

Electronic evidence in the practice of the determination of the norms to explore the wechat records as an example

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Abstract. Nowadays, with the popularity of weibo, relying on the app to form a variety of records, gradually by the parties as proof of the facts of a case submitted to the court as evidence, the formation of the "weibo evidence" more and more appear in all kinds of civil and commercial cases, similar to the internet electronic evidence has also become the main form of electronic evidence. Before the legal status of electronic data was recognized, WeChat records had the ability to prove the facts of the case, but because of the lack of corresponding legislative provisions and supporting mechanisms, it has been excluded. Therefore, this paper from the background of the times, analyze the current legislative status of microsoft record evidence and practical application of the status quo, identify the microsoft record evidence and electronic evidence of the similarities and differences, microsoft record evidence as electronic evidence of the necessity of the analysis, and finally on the application of the microsoft record evidence of the difficult problem, to put forward the author's personal thinking and feelings.

Keywords: electronic evidence; civil litigation; microsoft; evidential capacity; probative force.

1. Zeitgeist

With the rising tide of social informatization, the revolution of information technology has widely and profoundly affected the development and changes of human society, and people's way of life has also changed dramatically. We have stepped into an era dominated by information, and people's lives are more and more dependent on the Internet. At the same time, life interactions between people, business transactions from letters, paper contracts and other forms of change to QQ, WeChat, e-mail, electronic contracts and so on. The most significant feature of the information-driven era is that everything has become "traceable".

At the same time, the popularization of electronic products and the development and use of big data have brought great changes to litigation evidence. In the trial of cases, more and more evidence presents electronic characteristics, the role of electronic evidence in the trial of cybercrime cases and disputes over business dealings is becoming more and more prominent, and WeChat, emails, call records and so on have even become the main basis for determining the facts of the case in many cases. However, in the collection, fixation, display, review, electronic evidence and traditional evidence are very different. In our country, electronic evidence as a new type of evidence in the law has been established, about the electronic evidence of the forensic method, review judgment and other issues also have the relevant norms, and formed a relatively large system. The court's identification of the type of evidence and the application of research into the electronic evidence as the core of the new era.

It is also true that the types of evidence provided for in the procedural law are not well suited to provide effective proof of emerging disputes that occur in the information-driven era. To address this phenomenon, the 2012 amendment to the procedural law formally established electronic evidence as one of the legal forms of evidence. As a result, the Chinese legal system ushered in a new era of electronic evidence. In recent years, relevant laws and regulations have been issued on the legislation and regulation of electronic evidence; the newly amended Civil Procedure Law in 2012 independently stipulated electronic evidence as one of the types of evidence; the Supreme People's Court's "Interpretation on the Application of the Civil Procedure Law of the People's Republic of China" in 2015 further clarified the definition of electronic evidence, which refers to the evidence obtained "through e-mail, electronic data interchange, online chatting, and other forms of evidence". The

Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China" in 2015 further clarifies the definition of electronic evidence , which refers to "information in the form of emails, EDI, online chat records, blogs, micro blogs, cell phone text messages, electronic signatures, domain names and other information or information stored in the electronic media"; Article 14 of the Supreme People's Court Provisions on Evidence in Civil Proceedings (the "Civil Evidence Provisions") amended in 2019 also lists the common information files

2. Status of Research

2.1 Current status of legislation

2.1.1. Civil Code of the People's Republic of China

According to China's "Civil Code" Article 469, 491 provisions, it can be seen that China's contract can be accepted "paperless", "electronic" form, in the current era of the Internet, e-contracts because of its convenience, low-cost, easy to manage and other features Sought after by many industries, the reality is that there are many enterprises through WeChat to sign labor e-contracts with workers.

2.1.2. Electronic Signature Law of the People's Republic of China

The Electronic Signature Law was adopted on 28 August 2004, and its status is the first informatization law of real significance in China, as well as the first law in China to confirm the legal effect and evidential nature of electronic signatures, so that electronic documents meeting certain conditions have gained an evidential status and effect in legislation. The law defines electronic signature as "data message contained in electronic form, attached to identify the identity of the signer and indicate that the signer recognizes the content of the data", its Article 2.3 of the "data message" to make clear provisions, and so on, stored in WeChat By analogy, the user's electronic signature stored in WeChat also belongs to the data message in the Act. Article 7 of the Law specifies the evidentiary qualifications of electronic signatures as evidence in litigation. The provisions of Article 65 are of great significance for the fixation and preservation of electronic signature data formed and stored in WeChat. The data message is defined as "information generated, sent, received or stored by electronic, optical, magnetic or similar means". WeChat records as electronic evidence provides great technical possibilities, and the biggest breakthrough in legislation is to clarify the legal effect of electronic signatures and data messages.

2.1.3. Civil Procedure Law of the People's Republic of China

The revised Civil Procedure Law of the People's Republic of China in 2012 took an important step in evidence legislation, and for the first time, "electronic data" was independently categorized as a kind of evidence, which legally clarified the evidence qualification of "electronic data". So far, all kinds of records on WeChat can become legal evidence as long as they can be saved and verified.

2.2 Current state of affairs

The author to "WeChat evidence" as a keyword, in the Chinese referee documents online search to retrieve a total of 75,520 documents, the previous 600 as an example, the civil verdicts in the past five years, the classification of its summary, and combined with the empirical results of other scholars to arrive at the following analysis.

2.2.1. Status of substantive research in the region

Taking the regional scope of China as a criterion, the author summarizes the distribution of the number of judgments concerning WeChat evidence in each region in the past five years, which also reflects the number of civil cases involving WeChat evidence in each region. According to the author's analysis, most of the cases concerning WeChat evidence occurred in East, South and North

China, and the number of cases in Guangdong and Beijing accounted for more than half of the number of cases in their respective regions. To some extent, the more economically developed the region, the more frequent the application of electronic evidence, the more cases concerning WeChat evidence. As we all know, from a general cognitive perspective, the more economically developed the region, the level of development of science and technology at the same time will be higher, the penetration rate of intelligent devices is also higher, the base of the number of people applying WeChat is naturally higher than other regions. In addition, the judge's free mind at the same time will change because of the different regions. For example, in the regional economic level and high level of science and technology in the region of the judge tends to WeChat evidence will hold a more open, acceptance of the attitude of the relatively economically backward areas of the judge may be on the emerging WeChat electronic evidence to hold a more conservative attitude towards electronic evidence more skeptical.

2.2.2. Status of research on the application of notarization

In terms of subject matter, at present, for the notarization of WeChat evidence in China, the first thing to be examined is the identity of the holder of the WeChat evidence, and if it is not the person himself, there needs to be a commissioning document similar to a power of attorney authorizing him to notarize the WeChat evidence. Only after the identity of the holder is confirmed will the notary carry out the relevant operations on the WeChat record to be notarized. Procedurally, when notarizing the relevant WeChat records, the notary will require the person to connect to the notary's WIFI wireless network in order to prevent errors from occurring during the notarization process.⁸ Subsequently, the person concerned will generally be required to re-login to WeChat via the original cell phone in the presence of two notary staff (to ensure that the interface of the system is brand-new and has not been altered), and then the person concerned will then select the relevant WeChat records to take screenshots of them, and transmit them via a data line. Then the person concerned will select the relevant WeChat records to take a screenshot, and transmit them to the computer equipment of the notary office through a data line, and finally print out the screenshot information through a printer. The video and voice recordings on WeChat are either recorded or stored on a CD-ROM, and the notary will record the entire process in real time.

According to the above, the current notarization in general can indeed guarantee the authenticity of the relevant electronic evidence, at the same time, the judge in the court hearing will usually accept the notarized electronic evidence. However, the author also found that the current notarization can not solve the problem, namely, in the case of civil loan dispute between li moumou and liu moumou⁹, the plaintiff provided notarized wechat chat records, and the judge also confirmed the evidence, but the defendant took out the same chat records on his own cell phone, proving that the plaintiff had deleted and altered the relevant chat records before the notarization was carried out. This tends to expose the current even after the notarization of weibo evidence is difficult to hide its falsehood, which means that in civil litigation, the current notarization preservation can not protect and identify whether the electronic evidence has not been tampered with before the notarization is carried out. Without notarization of electronic evidence of proof, in fact, and after the notarization of electronic evidence of the proof of the difference is not very big, this also puts forward a high demand for China's current notary organs and systems, notarization of the level of technical means also need to be with the requirements of the times and continue to develop and progress. When the notarization did not play the due effect, at this time a little bit of WeChat and other electronic evidence have some knowledge of the judge, will also rely on trial experience and logical reasoning on the unnotarized electronic evidence to be identified.

3. Sorting Out The Relationship Between Electronic Evidence And Microsoft Evidence

3.1 Definition and characteristics of electronic evidence

For the specific definition of electronic evidence, there are different opinions in the academic community, according to the provisions of the newly revised Civil Procedure Law in 2012, "electronic evidence" is included in the statutory types of evidence, Prof. He Jiahong defines it as "all materials and their derivatives in electronic form, used as evidence" ; Prof. Liu Pinxin defines it as "all evidence formed with the help of modern information technology " ; "all evidence formed with the help of modern information technology ". Or, with the help of electronic technology or electronic equipment and the formation of all evidence"[1] ; Professor Liu Pinxin will be defined as "with the help of modern information technology and the formation of all evidence[2] ". For "electronic data", academics agree with Professor Fan Chongyi's point of view[3] , which believes that "electronic data is the electronic form of data information[4] ". In addition, according to the provisions of the relevant legislation, electronic data is "formed or stored in electronic media information[5] ". In a broad sense, many of the evidence in the form of electronic data, such as the digital form of witness testimony, victim statements, and suspects, defendants, confessions and defenses, and other evidence, can be in the form of electronic data, and they are equivalent in the technical level of electronic evidence in the narrow sense. Accordingly, some scholars advocate a broad concept to define electronic evidence and on this basis to form a corresponding review of the judgment rules, more in line with the actual trial, but also a more reasonable choice[6]

3.1.1. Digital Characteristics

The digitalization of electronic evidence is a fundamental feature that distinguishes it from other types of evidence. In the process of digitizing information, all inputs are converted into binary codes that can be read and written directly by machines for operations, and then the results of the operations are converted into outputs that can be read by human beings.

At the same time, due to the characteristics of digitization, which gives WeChat evidence as electronic evidence of the unique nature of evidence, resulting in its storage carriers are prone to conditions such as infection with electronic viruses, hardware and software incompatibility, and lead to data loss or WeChat crash[7] .

3.1.2. Stability characteristics

Compared with traditional evidence, the falsification of electronic evidence is easier to detect. In judicial practice, some actors by modifying the computer's clock or document attributes of the previous Word document forgery, the result in the software version of the information reveals the cracks. Some actors before being caught with fire, knife and other ways to damage the computer, but in the end, because the key part of the disk information is not damaged, or traces of counterfeiting was found. Cases like this one tell us that it is not easy to keep electronic evidence counterfeiting undetected.

For example, as an example of electronic evidence of WeChat, the user can be withdrawn within two minutes of sending the message, and after the withdrawal, the two or more parties in the chat page will only show "XXX withdrew a message", but this is for the authenticity of the evidence of judicial practice will affect the reliability and integrity of the evidence of WeChat, such as no other evidence to support the relevant facts, the judge will generally not admit the evidence of WeChat, the judge will not admit the evidence of WeChat. If there is no other evidence to support the relevant facts, the judge will generally not accept the WeChat evidence.

3.1.3. salvageability

The salvageability of electronic evidence is reflected in the ability to recover deleted and modified documents. For traditional documentary evidence, evidence once destroyed, will not be able to

recover, and for the computer hard disk data information on the modification, deletion, can be detected by technical means[8] . In fact, the operation of modifying and deleting hard disk files is nothing more than the process of erasing the hard disk with a laser probe. Just like writing with a pencil, even if you use an eraser to erase the written word, it will leave a shallow mark on the paper, electronic evidence will still leave traces after it is deleted and overwritten by other files. These traces can be recognized and recovered by technical means. For files that have not been overwritten after deletion, recovery is even easier, and files that have been deleted and placed in the "Recycle Bin" can be recovered directly with a command. Even if the Recycle Bin is emptied, the file is not deleted from the hard disk, but only the logical pointer to the physical address of the file is deleted, i.e., the deletion operation only performs simple pointer invalidation rather than actual deletion of the program and file.

3.2 Definition and characteristics of microsoft evidence

3.2.1. Immediacy

Immediacy is the most significant feature of WeChat records, which is a product of the progress of the digital era. WeChat records, whether chat records or transfer records, reach the other party are instant[9] . Press the send button information can immediately reach the other party's cell phone, there is little delay, the other party received the information to form an accurate time record.

3.2.2. Privacy

WeChat is a private social platform with a high degree of privacy, and the information records generated by WeChat are naturally extremely private, and their information records often permeate all aspects of life. The WeChat record between WeChat users is the expression of both sides of the idea, and WeChat group covers a large number of people, based on different reasons for the establishment of the group chat to undertake different functions, but the same place is that WeChat group involves more than one person's information record, the chat content if the group chat forensics, will inevitably involve a lot of other people's privacy.

3.2.3. Diversity

WeChat evidence (WeChat records) is comprehensive and diversified[10] means that WeChat includes the functions of text chat, voice chat, video, circle of friends, documents, pictures, money transfer and so on. The functions of the WeChat platform are also diverse, and with the continuous expansion of the functions of the WeChat platform, its public number and video number are also increasingly being used, and even the e-commerce function of WeChat small program shopping has appeared. Not only does it have its own characteristic attributes of chatting, but it has also begun to become a distribution center for data and information and a gathering place for speech expression. WeChat record integrates a variety of media forms, a variety of forms of expression, is the synthesis of traditional evidence, but also the synthesis of many social software. But even if weibo records of various forms, but not all forms will enter the field of litigation, into the field of civil litigation is mainly text chat, voice chat, pictures, documents, transfer records of common functions, but even these "common" electronic evidence, still beyond the traditional forms of evidence, the court review needs to be comprehensive Review.

3.3 Sorting out the relationship between electronic evidence and microsoft evidence

First, in terms of magnitude. According to the statistics of China's adjudication documents network, the court since 2012 to 2021 (2022 because of the epidemic and other reasons and a large deviation, for the time being, will not be counted) on the basis of WeChat evidence cases, the preliminary statistics have increased by nearly 11,903 times, in 2012 the national court accepts about WeChat records as evidence of the case is only 73, and pulling the time to 2021, the country's WeChat electronic evidence cases have reached 868,925. In addition, the number of registered users of

WeChat itself is currently the largest among all social software, and as of 2018 the number of registered WeChat registrants has exceeded 1 billion, far beyond the reach of other social software.

Secondly, from the manifestation of evidence and function, wechat evidence rely on wechat platform, its both text, pictures, voice, video and other traditional electronic evidence manifestation, but also such as transfer records, online shopping records, all kinds of service records and other forms of expression. Compared to QQ, microblogging, text messaging, e-mail, weibo can be said to integrate all the functions of the former, in addition to paypal, taobao, compared to weibo's social attributes are obviously stronger, the parties can use weibo to enter into a contract, you can also use weibo to release commodity information and real-time communication with customers. Therefore, in this case, to solve the obstacles to the use of electronic evidence in civil litigation and put forward relevant recommendations, the study of WeChat evidence is obviously a more effective entry point[11].

To sum up, in the more and more popularization of the internet today, weibo evidence as a specific form of electronic evidence, especially in the internet electronic evidence has a stronger typicality and representativeness, in the judicial practice is also more widely used, these are the reasons why this paper selected weibo evidence as an example of research. At the same time, for weibo this specific example for research, but also to facilitate the combination of theory and practice, the help of judicial practice is also more practical significance.

4. Obstacles To The Use Of Wechat Records As Evidence

The group research shows that 60% of the respondents said "know or have heard of the concept of electronic evidence at the same time also know the relevant concepts", 94% believe that "micro letter evidence as a representative of the chat records" can be used as electronic evidence. On the issue of "preservation of electronic evidence", nearly 80% of the respondents do not have the habit of preserving electronic evidence, and 95% of the remaining respondents only preserve important electronic evidence.

In affairs, among the respondents who have experience in the use of electronic evidence, 90% of them choose to use the chat records of social software such as WeChat as electronic evidence, but they encountered many problems such as high appraisal costs, appraisal condition results not recognized by the court and difficulty in proving evidence in the process of use.

The above results show that since 2012, the Civil Procedure Law revised the new electronic evidence as a type of evidence so far, the general public for the concept of electronic evidence and the specific types of electronic evidence under the law is a certain understanding, but many people do not have a deep understanding of the degree. Electronic evidence is not perfect, it is easy to lose, difficult to prove, authenticity is difficult to determine the shortcomings, so the knowledge of electronic evidence related to the popularization of science is a must need to be carried out. After analyzing the data, we found that most people have some knowledge about the preservation and use of electronic evidence, but often do not know how to do. Knowledge of electronic evidence is not the exclusive knowledge of legal workers, preservation of electronic evidence is not the exclusive task of legal workers, should be widely popularized to the general public, to enhance their daily life for the degree of attention to electronic evidence, it is possible to overcome the disadvantages of electronic evidence, carry forward the great energy it lurks.

Meanwhile, for legal practitioners, the biggest problem of using electronic evidence in practice is the difficulty of obtaining evidence. Concerning the personal privacy of the person to be accessed, lawyers and courts can not privately access, and the relevant platform has no obligation to provide. Therefore, for the need to retrieve data to provide electronic evidence to prove the case requires the relevant authorities through the formulation of the corresponding rules to reasonable and lawful precision retrieval of the data required, not only does not violate the privacy of the person to be retrieved can also obtain the required data.

5. A Strategic Concept For Constructing Electronic Evidence From Wechat Records

5.1 Conceptualization of a strategy for reviewing the admissibility of microblogging evidence

Determine the admissibility of evidence, i.e., evidentiary capacity, refers to the attributes or characteristics of a piece of evidence to meet the basic requirements of the relevant laws on evidence, can be used as evidence in the demonstration activity[12]. According to the previous relevant data and case analysis, as well as the traditional theory of evidence, the judge is also mainly from the legitimacy, authenticity, relevance of WeChat evidence review, WeChat evidence will be adopted as valid evidence only if it meets these "three sexes".

5.1.1. legality

When reviewing the legality of WeChat record evidence, first of all, to meet the means of lawful, that is, the relevant records are not obtained through eavesdropping, eavesdropping, stealing other people's cell phones or social accounts, etc., and secondly, to meet the procedural lawfulness, that is, the party concerned in the process of collecting the relevant records can not violate the privacy of other people, and the records involving state secrets and commercial secrets can be applied to the court to retrieve the records. Third, to meet the content is legal, that is, the content of the social records collected or presented must be legal. Only in this way, wechat and other electronic evidence can maximize the legitimacy of the requirements, in order to further its authenticity and relevance and then review the judgment.

5.1.2. relatedness

In judging the relevance of the content of electronic evidence such as WeChat, it is also considered from the following three aspects: firstly, what the evidence presented is used to prove; secondly, the issue to be proved is a substantive issue in the case; and thirdly, the evidence presented is probative of the issue[13]. Specifically, the need to WeChat and other electronic evidence into the entire case system, linking it with other relevant evidence, from the overall perspective of the analysis of the contradiction between them, to see whether they can come to a consistent conclusion of proof, whether to reach a logical unity and thus the formation of a complete closed chain of evidence, so as to ensure that the electronic evidence for the facts to be proved has provability.

5.1.3. validity

Adopt a variety of methods to comprehensively judge the authenticity of wechat record evidence, first, based on the characteristics of wechat and other electronic evidence, it is difficult for ordinary people to judge its authenticity. Therefore, the party can apply to the court for relevant professionals to explain the authenticity of the electronic evidence; secondly, the party can notarize and preserve the relevant records beforehand, and the court can also entrust the specialized electronic evidence appraisal agency to appraise the relevant evidence. Through the notarization and appraisal of electronic evidence, the court shall recognize its authenticity, unless there is evidence to the contrary; Finally, the most effective way is still through the "original carrier" or precisely copied to other carriers in the record for comparison, to see whether the "copy" with its The authenticity of a "copy" can be judged by comparing it with the "original carrier" or with records precisely reproduced in other carriers to see whether the "copy" is consistent with it. [14]

5.2 Improvement of the path of reviewing and judging the evidence of micro-letter records

WeChat subject matter is related to the identity of the party of wechat, is wechat record into the field of evidence first of all to be clear, judicial practice for wechat record subject identification is not standard, only the above practice. WeChat avatars and photo albums do not necessarily directly prove the identity of the subject of WeChat; and the micro-signal and cell phone number can be unbundled; WeChat chat records can be forged, and the cost of forgery is very low. In general, WeChat platforms

do not provide data to individuals. And for the parties, they may not know the common way to prove the subject, often their own according to the subjective understanding of the subject user to prove, for example, screenshots of WeChat user nicknames or notes, but this is likely to lead to the screenshot does not have the ability to evidence. Therefore, the author proposes the following two strategy concept.

5.2.1. Mechanisms for cooperation between the microblogging platform and the Court

The WeChat platform is behind the most real and objective chat records, there is no element of forgery. Therefore, it can be suggested that WeChat implement the rule of "voluntary front-end, real-name back-end"[15]. Therefore, for the identity of the subject of WeChat, the WeChat platform has the absolute right to speak, the court can establish long-term communication and cooperation with the WeChat platform, for the court to share the worry.

5.1.2. Standardize the criteria for determining the subject of micro-credit

For weibo subject identification is objective, unique, but due to the lack of uniform identification method, the parties for weibo user identity proof there is chaos, different parties prove different ways. The author believes that through the unified WeChat subject identification standard can let the parties understand the WeChat subject identification method, can improve the efficiency of proof can also better guarantee the legitimate rights and interests of the parties.

6. Concluding Remarks

WeChat records have been increasingly applied in judicial proceedings and have become an important factor in judicial activities. However, most of the legislative norms for the identification of electronic evidence are stuck in the authenticity review judgment. In addition, the determination standard for the relevance of WeChat records is not uniform, which affects the judgment result of the case. Identity determination, there is no standardization of the real identity of WeChat users, and the evidence of the identity of WeChat users in judicial practice is uneven, which affects the determination of evidentiary capacity. The problem of probative power is a long-standing and cumulative problem that has lacked judgment standards and, like relevance, depends mainly on the judge's free will. This paper takes wechat record evidence as an example, makes a distinction between the relevant concepts, and carries out certain visual data analysis on the legislation and judicial status of wechat record evidence in litigation, and concludes that it is worth pondering.

The author in the relevant interviews and collection of relevant cases, it is well known to promote the public to the electronic evidence of the concept of change, refine the relevant institutional norms can not be achieved overnight. Nevertheless, we should still positively face the electronic evidence of this new thing, strengthen the study of electronic evidence, because it is not only to enhance the evidence system in China and even the entire litigation system modernization of the character of the opportunity, but also in the judicial system towards democracy and science in the context of the scene. At the same time, the correct cognition of electronic evidence, and its benign use in civil judicial practice, for the resolution of disputes arising from the current Internet and promote the harmony of the Internet world also has a fundamental significance of protection.

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