingly, at the legislative level, electronic data has established its legal status in the field of procedural law. However, in the judicial practice, the legal problems caused by the electronic data are not terminated by the establishment of their legal status. At present, there are three main problems in the judicial level of electronic data: First, there is no certainty concept in the three major procedural laws on the connotation and denotation of electronic data evidence. Secondly, there is no unified view on the attribution of evidence in electronic data, and the relationship between electronic data and other evidence is not clear enough. The third and most pressing issue is that there is no judicial authentication rule on electronic data evidence, and there is no systematic and operable uniform standard for what kind of electronic data conforms to the evidentiary standard. In judicial practice, the general enthusiasm of the parties to submit electronic data evidence contrasts sharply with the cautious attitude taken by the judge to adopt the evidence of the electronic data. In the author's personal experience of civil and commercial cases dispute, the judge on the parties submitted QQ chat record screenshot and micro-letter chat record screenshot Basically take a cautious attitude, or not to allow the parties to submit as evidence, or although the proof of the evidence but ultimately do not believe the proof, Nor does it justify the admissibility of the evidence in the judicial instrument. Concerns about the new type of evidence for electronic data and the judicial practice of judges, in particular, the concern of the judges of the grassroots court for the cautious judgment of electronic data evidence has prompted the author to study the relevant theoretical and practical problems of electronic data evidence in order to provide limited help to solve the embarrassing situation of electronic data evidence.

1. JUDICIAL APPLICATION OF ELECTRONIC DATA EVIDENCE

1.1 Number of Cases Concerning Electronic Data as Evidence

The author uses the law search method to enter the three key words of “electronic data”, “electronic evidence” and “data message” on the website of the Peking University Magic weapon and the Chinese referee’s document to retrieve the evidence in judicial precedent for nearly

11 years. As of December 30, 2016, a total of 23,816 cases were searched for the use of “electronic data” as evidence in various cases, including 8,948 civil cases, 14,562 criminal cases, 306 administrative cases, and the search of “electronic evidence” as a keyword in a total of 5,449 cases, Among them civil 1942 pieces, criminal 5,107 pieces, administrative 72 pieces, the “data message” as evidence of 3,378 cases, including civil cases 3,088 pieces, criminal cases 7 pieces, administrative cases 283 pieces. See Table 1 for details.

Table 1
2006-2016 Application of Electronic Data as Evidence in the Number of Judicial Cases Change (Units: Pieces)

Type \ Year	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
Total quantity	9940	10382	8374	2043	1013	435	346	199	97	42	50
Civil cases	3392	3902	3614	1076	667	284	244	128	67	21	27
Criminal cases	6318	6328	4641	938	297	144	97	66	29	19	21
Administrative cases	230	150	119	29	49	7	5	5	1	2	2

Note. Each group of data is the sum of the judicial cases of three kinds of appellation evidence of electronic data, electronic evidence and data message.

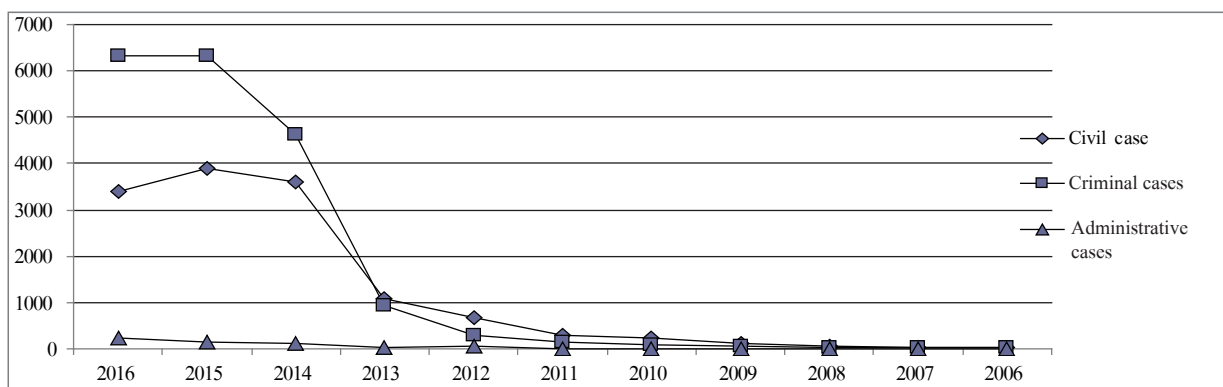


Figure 1
2006-2016 Comparison Diagram of the Application of Electronic Data as Evidence in the Three Major Procedural Laws

By means of legal search, the electronic data evidence is used in the form of “data message” in civil lawsuit and administrative cases in June 2010 before the State promulgated the implementation of the provisions on the examination and judgment of the evidence in the case of death penalty cases. After the promulgation and implementation of the provisions, the application of electronic evidence in criminal cases is constantly increasing, although it cannot be completely unified in concept. Since 2012, after the establishment of electronic data as an independent type of evidence in the criminal Procedure Law, the Civil Procedure Law and the Administrative Procedure Code and various judicial interpretations, the cases of using electronic data as evidence in various kinds of litigation have increased rapidly, The use of electronic data as evidence in civil cases in 2014 increased by nearly 235% in the previous year, with criminal cases increasing by nearly 394%.

In addition, the use of electronic data in criminal cases is the highest in the three major lawsuits, followed by civil cases, and administrative cases have increased year by year. Visible electronic data as a legal new type of evidence has been rapidly used in judicial cases.

1.2 Electronic Data Evidence Presentation and Presentation

1.2.1 Electronic Data Evidence Representation

According to article 116th of the Supreme People’s Court on the application of the interpretation of Civil Procedure Law of the People’s Republic of China, “electronic data refers to information that is formed or stored in electronic media through e-mail, electronic data interchange, online chat records, blogs, micro blogs, mobile text messages, electronic signatures, domain names, etc.” Through the analysis of the above-mentioned cases, we can find that the existing electronic data are mostly the following types:

SMS, email, micro-letter chat records, bank electronic signature, fax data, network purchase transaction record, third party network electronic data, etc.

1.2.2 Electronic Data Evidence Presentation Form

Because of the multiplicity of the carrier of the electronic

data evidence and the objective requirement of the litigant to produce the evidence to the people’s Court, there are many situations in the judicial practice in which the main body of the lawsuit produces evidence to the people’s Court, as shown in Table 2.

Table 2
Presentation of Electronic Data Evidence

Electronic data evidence presentation form	
1. Electronic data evidence printing parts	5. Forensic opinion on electronic data
2. Electronic data original carrier + printing parts	6. Demo e-Mail Login
3. Electronic data original carrier + printing parts + public certificate	7. Timestamp record
4. Electronic data printing parts + public certificate	8. Electronic data on an inquest transcript

1.3 Information on the Admissibility of Electronic Data in Judicial Cases

The author of the above-mentioned cases of the various types of litigation to extract 100 as an analysis of elements found, in contrast to the fact that electronic data evidence has been used in full swing as evidence, in civil, criminal and administrative cases, it is true that the use of electronic data as evidence or the adoption of a letter is a double day of ice fire. In 100 criminal cases extracted by the author, in addition to one case not adopted and the electronic data evidence, the other 99 cases People’s Court adopts the electronic data as evidence to convict the defendant. In civil cases, the People’s Court directly adopted the ability to comply with the evidence is only 56%, and most of them (100 of them 70) belong to the bank financial loan contract dispute. In the case of the 100 cases of administrative cases, it can be found that the judicial organs in administrative cases to the administrative organs to provide electronic data evidence

and the adoption of the proportion of letters is more than 90% (see Figure 2).

Figure 2: The case of electronic data evidence in each type of case.

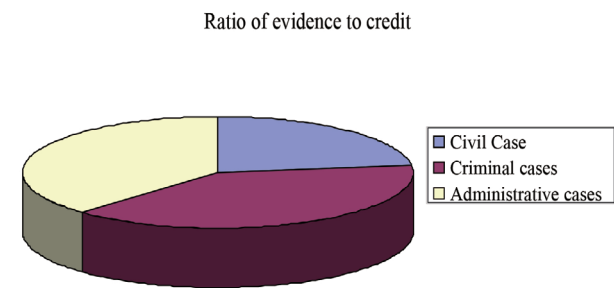


Figure 2
The Case of Electronic Data Evidence in Each Type of Case

Note. This chart is based on the 100 cases of criminal, administrative and civil cases on the magic weapon of Peking University.

Table 3
Summary of Reasons for Admissibility of Electronic Data Evidence in Judicial Cases

On the reasons of evidence-gathering or not-gathering in civil cases	
Reason for the gather	Reason for not believed
<ol style="list-style-type: none"> 1. The defendant was tantamount to a discussion; 2. Produce original carrier + form without defect + objection without evidence; 3. The original defendants were corroborated by the evidence and verified by each other; 4. The trial directly demonstrates evidence and the other party has objections and no evidence; 5. The other party denies, but the evidence can corroborate each other. 6. High credibility of third-party institutions of Electronic Data information (bank, network purchase transaction information, timestamp certification); 7. SMS Micro-letter of evidence to produce original + each other recognized micro-signal or mobile phone number; 8. Third party network printing parts approval. 	<ol style="list-style-type: none"> 1. The authenticity of the evidence is difficult to determine and the original evidence cannot be econciled; 2. The legal source of evidence cannot be proved; 3. Electronic data evidence is not able to determine the sender, the addressee can not verify the identity of the other person; 4. SMS can not provide original or notarized; 5. Unable to provide the original carrier or conduct an inquest before the court; 6. Derivative evidence cannot confirm that its authenticity is not valid.

By retrieving 300 of cases, you can see: (a) The electronic data evidence held by the People’s Court on the public Prosecution organ, the administrative organ, the Bank and the third party network platform is generally accepted and adopted, and the electronic data-collecting rate of the private rights subject is obviously low. (b)

The People’s Court shall have a higher proportion of the evidence of electronic data provided in other forms other than the direct printing of electronic data, and shall not adopt a letter of evidence for the direct provision of electronic data printed parts unless the other party considers itself or confirms it. (c) In civil cases, the

reasons for not being adopted in electronic data evidence are mainly focused on the authenticity and legality of the evidence, such as inability to provide originals of electronic data, inability to provide sources of evidence, unauthorized notarization of electronic data and uncertainty as to whether the party receiving electronic data is a party to the case. (d) Through the search and analysis of cases, it can also be found that the people's Court in the trial of civil litigation cases for electronic transactions in the new type of commercial activity disputes on the authenticity and legality of electronic data evidence will be combined with the relevant evidence to adopt the letter, and for traditional civil cases such as marriage, The rate of the electronic data evidence in the succession dispute is obviously low. (d) At the same time, it was found that the ratio of electronic data used in the case of the people's courts in the provinces of central and eastern China, such as Zhejiang Province, Jiangsu Province and Hubei province, was significantly higher than that of the people's Court in the western region.

2. PROBLEMS AND CAUSES OF ELECTRONIC DATA EVIDENCE IN JUDICIAL ADJUDICATION

2.1 Existing Problems

Through the analysis of the above-mentioned cases, we can find that there are several problems in the existing judicial litigation system, such as the adoption of electronic data evidence and the acceptance of letters.

2.1.1 In the Field of Controversy

The areas where electronic data has been adopted as evidence and which is disputed are mainly concentrated in civil proceedings, and mainly focus on the credibility and credibility of the lower than the natural person, legal person and other civil private subjects in the lawsuit, and for the higher credibility of private subjects such as banks and other financial institutions used by the electronic data evidence less controversy.

2.1.2 Judging From the Three Aspects of Evidence Determination

The problems of the adoption of electronic data as evidence and the controversy over the adoption of letters are mainly focused on authenticity and legality. Some judicial organs have a direct denial of the authenticity and legality of electronic data evidence, depriving one side of the burden of proof as evidence of the right; some judicial organs will mechanically deny the authenticity and legality of the evidence because of each other's denial. This directly affects the use of electronic data as evidence.

2.1.3 From the Perspective of the Original Theory of Evidence

When the people's court hears the evidence of electronic data, it will often deny the right of proof to the lawsuit

by denying the electronic data as the original carrier of the electronic data, or authenticating the electronic data printed piece without notarization or authentication.

2.2 Analysis of Causes

The author analyzes the causes of the problems in the process of applying the theory, practice and expert scholar to the embarrassment of the application of electronic data as evidence.

2.2.1 The Specificity of Electronic Data Evidence Leads to Uncertainty in Judicial Application

(a) According to the British scholar Peter•Murphy's viewpoint, the evidence which produces the proof force in the civil lawsuit should be the evidence of "probability dominant position", and the criterion of judging advantage evidence lies in the quality of the evidence, that is, the credibility and persuasion of the evidence. However, due to the tamper-proof, perishable, difficult to control and difficult to preserve, it is questionable that the authenticity and persuasiveness of the electronic data evidence submitted by the judicial authorities have been questioned, that is, the veracity of the electronic data evidence. Especially when the subject of submitting the evidence is the civil subject such as the natural person and legal person with lower credit ratio.

(b) Electronic data evidence is a kind of data information stored in electronic media, which is different from traditional lawsuit.

Paper documents in the hands of litigants. Therefore, in the case of disputes, in the absence of electronic data production form to make explicit provisions, and in the cases of inadequate knowledge of the litigation, the party submitted to the People's Court of electronic data evidence form is diverse. As found in the previous search analysis, in most cases the parties submit a printout of the electronic data evidence, which is incompatible with the original evidence in the traditional evidence rule. Therefore, this form of evidence is often not accepted by the People's Court because of its low credibility.

2.2.2 Reasons for the Traditional Concept of the Judicial Authority

(a) The judge of the People's Court has not given the electronic data evidence to be treated in a non-discriminatory and equal manner. Because the electronic data evidence is the new evidence type, compared with the traditional evidence type, there are many differences and particularity, such as the form of electronic medium, the reproduction and the easy deletion, which makes some judges of the court subjectively treat the judge from the subjective. For example, a divorce case and an honorary right infringement case by Li Yingping Judge of the Yongzhou People's Court in Hubei province are in full agreement with the reasons for the admissibility of the electronic data evidence, which are considered to be "the instability and variability of electronic data evidence, and the failure to adopt lawful and effective methods to

deposit and retain evidence It is not possible to confirm the original nature of the evidence, not to confirm it as valid evidence, and to give no specific reasons for the case. However, according to article fifth and article Nineth of the United Nations Model Law on Electronic Commerce, it is stated that “the legal effect, validity or enforceability of a data message shall not be denied on the ground of a particular information.” “In any legal proceedings, the application of the rules of evidence shall not in any way negate the admissibility of a data message as evidence for any of the following reasons:” (a) only if it is the same as a data message, or (b) if it is the best evidence that the proof person can reasonably expect, it is not based on the original.... Therefore, in the case that the three major procedural laws of our country have all put the electronic data as one kind of evidence in the law, under the circumstance that the international law establishes the rules of the electronic data mining, the People’s Court judge is still questionable about the practice of denying the electronic data evidence.

(b) The concept of technology is a serious influence on the validity of the judge’s application of evidence judgment rules to authenticate electronic data. Electronic data evidence is the product of judicial trial entering into the era of large data, and the particularity of electronic data evidence makes it impossible for judges to use traditional evidence authentication rules to determine the validity of such evidence. In particular, the characteristics of its easy deletion make the court more inclined to judge the electronic data which has been notarized, witnessed or appraised, and the judge of the People’s Court, who has not taken the corresponding technical preservation measure, will also exclude its authenticity. The reason is that the concept of technology first in mischief, some court judges do not want to be the first to eat crab, lest their “reckless” will make themselves the antithesis of criticism. At the same time, in 2002, the Supreme People’s Court issued the “evidence of several issues of administrative Procedure Law”, Article 64th also stipulates that

fixed or displayed by the physical carrier of electronic data exchange, e-mail and other data information, the production and authenticity of the other party confirmed, or notarized and other effective means to prove, has the same proof effect as the original.

This also affects the judge’s judicial judgment invisibly from the idea. However, we cannot forget that the most basic idea and rule of the referee’s certification is that the judge’s free Heart Certificate rules, the judges of the People’s Court can only hold the independent and objective and impartial attitude to hear the case, and can fully use the specific rules of evidence, including corroboration rules, corroboration rules, and so on, combined with the principle of free heart , the trial of the parties’ satisfaction to allow the social recognition of the case. In this regard, some judges of the Court are very

innovative and at the forefront of judicial proceedings. For example, Zhejiang province Taizhou Luqiao District People’s Court Zhou Chen judge Chen MoU and Taizhou a household goods shop confirmed labor relations dispute, in the case of only electronic data evidence, the judge can make full use of the rules of evidence, QQ chat record screenshots, micro-letter chat record screenshots, nail-nail chat record screenshots and micro-signals, The telephone number and so on the comprehensive judgment and the proof, obtains the laborer and the employing unit existence labor relations judgment opinion. The author believes that such judgments are very innovative and very representative and inspiring.

3. REASONS FOR THE CONSTRUCTION OF ELECTRONIC DATA SYSTEMS

In addition to the concept of the reasons, the use of electronic data evidence in the field of obstruction to the majority of judges is a system-level reason.

3.1 The Lack of Operational Rules on Electronic Data Evidence Certification

Although the three major procedural laws have confirmed the validity of the electronic data, but in addition to the criminal Procedure Law, the judicial interpretation of article 93rd provides for the examination of electronic data as evidence for the authentication rules, the Civil Procedure Law and the Administrative Procedure Code are not what kind of electronic data can be finalized evidence, what kind of electronic data should be excluded from the effectiveness of the evidence to give a clear and operable authentication specification. In judicial practice, civil litigation and administrative litigation disputes are the main areas of controversy in the adoption of electronic data evidence. In other words, the principal contradiction of the electronic data authentication rules has not been resolved.

At present, in our country, the rules of electronic data authentication are in front of the judicial trial of the court in Jiangsu and Zhejiang area mentioned in the empirical study above, at the legislative level, there are the answers to some questions on data message evidence issued by the Shanghai High People’s Court in 2007 and the 2007 Beijing High People’s court Circular of the Beijing Municipal High People’s Court on the answers to some questions on the application of evidence in the civil procedure of intellectual property The first part is the provisions of the electronic evidence. In addition, there is no higher level of legislation on the electronic data evidence how to adopt and adopt the authority of the letter to give the norms, and the provisions of the two local courts there is a certain contradiction between. This has brought enormous obstacles to the judicial practice of electronic data.

3.2 The Rules of Traditional Evidence Authentication Rules Prevent the Authentication of Electronic Data Evidence

Because the carrier of electronic data is mostly computer, cell phone or storage Internet space, the most direct way for the parties to take the above information is to provide the printed parts of the above-mentioned electronic evidence in court. There is a huge cognitive difference between the printed parts and the original rules of the traditional evidence rule. According to article 22nd of the Supreme People's Court on the evidence of civil procedure, the investigation personnel shall request the original carrier of the relevant information to be provided by the investigators to collect the audio-visual materials such as computer data or audio and video recordings. It is difficult to provide original carrier, can provide copy ... similarly, article 12th of the provisions on the evidence of administrative proceedings stipulates that: In accordance with the provisions of article 31st of the Administrative Procedure Law, the Parties shall provide the people's Court with audio-visual information such as computer data or audio and video recordings, should meet the following requirements: Provide the original carrier of the relevant information. The original carrier is difficult to provide, can provide copies This is the original rule of evidence, which is accepted by the evidence theorists, that is, the submission of evidence should be submitted to the original carrier.

At the same time, the article 65th of the provisions on evidence in civil Procedure stipulates that the trial personnel may examine the single evidence from the following aspects: Whether the evidence is original, original, photocopy, copy and original, the original is consistent with; although the rules of evidence are not specifically targeted at electronic data, the rules of the original evidence affect the judge's understanding that the electronic data printed parts are not the original carriers. Moreover, in the new "judicial interpretation of Civil Procedure Law", the rule of the original evidence is still playing the guiding function of judicial adjudication, which will seriously affect the wide application of electronic data evidence. Therefore, it is necessary to change the concept and establish the rules for the authentication of electronic data.

3.3 The Proof System Is Not Perfect, and There Is No Strict Implementation of the Evidence System

The embarrassing position of electronic data evidence in judicial practice is not only the defect of the People's Court attestation Link, the corresponding party's proof and the quality-proof link have not reached the corresponding altitude, which leads to the whole low level of the judicial trial of electronic data evidence.

The proof and the quality certificate are two very important stages in the lawsuit activity. At the present stage, the proof party does not fully submit and explain

the evidence from the source, the original carrier, the authenticity, the legality and the relevance of the electronic data evidence in accordance with the principle of benefit to the party. In a lawsuit where no lawyer is involved, the client simply submits the printout of the electronic data to the court, not to mention the legalization, witnessing or identification of the electronic data evidence. The randomness of the evidence leads to the arbitrariness of the quality certificate. The quality-proof party simply denies the proof of the evidence on the basis of the original carrier of the evidence, and sometimes denies that he is the recipient of the electronic data evidence, and does not regard judicial proceedings as a serious matter. Often there will be "no reason to deny", "only deny no evidence", "only deny without questioning" and so on, the above-mentioned practice can not help the judge to ascertain the truth of the facts, but to further increase the authenticity of the trial of electronic data evidence is difficult.

At the same time, our country does not carry out the electronic data before the court evidence opening system, it is not possible to make good use of the opportunity of the prior evidence exchange for the preliminary deletion of the authenticity, legality and relevance of the evidence submitted by each party, and it is not possible to provide a prima facie opportunity for any party to substantiate the evidence, Lead to both sides in the trial in the face of the other side of the denial unprepared, thus reducing the truth of the case to ascertain the probability and efficiency of judicial proceedings. Therefore, it is necessary to improve the efficiency of evidential application of electronic data by improving the three links of proof, quality and pre-trial evidence exchange.

4. THE IDEA OF SOLVING

Aiming at the problems of electronic data in the present judicial proceedings, the author puts forward the scheme and ideas of improving the awkward status of electronic data in lawsuit, especially in civil lawsuit from two aspects of rules and principles.

4.1 Principle Level

4.1.1 Establish the Concept of Equal Treatment of Electronic Data Evidence

The principle of non-discrimination in the treatment of electronic data has been widely recognized and proclaimed by many international treaties and foreign law. Both articles 5th and 9th of the United Nations Model Law on Electronic Commerce give a clear description of this; The United Kingdom has also removed the outstanding provisions on electronic evidence in the 1995 Civil Procedure Act and the 1999 Juvenile Trial and Criminal Evidence Act. It can be seen that the concept of equality is the first step to promote the real equality

of electronic data and other types of evidence. Only the vast number of judges and law-makers in-depth study of the characteristics of electronic data, to make a targeted response norms, to give electronic data to equal audit opportunities, quweicunzhen, to give full play to the evidential value of electronic data, to achieve the legal reality more towards the objective and realistic goal and effect.

4.1.2 Establish the Proof of Evidence and the Full Combination of the Judge's Free Heart Certificate

The authentication of any evidence in the lawsuit should be examined in two steps, one is the evidence ability of evidence and the other is the proof ability of evidence; The former mainly investigates whether the evidence is suitable to the evidence condition stipulated by law, that is, to investigate the legality and authenticity of evidence. The latter only really combined with specific cases to investigate the evidence of the strength and strength of the proof, that is, to investigate the relevance of evidence. Only evidence that conforms to legality and authenticity can enter into the examination of evidence relevance. The review of the former is more of an objective review and requires compliance with the statutory criteria, which examines the need for more judges to make discretionary measures. It is based on the evidence authentication of this kind of logic, therefore, in the electronic data authentication also should be the normative examination and the judge's free heart examination thorough combination, and establishes the scientific reasonable electronic evidence examination idea.

4.2 Rules

4.2.1 Exclusionary Rule of Illegal Evidence

The exclusionary rule of illegal evidence requires that the evidence must be lawful. The main investigation is the question of the legality of the way of obtaining evidence. The exclusionary rule of illegal evidence does not exclude all illegal evidence. Our country's criminal Procedure Law, civil law Procedure and Administrative Procedure Act all have the evidence which the method which violates the legal prohibition sex stipulation or violates other people's lawful rights and interests, can not be regarded as the stipulation of the case fact. According to the legal provisions and practice of the exclusionary rule of illegal evidence, the author believes that the electronic data obtained by the following means shall be deemed illegal and should not be used as evidence: (a) Electronic data obtained by means of theft, inducement, fraud and coercion. (b) Electronic data obtained through illegal search and seizure procedures. (c) The electronic data obtained by means of restricting personal freedom and extorting confessions by torture. The inability to provide electronic data to obtain a legitimate source of electronic data cannot be used as evidence in case trials.

In the case of excluding illegal evidence, the authenticity of the evidence should be further examined and authenticated. In the aspect of Authenticity authentication, I think we should adhere to the following rules: Admission rules, functional equivalence rules, corroboration presumption rules and third-party validation rules.

4.2.2 Rules of Admission of Evidence

The so-called admission rule refers to the electronic data which the litigant parties agree on, which should be adopted as evidence in the court hearing. The price of electronic data in the court is always in the interest of one party and is unfavourable to the other party. If the party or his agent does not object to the question of authenticity or even expressly endorses it, the electronic data evidence shall be accepted by both parties and the Court should adopt it. Although the rules of admission of evidence are susceptible to the challenge of false litigation, the rule of admission of identity is the primary principle of determining the authenticity of electronic data based on the trust of the parties' normal rationality and the severe punitive consequences of the false lawsuit on the parties.

4.2.3 Functional Equivalence Rules

The rule of functional equivalence is an innovative rule that has been proposed to break through the original rules of traditional evidence rules with the rise of electronic commerce. The so-called functional equivalence principle means that the act and the system of the same function are endowed with the same legal effect in law. In other words, if the printed parts of the electronic data have the ability to prove the traditional documentary evidence, the evidence of electronic data should be determined. Our country has already recognized in article 11th of the Contract law that "written form refers to a contract, letters and data messages (including telegrams, telex, facsimile, electronic data Interchange and e-mail), article 3rd of the Electronic Signature Act, promulgated in 2004, also stipulates that:" The parties agree to use electronic signatures, The instrument of a data message shall not negate its legal effect only because of the use of electronic signatures and data messages. It can be said that "functional equivalence rule" is the specific embodiment of the principle of non-discrimination of electronic data in the field of evidence authentication. The scope of its application should be enlarged in the judicial trial, especially in civil litigation, and it is not possible to negate the evidential ability simply because the printed parts provided by the parties are electronic data. The problem of authenticity of electronic data prints can be solved by providing the client with the opportunity of the original carrier or by taking a trial inquest. The trial judge can make a comparison between the original carrier and the electronic data printout, the time of the formation of the electronic data information, the correlation with other evidences, the degree of conflict with the other's evidence and so on, the authentication

of the electronic data evidence, the authenticity of the evidence is examined.

4.2.4 Confirmation of Presumption Rules

In the case where the other party denies the authenticity of the electronic data, the judge of the People's Court shall examine whether the electronic data can form a complete chain of evidence with other evidences, if it is logically unobstructed, and if it can be formed and the other party cannot provide sufficient evidence to overturn the authenticity of the electronic data, The authenticity of the electronic data should be determined as evidence of finalization. The evidence authentication rule is the embodiment of the judge's free heart certificate principle in the concrete evidence attestation process, also is the judge to use the legal reasoning ability to carry on the evidence truth presumption the rule, and also is the electronic data evidence which has the corroborative evidence to affirm the authenticity of the proof. When the evidence provided by the case parties can form an effective chain of evidence, the judge of the People's Court shall give full play to the discretion of the person who provides the authenticity and acceptance of the electronic data evidence provided by the other party when the negative quality certificate opinion provided by the other party is not enough to convince the judge.

4.2.5 Third-Party Validation Rules

Third-party validation rules mean that the authenticity of electronic data evidence can be tested by a neutral third-party verification mechanism, in addition to the self inference in the legal system through the above rules. At present, the third party authentication methods which are universally accepted in judicial practice of our country include both traditional notarization methods and judicial authentication methods, it also includes the new methods of certification and accreditation of technology, such as "Electronic Time Stamp Technology" and "Internet Cloud Technology", which are more used in e-commerce nowadays. It can be said that the neutral third-party credit status is good, and both parties have no interest, and can be more complete and comprehensive preservation of the corresponding electronic data evidence, making the evidence more convincing, with authenticity and reliability characteristics. The application of third-party validation rules can improve the degree of authenticity and credibility of certified electronic data, and reduce the difficulty of judge's hearing cases. Therefore, in the electronic data evidence authentication in the context of the traditional third-party authentication method, also advocates the evidence to improve the credibility of the proof by means of high-tech methods, also proposed in the evidence certification rules to introduce the above-mentioned third-party verification methods.

But we should also realize that the application of this technology will increase the litigants' litigation cost, and increase the threshold of victory, which is disadvantageous

to the vulnerable groups such as consumers, laborers and general civil subjects for the litigant. Therefore, the author thinks that the People's Court should not use this rule as the necessary evaluation standard when considering and authenticating the evidence cases of electronic data, or should use legal thinking and legal skills to judge the authenticity and legality of the evidence.

4.2.6 Establishment of Electronic Data Evidence Burden of Proof Distribution

When the rules of procedure insist on the premise of "who advocates the proof", in order to avoid the substantive injustice, the procedural law also stipulates the evidence rule of inversion of the burden of proof, and also stipulates the evidence rule that the other party should bear the consequences of losing the lawsuit in the case of holding the evidence against himself and refusing to provide it without justification. The aim is to balance the physical rights of both parties through the design of the balance procedure rules. The electronic data evidence also exists the problem that the evidence is concealed and destroyed by one party, therefore, in the field of electronic data evidence rule authentication, it is necessary to introduce the inversion rule of burden of proof and not to make the losing rule to the own evidence, so as to achieve the effect of fairness and justice.

4.2.7 Giving Full Play to the Role of the Electronic Data Evidence Preservation System

The evidence preservation system is used to strengthen the authenticity and legality of electronic data evidence. The evidence preservation system has achieved the evidence collection and proof of equality in the real sense, and also made the proof of electronic data obtained by means of preservation improved.

4.3 Other

(a) Actively improve our country's credit evaluation system, the establishment of personal integrity records, to improve the private rights of the main evidence of the proportion of the letter.

By comparing the use of electronic data in three major lawsuits, the author finds that in civil litigation, the proportion of electronic data evidence is accepted and the lowest, and a large part of it is due to the low credit level of the electronic data provider, which cannot be compared with the credit of the electronic data evidence issued by the administrative organ, the judicial organ or the financial institution. In order to improve the application efficiency of electronic data evidence, the state should perfect the real-name authentication system of electronic equipment users as soon as possible. For mobile phones, Microblogs, WeChat, Alipay, Taobao and other users should adopt the real-name authentication system design and technical operation means, improve multi-channel solution problem ideas. This method and system design can improve the degree of objectivity and credibility of the proof of private

rights subject in judicial proceedings, which are beneficial to the establishment of the whole Social Credit system.

(b) To improve the system of evidence-opening in all kinds of lawsuits, and to improve the evidence from the proof to the quality certification to a full range of standards.

The issue of electronic data evidence certification, it is necessary not only to improve the standard of judge certification, but also to improve the proof and quality of evidence, the proof of the ability of the evidence, and the parties to comply with the rules of the judges to certify electronic data, to provide more acceptable and credible evidence of electronic data, to provide both sides and the original defendant litigation success

At the same time, we should continue to implement the system of evidence discovery, excluding illegal evidence from the court proceedings, giving ample evidence of the need to improve the efficiency of court proceedings. Leave no regret for each indictment and suit and every trial.

CONCLUSION

As a new type of evidence, electronic data is bound to play an important role and status in future lawsuits. Only

by recognizing its essence, breaking through the shackles of traditional ideas, constantly improve the authentication principles and rules of electronic data evidence, through the principle of normative proof and the principle of free proof of the judge fully combined, let the judge himself become the center of the evidence trial rather than the technology instead of the judge, so that the trial of the case constantly from the legal reality towards the objective reality.

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