The Fundamental Questions of Cyber Evidence Are Discussed

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Abstract. As a new type of evidence, network evidence has improved China's litigation evidence system and made up for the deficiency of traditional evidence. However, in civil litigation, the court is not very active in the adoption of online evidence. The reason may be that there is great uncertainty in the collection, preservation, review and judgment of online evidence. Therefore, in the minds of litigants, the reliability of online evidence is far less than that of traditional evidence. This paper proposes relevant solutions through the current situation and deficiency in the practice of network evidence legislation and judicature.

Overview of Network Evidence

Network evidence is a variety of electronic information that can prove the real situation of civil cases. Generally there are the following forms: E-mail, online evidence exchange, online chat record, blog, micro-blog, mobile message, electronic signature, domain name and other information as well as audio and video data stored in electronic media. These online evidences play an important role in proving the facts of common civil litigation cases. The network evidence is highly scientific and complex. The carrier and each link of the network evidence are high-tech, easy to save, carry, and various in form, not only static text pictures, but also dynamic video audio, comprehensively and dynamically reflecting the case. But the network evidence also has the problem that the technical dependence is easy to be forged and tampered. It is necessary for information technicians with professional background to use scientific and technological means to identify, judge, examine and judge, which brings some obstacles for the use of online evidence. There are many types of online evidence, such as:

- QQ, WeChat and other software chat records, text, pictures, audio, video, comments and thumb up;
- Transfer information generated by alipay, WeChat and other software;
- Email, blog, SMS.

If the party concerned provides network evidence, the evidence shall be fixed through such means as screenshots, photographing or recording, video recording, etc., and shall be submitted to the court after being stored in paper printing, audio recording and video. Moreover, it is better to notarize the network evidence through notary organizations and submit notarization to the court for examination and judgment. With the development of network technology, more and more litigation activities are interwoven with the network, involving all aspects of litigation. This urgently needs us to give the clear standard to the network evidence application, in order to ensure the litigant can use the network evidence effectively. At present, there are still many problems in the establishment of network evidence in China, which leads to the fact that both parties and the court cannot use the network evidence well in practice. It is also necessary to improve the relevant legislation and guide the judicial practice, so as to facilitate the continuous improvement of network evidence rules.

Differences between Network Evidence and Other Types of Evidence

With the development of digital technology, network evidence is more and more used in various cases. However, in the judicial and practical circles, there is a certain deviation in the knowledge of network evidence, which leads to the obstacles in the use of network evidence. There are two points worth analyzing:

The first view holds that network evidence is a special form of documentary evidence. The reason is that people can print some network evidence to form written materials, which looks like...
documentary evidence from the appearance, but the paper surface of network evidence is only written as the carrier to make network evidence have a shape, which is the essence of intangible data composition. However, the carrier and presentation of network evidence are complex and diverse, far more than just paper presentation. Multimedia forms such as audio video can also present network evidence. In addition, Network evidence is easy to be falsified and tampered, and its technical dependence is much higher than the requirements of documentary evidence.

The second argument is that online evidence belongs to audiovisual sources. Again, this is an older view of online evidence. Network evidence used to be included in audio-visual materials in a certain historical period, but with the development of The Times, the unique value of network evidence has been highlighted. The audio-visual information technology enables people to perceive the case, while the network evidence presents the case through a variety of media forms including audio-visual means, which is more comprehensive and diversified than audio-visual materials.

The complexity and importance of network evidence requires us to correctly understand and clarify relevant concepts and categories so as to facilitate their correct application in litigation. The network evidence is the information evidence which exists in the Internet and can prove the true situation of the case. To the network evidence also needs to examine and judge its evidence ability and the proof strength question. As for the capacity of evidence on the Internet, it is mainly examined from the three aspects of objectivity, relevance and legality, which is the same as the traditional evidence.

The objectivity of the network evidence refers to the fact that the network evidence must be objective existence, cannot be transferred by human will, cannot imagine guess.

The relevance of network evidence refers to the relationship between the network evidence and the facts of the case, and the network evidence and other evidence in the case.

The legality of network evidence refers to that network evidence should not only have the legal form prescribed by law, but also conform to the law. That is to say, the collection, provision, review, demonstration, verification and certification of online evidence are in compliance with legal regulations.

Among the above questions, it is the most difficult to examine and judge the objective authenticity of network evidence. First, the authenticity degree of the carrying method of network data should be examined. Second, the authenticity degree of network evidence itself should be examined. Therefore, it is necessary to judge according to the relevant provisions of the criminal procedure law, the civil procedure law and the administrative procedure law and relevant judicial interpretation, and apply the rules of daily life experience.

The Practical Significance of Network Evidence

First of all, improve the efficiency of litigation, reduce the cost of justice, and achieve judicial justice more conveniently. Through network evidence, judicial organs, litigants and other litigation participants can easily obtain, repair and transmit a large number of information related to the case. Secondly, it is convenient for the litigants to participate in the litigation, understand the case and the progress of the case, and facilitate the court to examine and judge the evidence and determine the case. Thirdly, it is convenient for the information exchange between the parties and the courts, easier for the courts to adjudicate cases, and to build an information exchange platform for the parties to form a unified understanding. Finally, with the popularization and application of Internet technology and the convenience of technical means, network evidence can effectively enhance the enthusiasm of the parties to submit evidence on their own initiative.

While we have a deep understanding of the positive impact of network evidence on litigation, we should also be aware of the new challenges that network evidence poses to the basic principles of litigation.
Problems in the Application of Network Evidence

First, as mentioned above, the network evidence is easy to be tampered with, is very hidden, does not depend on the scientific and technological equipment is difficult to find. Therefore, whether the content of network evidence is true, whether it is deleted or not, whether it is transported with the original storage medium, whether it has been identified or examined, whether it has taken safeguard measures and so on are very important. And the integrity of the network evidence to give a full play to the superiority of the network evidence, reduction is of great significance to the case facts, such as the production, storage, extraction process is complete, whether the attached case, written materials and evidence, such as listing, if confirmed by the relevant personnel to sign, etc., to determine whether the network evidence collection complete.

Second, the network evidence should have an objective connection with the case, which is formed or associated with the case, and the network evidence should be compared with other evidence to judge the strength of the network evidence. In addition, how to determine the network evidence of the original producer is also important to have a very difficult problem, if only by IP address has the identity is attributed to the work must be a person can cause miscarriage, so the other person shall, on the Internet operation trace information such as account, log and the comparison, to determine whether the network evidence producer himself.

Thirdly, the collection, storage and submission of online evidence should also be legally prohibited from using illegal methods, and should not infringe upon national interests, social welfare and other people's legitimate rights and interests. We should also compare and analyze the online evidence and other evidence in the case to make a comprehensive judgment to see whether the evidence is consistent.

The fourth, Many network evidences are constantly changing dynamically, so they should be extracted in time if they are found; otherwise, the difficulty of extracting the fixed evidences will be greatly increased. Therefore, the discovery and preservation of network evidences should be carried out and completed in the first time. However, at the present stage, because of technical reasons and people's generally low level of understanding of network evidence, the collection of network evidence data needs to be improved. Especially, the ambiguity of relevant legislation makes it more difficult for the parties and the court.

Countermeasures for Establishing and Perfecting the Network Evidence System

Improve Legislation

Firstly, the concept of network evidence is clarified. At present, there is still a gap between the concept specified in relevant judicial interpretation and the actual requirements of network evidence. It can be attempted to stipulate: the network evidence is presented in the network environment, formed in the process of case occurrence, stored, processed and transmitted in the digital form, and the data can prove the fact of the case.

Secondly, the types of network evidence should be clearly defined, including the information published by the network platform, the communication information of the network application service, user registration information and so on.

Thirdly, establish the rules of network evidence. For example, network evidence authenticity discovery rule, verification rule, network evidence integrity rule, network evidence collection, extraction rule, network evidence verification rule and so on.

Improve Supporting Measures

First, when examining and judging online evidence, judges should strictly implement relevant laws and regulations, prudently identify and avoid randomness.

Secondly, judicial personnel should improve their professional quality. Give consideration to the technical requirements, the judicial personnel to carry on the specialized training and the examination, guarantees its information technology level. It can also be staffed with full-time it
personnel within the court to cooperate with the judicial personnel to successfully complete the
verification of online evidence.

Finally, the standardized management of network evidence identification institutions, from
hardware and software facilities, personnel composition and other aspects of standardized
management, to facilitate the smooth use of network evidence in litigation.

In addition, China's civil procedure law stipulates: “the people's court shall serve as the basis for
ascertaining facts, except that there is evidence to the contrary sufficient to overturn the notary
evidence.” It can be seen that the evidence preservation of notary institutions is stronger and more
conducive to the protection of fixed network evidence.

**Conclusion**

With the development and popularization of the Internet and information technology, the
application of network evidence in litigation has become increasingly frequent. Whether it can
correctly recognize and apply network evidence, whether the relevant cases can be proved and
whether the relevant cases can be handled correctly.

Therefore, it is of great significance to establish and perfect relevant legislation and supporting
measures of network evidence. Only in this way can the full application of this special evidence be
guaranteed.

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