

# Research on the Civil Electronic Evidence System in China

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## Abstract

**With the continuous development of internet information technology, mobile electronic devices are widely used in daily life, resulting in a massive amount of electronic data. The status of electronic evidence is becoming increasingly important in civil litigation. However, as a new type of evidence, electronic evidence has relatively lagged behind in domestic legislation, and the institutional system is not yet sound, resulting in many problems in practice. This paper starts from the basic theory of civil electronic evidence, analyzes the current legislative status of civil electronic evidence in China, and combines it with the actual situation in China to propose suggestions for improving the legal system of civil electronic evidence in China.**

## Keywords

**Civil electronic evidence; Evidence law; Legal status; Authenticity.**

## 1. Introduction

With the rapid development and widespread popularization of electronic information technology, the application of electronic evidence has gradually penetrated into various industries. In judicial practice, electronic evidence inevitably becomes an important type of evidence. However, the legislation on civil electronic evidence in China is relatively lagging behind. Most of the relevant legal norms are aimed at solving the problems that have already arisen, and it is difficult to escape the plight of the stop-gap measure. This fragmented legislative model makes the legal norms for electronic evidence too complex and scattered, making it difficult to provide effective guidance for practice and not conducive to forming a unified legal framework. Improving the rules of civil electronic evidence has become one of the urgent issues to be addressed.

Through literature search, it can be found that there is currently relatively little legal theoretical research on electronic evidence in China, and there are shortcomings in research methods and content levels such as singularity and weak systematization. Taking the legal concept of electronic evidence as the starting point of research, this paper makes a deep exploration of China's civil electronic evidence system, which is conducive to deepening the existing theoretical system of electronic evidence, providing a specific theoretical basis for the construction of the legal system of electronic data, filling the existing theoretical gaps, and providing new ideas for subsequent research.

At the same time, due to the imperfect rules of electronic evidence and the existence of many contradictions between legal provisions related to electronic evidence, judicial practice is relatively chaotic when it comes to the collection and determination of electronic evidence, which seriously hinders the normal progress of litigation procedures. On the basis of in-depth analysis of relevant issues, this paper proposes multiple paths for improving electronic evidence rules. The research in this paper helps to solve the dilemma of using electronic evidence in civil litigation, safeguard the legitimate interests of parties, and promote the smooth progress of civil litigation procedures.

## 2. Overview of Civil Electronic Evidence

### 2.1. Concept of civil electronic evidence

As a new type of independent evidence, electronic evidence has several different definitions in the academic community regarding its connotation and extension, resulting in several theories about its concept. In summary, its definition can be divided into broad sense and narrow sense [1]. Broadly speaking, all evidence closely related to information technology belongs to electronic evidence. Narrowly speaking, it supports that only evidence closely related to computers can be included in the category of electronic evidence. With the rapid development of information technology today, it is obviously biased to limit the understanding of "electronic evidence" to "evidence closely related to computers". Therefore, a broad understanding of its concept is more in line with today's social life and more applicable to judicial practice.

Specifically, the concept of electronic evidence is as follows: Electronic evidence refers to a carrier that can prove the true situation of a case, mainly in the form of digital or analog signals, generated by optoelectronic devices or similar devices, sent, received, and stored through various media (sound, fax, network, magnetic objects, etc.) containing factual information of the case.

### 2.2. Characteristics of civil electronic evidence

Civil electronic evidence has the following characteristics:

(1) Invisibility. Traditional types of evidence often refer to objects with actual shapes and tangible perceptions. Electronic evidence, on the other hand, is represented through binary encoding and generated through imperceptible network media. In the process of conducting e-commerce transactions, all electronic information is transmitted through these invisible and intangible binary codes.

(2) Dependency. As a new type of evidence relying on computer technology, electronic evidence requires the use of certain information equipment to store, transmit, and display its content. Without corresponding information equipment, electronic evidence cannot be applied in litigation. In practice, the parties involved should use reasonable methods to collect and store electronic data. Judicial staff should use the correct equipment to display electronic data.

(3) Strong objectivity. Unlike documentary evidence and witness testimony, which are subjective interpretations of objective facts from a certain perspective, electronic evidence is more of a direct reflection of reality. For example, electronic evidence in the form of recordings can objectively and truthfully record all sound information at the scene without any errors. Compared to traditional types of evidence, documentary evidence and witness testimony have a certain possibility of error. There may be clerical errors in documentary evidence, and there may be misinformation in witness testimony, which will reduce the probative power of the evidence.

### 2.3. Legal status of civil electronic evidence

On August 31, 2012, the 28th meeting of the Standing Committee of the 11th National People's Congress passed the *Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China*. In this revision, the type of evidence "electronic data", also known as "electronic evidence" in the academic community, has been added to Article 63. This legislative revision of the Civil Procedure Law regards electronic evidence as a legally independent type of evidence, recognizing its legal status.

### 3. The Current Situation and Shortcomings of Civil Electronic Evidence Legislation in China

#### 3.1. Current situation of civil electronic evidence legislation in China

The legislation on "electronic evidence" in China mainly focuses on the following legal norms: the 2004 *Electronic Signature Law* defined "data messages". The revised *Civil Procedure Law* in 2012 also recognizes the legal status of electronic evidence, but does not provide for the positioning and collection of electronic evidence. In 2015, China issued the *Interpretation of the Civil Procedure Law* to define the concept of electronic evidence. In 2020, the *Civil Evidence Rules*, which began to be implemented, clarified and expanded the scope of electronic evidence, and provided guidance for the determination of authenticity. Overall, due to the fact that electronic evidence is a relatively new type of evidence, and China has not yet established independent evidence laws and other factors. There are few relevant provisions on civil electronic evidence in China's laws and regulations, and the legal system needs to be improved.

With the rapid development and widespread popularization of information technology in recent years, the use of electronic evidence in civil litigation in China has become increasingly frequent. Along with it comes a series of urgent problems to be solved: how to give electronic evidence a reasonable positioning? How should the collection process of electronic evidence be carried out? How to identify the "original" in the field of electronic evidence? In order to adapt to the social development and ensure the normal and efficient operation of the judicial work, the government departments at all levels in China have also taken an active part in formulating administrative rules and local regulations related to electronic evidence.

At present, in judicial practice, when dealing with civil legal disputes related to electronic evidence, relevant legal issues are mainly handled in accordance with the judicial interpretation and departmental rules on electronic data issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security, as well as the normative documents applicable to a certain industry or region issued by various ministries and commissions [2]. In terms of basic laws, in addition to the *Civil Procedure Law*, Article 114 of *China's Road Traffic Safety Law* also provides relevant provisions for electronic evidence. This article directly recognizes the legal status of electronic evidence. The *Electronic Signature Law* also provides some detailed provisions on electronic evidence, mainly focused on the provisions of Articles 4-8. These provisions establish the legal status of electronic evidence and regulate the form of electronic evidence. There are few provisions at the level of administrative regulations. It is mainly the *Regulations on Administration of Business Premises for internet Access Services* and the *Measures for the Administration of Internet Information Services* that have relevant provisions on electronic evidence. Among them, the provisions on electronic evidence in the *Regulations on Administration of Business Premises for internet Access Services* are concentrated in Articles 23 and 31. These regulations determine the legal status of electronic evidence and stipulate the forms of acquisition and preservation of electronic evidence. The legal norms on electronic evidence in judicial interpretation specifically include the *Rules of Criminal Procedure of the People's Procuratorate (for trial implementation)*, the *Provisions on Certain Issues of Administrative Litigation Evidence*, and the *Provisions on Civil Litigation Evidence*. In view of the nature of judicial interpretation, the establishment of these norms is relatively scattered, which is difficult to provide systematic reference for the relevant legal framework of electronic evidence. There are many legal norms related to electronic evidence in departmental regulations. For example, the *Measures for the Protection of Computer Information Networks and International internet security*, the *Notice on the Implementation of Relevant Issues in the Measures for the Protection of Computer Information Networks and International Internet Security*, the *Interim Provisions on the Administration of Internet Publishing*, the *Provisions on the Administration of Internet Electronic Announcement Services*, the *Interim Measures for the*

*Administration of Online Securities Entrustment, the Administrative Provisions of the Customs of the People's Republic of China on Customs Declarers and Customs Broker, Notice on Issues Related to Online Cigarette Trading, etc.*

### **3.2. Shortcomings in China's Civil Electronic Evidence Legislation**

From the above situation, it can be seen that China has indeed made some detailed legal regulations for electronic evidence, but many of the legislative purposes of these regulations are due to the emergence of relevant problems that are difficult to solve in judicial practice. This legislative approach has led to an incomplete legislative system for electronic evidence in China, and when dealing with electronic evidence issues, it will fall into the dilemma of addressing the symptoms rather than the root cause [3]. This legislative model can only solve existing problems in a fragmented manner and cannot provide assistance for the formation of the theoretical system of electronic evidence. Based on this, China's civil electronic evidence legislation mainly has the following shortcomings:

#### **3.2.1. The legislation on civil electronic evidence is too fragmented and has not formed a complete system**

As mentioned earlier, China's electronic evidence legislation is mostly aimed at solving problems that have already arisen in judicial practice, without systematic provisions. This directly leads to the complexity and dispersion of legal norms for electronic evidence in China. Meanwhile, most of the relevant regulations are conceptual and principled, making it difficult to provide direct and effective assistance in practice. This situation has brought certain difficulties to judicial practice in various regions, and judges have varying understandings of electronic data. Although some regulations are related to electronic evidence, their legal effectiveness in the field of electronic evidence is weak due to various reasons such as legal attributes.

Although the *Electronic Signature Law* provides legal provisions in areas such as e-commerce, its scope of application is narrow and too general [4]. This law imposes strict restrictions on the scope of electronic signatures, and its adjustment objects are closely related to electronic signatures, which limits the scope of application of this law, lacks supporting evidence rules, and lacks enforceability in the identification of electronic data.

#### **3.2.2. Imbalance in the legislative structure of civil electronic evidence**

Evidence collection and authentication are two important operational steps in electronic evidence. However, the legal norms of civil electronic evidence in China focus more on evidence collection and preservation. There are almost no regulations on the authenticity and admissibility of evidence. The *Civil Evidence Regulations*, which were implemented in 2020, only provide principle provisions for the authenticity judgment of electronic evidence. This structural imbalance will directly lead to the difficulty for people's courts to have legal basis when trying cases involving electronic evidence, thereby reducing the efficiency of China's judicial operation, and even leading to the occurrence of wrongful cases, shaking the credibility of China's judiciary in the hearts of the people.

## **4. Suggestions for Improving China's Civil Electronic Evidence System**

### **4.1. Adjust the legislative structure of electronic evidence and establish a unified legal framework**

Due to the lack of a unified legislative framework for electronic evidence in our country, the current relevant regulations are mostly administrative regulations and local regulations formulated to address existing problems. With the rapid development of information technology, the penetration of electronic evidence into various fields in China is also accelerating. There will also be more and more relevant regulations. This will lead to more

dispersed and complex legal norms for electronic evidence, further weakening the unity of the electronic evidence legal system. Therefore, adjusting the legislative structure of electronic evidence and establishing a unified legal framework are important issues that need to be urgently addressed today.

To address this issue, firstly, it is necessary to clarify the boundaries between legal and technical aspects, and clarify the content that is suitable for legislation. Secondly, it is necessary to coordinate the relationship between different levels of legal norms and formulate legal norms based on judicial practice and the inherent attributes of relevant legal norms. For example, the Philippine *Electronic Evidence Rules* are very detailed and have strong operability. Its purpose is to establish a systematic legal framework. The legislation of the United Nations Commission on International Trade Law focuses more on principles and generalizations. Its purpose is to eliminate legal obstacles in the application of electronic evidence. When legislating in China, it is also necessary to comprehensively consider various factors such as the evidence legal environment and the actual situation in China.

#### **4.2. Improve the legal norms for the authenticity of electronic evidence collection**

Firstly, authenticity is the most fundamental attribute of evidence and a prerequisite for the existence of other attributes of evidence. Secondly, the forensics process, as a prerequisite for the operation of evidence, plays an immeasurable role in the entire process of evidence operation. Therefore, it is necessary to establish detailed legal regulations for the authenticity of electronic evidence in the process of obtaining evidence, providing guidance for judicial practice. This can be effectively achieved by setting obligations for content preservation and assistance from network service providers.

(1) In terms of content preservation obligations. Electronic evidence is a relatively new type of evidence, and collecting it requires the parties to possess certain professional skills. However, most parties do not have the technical means required to collect such evidence, so evidence preservation may be more effective than collecting relevant evidence on their own. In judicial practice, content preservation is generally achieved through printing, copying and backup, seizure, data recovery, and other means. Of course, considering that electronic evidence is a relatively new type of evidence and the level of education received by the parties involved, there should be some flexibility in the subject setting and responsibility assumption of the obligation to preserve the content of electronic evidence.

By setting the obligation to preserve the content of electronic evidence for the parties involved, on the one hand, it greatly reduces the cost of judicial operation in evidence collection and saves judicial resources. On the other hand, the method of advance notification enables the parties to consciously preserve electronic evidence that may cause disputes in their daily lives, thereby avoiding any inconvenience caused by subsequent collection.

(2) In terms of assistance obligations for network service providers. If the parties are unable to fulfill their content preservation obligations due to insufficient capabilities, the assistance of network service providers is crucial. Compared to the parties involved, network service providers are in a relatively neutral position and can basically rule out the possibility of providing forged evidence. At the same time, it has corresponding records of the electronic data stored and circulated on this system, as well as the formation process of electronic data [5]. By setting assistance obligations for network service providers, the authenticity of electronic evidence can be ensured to a greater extent. At the same time, it is also greatly beneficial for improving the efficiency of China's judicial operation and saving judicial costs.

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