

On the Application of WeChat to the Practice of Evidence System of Civil Procedure

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Abstract: As a new daily communication software in recent years, WeChat has an inevitable impact on people's lives. People use WeChat more or less to achieve their goals in study and work, from knowing the things around them to understanding the national affairs. However, there are more and more legal problems and legal contradictions in daily life, which make WeChat as electronic evidence. Therefore, how to make the chat record of WeChat as evidence in civil litigation needs further discussion.

1. Introduction

With the rapid development of science and technology, the number of netizens is also increasing rapidly. The important storage form of transmitting information or recording facts has been transformed from paper documents to electronic documents. Once disputes or cases arise in these areas, relevant electronic documents become important evidence. More and more cases of civil disputes involve electronic data. In some cases, electronic data even plays a key role in deciding the outcome of a case. This phenomenon determines the wide application of electronic data, such as electronic signature, QQ chat record, e-mail, voice or text of WeChat and other forms of chat record, which are carried by electronic devices such as computers and mobile phones in the field of civil judicial practice.

2. Basic Overview

Since the 21st century, the rapid development of science and technology has brought many conveniences to our life, but at the same time, some adverse effects are also quietly emerging. Most evidences will be stored in a certain electronic medium in the form of electronic data. So this kind of evidence shows different characteristics from other kinds of evidence. In today's mobile Internet era, where social life has been highly networked, the network constantly replaces the traditional way of communication. It has become very common that chat on line replaces real chat. Therefore, it is necessary and reasonable to include electronic data such as "record of chat on line" into the legal evidence type in civil cases. It is more convenient for people to solve disputes, resolve contradictions and safeguard their legitimate interests through electronic data in such a network era, which embodies the spirit of keeping pace with the times.

As evidence, "electronic data" is referred as electronic evidence in litigation cases. In law, electronic evidence is explicitly stipulated as electronic data. In the amendment of the Civil Procedure Law in 2012, besides seven types of evidences stipulated in Article 63 of the former Civil Procedure Law, "electronic data" is formally incorporated into the Civil Procedure Law as an independent type of evidence. Many jurists have defined electronic data in law. Although this definition sounds awkward, it expresses several basic features of "electronic data". Digitalization is the storage form of electronic data which can be stored in many forms and on some carriers indefinitely. Electronic evidence is the existence form of digitalization, independent on specific carriers indefinitely and duplicated on the basis of the original.

In 2015, the identification of electronic evidence in the Interpretation of Civil Procedure Law promulgated by the Supreme Law explicitly included audio-visual materials. Electronic data is stored in a certain carrier like e-mail, micro-blog, and micro-mail. The formal scope of electronic

data is clearly defined in the legal provisions, which refines the different fields of audio-visual materials and electronic data, and clarifies the differences between them.

Micro-blog and record of chat on line can be used as “evidence in court”, which makes electronic evidence no longer limited to traditional electronic data, such as disk, CD-ROM, etc., but also includes the data stored in the cloud into the scope of electronic evidence, which provides great convenience for the parties in dispute. In addition to micro-blog and record of chat on line, WeChat record is also an important part of the data stored in the cloud. However, with its own unique characteristics, WeChat is different from micro-blog and record of chat on line. Therefore, what kind of chat record can be strong evidence in lawsuit, and how to make chat record become legal evidences need to be further explored.

3. Relationship between WeChat and Civil Evidence

3.1 Chat Record of WeChat Becomes One of Electronic Data

According to the revised Civil Procedure Law in 2012 and relevant provisions of judicial interpretation, electronic data, as a legal type of evidence, has the same proving power as other seven types of evidence. In addition, from the detailed scope of electronic data, as one of the large categories of online chat record, chat record of WeChat has also been given proving force by law. Since then, it has become one of the evidences in civil litigation.

3.2 Role of WeChat in Daily Life

WeChat is a mobile client application launched by Tencent in 2011 to provide instant messaging and others for users. This real-time chat function greatly facilitates our daily life. When we cannot discuss or solve face to face, through real-time voice and words communication, we are able to deal with things well without meeting. As a third-party payment platform, WeChat binds bank cards, through which we can transfer money to relatives and friends, and withdraw money to bank cards in a short time. Although WeChat offers us convenience in life, it brings us some adverse effects. WeChat just uses mobile phone number or QQ number to verify registration, but does not implement the real-name system, which will be a security risk to a large extent. These negative effects lead to in-depth discussion on the authenticity and credibility of the chat record of WeChat. Whether it has the same proving power as other electronic data and becomes legitimate electronic data requires further research on the essence of the chat record of WeChat.

3.3 Requirements for the Chat Record of WeChat as Electronic Data

Substantive conditions that are essential for the chat record of WeChat. In some strictly limited conditions, the chat record of WeChat can be used as evidence in litigation, but the premise is to conform to the characteristics of evidence in civil litigation.

Firstly, as evidence, the chat record of WeChat must be objective and authentic. True and objective chat record is the premise for electronic data becoming proof. In fact, the chat record of WeChat is generated in the daily communication or civil activities of users. Its content is clearly known between users and stored in the mobile client in real time, which can be replicated and restored under certain conditions.

Secondly, as evidence, the chat record of WeChat must be related to the facts of the case. For chat record of Wechat, if disputes or civil litigation arise, the content of the record as evidence in the lawsuit itself should be related to the facts of the case, and chat record that is not related to the facts of the case cannot become effective evidence.

Thirdly, the chat record of WeChat must be legitimate. All evidence involved in civil proceedings, whether provided by the parties or collected by the people’s courts according to their powers, should conform to the provisions of the law in procedure.

The legality of chat record as evidence mainly embodies in three aspects, that are the procedure of collecting the chat record is legitimate, the content of chat record is legitimate and the form of chat record should conform to the law. These three aspects restrict the legitimacy of the chat record

of WeChat. Nevertheless, in judicial practice, it is not easy to use electronic data such as “chat record of WeChat “ as evidence in civil cases and obtain reliable proof effect compared with traditional evidence such as “documentary evidence and material evidence“. Through the above description of the substance and conditions of chat record of Wechat, it can be found that it is not as simple as we imagine that the “chat record of Weichat“ becomes “testimony in court“ after it is submitted to the court. Only after strict examination and conforming to the basic elements of evidence stipulated by law can it prove the facts of the case.

3.4 Identify and Process Defective Chat Record of WeChat

Generally speaking, the so-called defective chat record of WeChat is not saved and collected in time by the parties, which leads to the automatic updating and alternation of the chat record stored in the cloud and makes it difficult to retrieve the original data. In the daily judicial practice, in addition to the above several cases, there are many other unexpected flaws in the WeChat record, which are often the key evidences in some cases, or play a key role. In these circumstances, judges are required to strictly examine, identify and deal with these flawed evidence, which is the requirement of legitimacy of the chat record of WeChat. As for the legitimacy of chat record, usually we can investigate form the following aspects, that are the generation, transmission, acceptance, storage, collection and preservation of chat record. For example, public interests and other people’s basic rights should not be infringed. Electronic data should not be obtained by illegal intrusion into the network or other people’s computer systems. Electronic data should not be obtained by illegal search or seizure.

4. Relation between WeChat and Civil Procedure

In the current era, electronic data is closely related to our lives. It is more obvious in the judicial practice. In order to reduce disputes or rationally use electronic evidence to settle disputes after encountering disputes, this paper takes WeChat as an example and puts forward the following suggestions:

- (1) When we use WeChat, it is suggested to use regular registration methods such as mobile phone number, so that at least the real users can be found through mobile phone number.
- (2) When we use WeChat to communicate with others, in addition to WeChat, other exclusive or specific mailboxes should also be agreed in order to prevent the unilateral denial of the use of WeChat account after disputes occur.
- (3) In business dealings with other people or companies, it is better for both parties to negotiate without WeChat when some important matters or amount of money are involved. If certain matters (such as contracts, loans, etc.) are settled by WeChat, the other party or both parties should provide or issue corresponding written materials in order to avoid the failure of identifying evidence after disputes occur.
- (4) It is essential to learn to preserve raw data. In the process of using WeChat to communicate with others, if you encounter fraud or other situations, you are advised to save chat records, pictures and videos as original data in time, and keep complete original data. In the process of data preservation, it is required to minimize the negative impact on its proving power as evidence.
- (5) It is necessary to perfect legislation. Law also needs to develop with the development of the times and keep pace with the times. Some other social platforms, such as WeChat, should introduce some rigid rules, such as the real-name system. All of these make the settlement of disputes in the future follow available laws and traces.

5. Conclusion

To sum up, chat record on the Internet, represented by the chat record of WeChat, can be used as civil evidence, but it does not mean that chat record automatically becomes evidence that can fully and effectively prove the facts of the case. In judicial practice of civil litigation, we still need to strengthen the awareness that electronic evidence can also be used as evidence. On the other hand,

we should not put too much emphasis on electronic evidence, but should realize that compared with other direct and original general evidence, it still has shortcomings in proving power. In civil cases involving the provision of electronic data as evidence, we must not make a partial summary, but consider all the evidence provided by the parties and the real situation of the case comprehensively, so as to make the most just judicial judgment.

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