Evidentiary value of electronic documents in the Russian procedural law

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Abstract:
In the article the concept of the electronic document to the Russian legislation, describing the legal status of an electronic document that specifies the location of the electronic document in proof system of criminal and civil procedure, the range of problems in terms of raising the evidentiary value of electronic documents and on the basis of existing international agreements and practical experience in the U.S. this area, offers ways of improving legislation to overcome this legal conflict.

Keywords:
Electronic document, proof process, cybercrime, Data message, electronic document value evidentiary.

A novelty of the Russian legislation defines requirements for state agencies, local governments, courts, the Judicial Department and its organs that to provide information on their activities should use the Internet, placing it in the appropriate information and create official sites showing e-mail addresses, which may be sent to. Thus, the transition to the distribution of information on the Internet, once again confirmed the thesis of the importance of information systems in public life. Policy documents of the Information society in the Russian Federation aimed at identifying strategic objectives and reinforce the status quo.

This increases the need of the society, not only in the non-contact communication, but also to accelerate the transfer of legally significant information.

Art. 2 of the Model Low on Electronic commerce, approved December 16, 1996 by resolution 51/162 at the 85th plenary meeting of the General assembly Organization of the

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United Nations, the term “Data message” which refers to the information generated, sent, received or stored by electronic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex, etc. Electronic data revealed as the electronic transfer of information from one computer to another in accordance with the agreed standards framework information.

Thus, an electronic document in the sense of the law is the information in a form suitable for storage and transmission by electronic means of communication.

This point of view is also supported Directive 2000/31/EC of the European Parliament and of Council of 8 June 2000 on certain legal aspects of information society services, in particular, e-commerce in the Internal market (Directive on electronic commerce).

In the Russian Federation, the first steps in this direction were taken in 1984, the provisions of the State Standard GOST 6.10.4-84 USSR "Giving effect to the documents on storage media and mashinogrammes created by means of computer technology", to determine the requirements for the composition and properties of documents on the machine carrier and mashinograms.

The Civil Code of the Russian Federation, revealing the written form of the transaction, paragraph 2 of Art. 160 of the Civil Code states that the use in transactions facsimile reproduction of the signatures by means of mechanical or other copying, electronic signature or other analogue of a handwritten signature is allowed in cases and in the manner provided by law, other regulations or by agreement of the parties.

Par. 2 of Art. 434 of the Civil Code established that a written contract may be signed also by the exchange of documents by mail, telegraph, telex, telephone, electronic or other communication that allows reliably establish that the document comes from a party to the contract.

Russian law defined legal concept of an electronic document.

No longer effective (from July 1, 2013) the Federal Law "On electronic digital signature" defines an electronic document as a document in which information is presented in an electronic digital form.

Section 11.1 of article 2 of the Federal Law "On Information, Information Technology and Information Security" N 149 electronic document specifies how to document the information in electronic form, i.e. in a form suitable:

- Human-readable using electronic - computers;
- For transmission of information and telecommunications networks;
- For processing in information systems.

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Law N 63 “On electronic signature” meets the requirements of the UNCITRAL Model Law “On electronic signature”, does not reveal the concept of electronic document, however, section 1, Art. 2 defines a digital signature information in electronic form, which is attached to the other information in electronic form (signed by information) or otherwise relating to such information and is used to identify the person signing information. The low provides for the recognition of the base documents with an electronic signature – a document on paper.

The Act focuses not on the recognition of equivalence of electronic documents and paper documents, and to determine the conditions of equivalence of electronic document (only electronically signed) document on paper. The consequence of this is to simplify the procedures for the recognition between writing transactions and certified electronic signature, which is a significant concession to some participants of the business turnover, who believe that electronic documents are just text documents, "made with the help of a computer".

Modern practical approach to the electronic document focuses on his part as documented information that is suitable for human perception, using electronic - computers, ignoring its representation in a form suitable for transmission of information and telecommunication networks and processing in information systems. As we can see, the theory of electronic documents get itself in the practice contracts. So, in Russian Federation got the problem not to use electronic documents, but to get them evidentiary value.

A particular problem in the study of electronic documents is the fact that in the process of proof should be given considerable attention not only to the content of the file information, and other information contained in a computer, computer system, or their network. It should be borne in mind that the electronic document as a computer information can be represented at several levels: physical (on a physical medium, and is in the process of interaction with the carrier), logical, syntactic, semantic, etc.

When cases are involved in process, evidence obtained using high technology and equipment, such as: tape and videos with audio and video, floppy disks, CD-ROMs, memory sticks, hard drives, and even the computer system unit with records files, reports in various formats,

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7 Dulenko VA On the probative value of the computer information // Legal communication, 2006, № 2
database records, which are the actual data text, graphic and photographic, tables, audio and video-document information or combination. Therefore remains an open question of the applicability of the evidence "alternative forms" in the procedural activity.

Part of proof in civil and arbitration proceedings, the use of an electronic document has quite a long history, and developed very thoroughly.

Since the beginning of the eighties of the 20th century, the USSR State Arbitration Guidance on June 29, 1979 "On the use as evidence in the arbitration proceedings papers prepared using computer technology", identify the parties to arbitration proceedings in support of their claims and defenses submit documents prepared using computer technology. These documents, as they contain information about the circumstances relevant to the case should be taken by the authority of arbitration on the same basis as written evidence.

In the area of civil procedure decisions of the Plenum of the Supreme Court on April 3, 1987 № 3 "A strict observance of procedural law in the administration of justice in civil matters" identifies that, if necessary, the court may be taken as evidence of written documents received by computer technology, what materials are evaluated in conjunction with other evidence.

Guiding instructions to claim 6 Resolution of the Plenum of the Supreme Court of the USSR № 7 of 9 July 1982 "On the court decision," states that the reasoning of the Court, if necessary, the right to refer to the written evidence in the form of documents obtained by the electronic - computer technology. These documents are accepted as proof when properly clearance in accordance with established order.

With the adoption of Civil Procedure and the Arbitration Procedure Code, the electronic document in a separate category of evidence has not been selected, but the exact place in the structure of evidence in civil and arbitration cases are now defined.

Thus, in accordance with paragraph 1 of Art. 71 Civil Procedure Code of the Russian Federation to written evidence includes documents and materials made in the form of digital, graphic records, including those received via fax, email or other communications.

Article 60 of the Arbitration Procedure Code directly points to the possibility of using as a source of written evidence in arbitration agreements, memos, business letters, and other

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8 Semiletov SI Use of electronic documents as evidence in court proceedings // Citizen and Law, № 1, 2007
10 It is now recognized as invalid.
12 "Bulletin of the Supreme Court, № 4, 1982
documents and records, including those received via fax, email or other means of communication (eg electronic documents - author. ).
The requirements of Part 3 Art. 75 Criminal Procedure Code of the Russian Federation determined that the documents received by fax, email or other communications, as well as documents signed by electronic signature or another analogue of signatures accepted as written evidence in the cases and in the manner required by the federal law, other normative legal act or contract.
It should be emphasized that in the Russian civil and arbitration process, acquired a special significance not to relate electronic documents - paper documents, and the selection of an electronic document in a separate category of evidence (relating to formal written evidence).
In criminal proceedings, part 2 of article 74 Criminal Procedure Code of the Russian Federation contains a list of types of evidence, which is exhaustive and is not subject to interpretation. These include the testimony of a suspect, accused, victim and witness, opinion and expert evidence, expert opinion and testimony, physical evidence, records of investigation and trial, other documents containing information relating to the criminal case.
It should be borne in mind that according to the legal definition of art. 81 Criminal Procedure Code of the Russian Federation, any material evidence of recognized items:
- Which served as instruments of crime or retained traces of the crime;
- Which were sent to criminal acts;
- Money, valuables and other property derived from the commission of the offense;
- Other objects and documents that can serve as a means for the detection of crime and establishing the circumstances of the criminal case.
Article 84 of the Criminal Procedure Code of the Russian Federation states that other documents admissible as evidence if the information contained in them are important to establish the circumstances relevant to the case.
The documents may contain information, as documented in writing or in another form. These may include materials photography and filming, audio and video recordings and other media, received, obtained on demand or presented in accordance with the art. 86 of the Code.
In this case drew the attention clearly expressed "material form" evidence that might be or objects (Article 81 of the Code), or the information fixed in writing or in any other form (material photography and filming, audio and videos and other media).
Thus the electronic document can be considered as evidence in criminal matters only in the form of an exhibit, or as any other documents relating to the proceedings.
Currently, Russian Federation has refused to participate in the Convention on cybercrime\(^3\), under which since 2011 a number of countries of the Old and New World provides a set of agreed actions aimed at improving the integration process in the fight against cybercrime, implementing the unification of the national criminal-procedural law within defined above international agreement.

The above-mentioned measures to improve procedural law should be included:

- Expedited preservation of stored computer data (Article 16);
- Expedited preservation and partial disclosure of traffic data (Article 17);
- Production order (Article 18);
- Real-time collection of traffic data and search and seizure of stored computer data (Articles 19, 20).

Perhaps when the issues of the evidentiary value of electronic documents in a variety of process should study the experience of the United States, long and quite successfully resolve this issue as a standard - the legal level, and at the level of judgments precedent.

In the USA, the main sources of American law governing the use of evidence obtained by a computer, are adopted Federal Rules of Criminal Procedure and the Federal Rules of evidence\(^4\).

In addition, a number of provisions contained in the USA Patriot Act, Federal Criminal Code Related to Computer Intrusions, numerous court precedents.

Federal Rules of Evidence do not contain direct references to computer evidence. However, comments and case law suggest that the rules were created with the expectation of their application to the "non-traditional" evidence, which also include electronic documents.

In regard to the Federal Rules of Criminal Procedure, it should be borne in mind that the electronic documents as evidence are divided into direct (non-hearsay), indirect (hearsay), and combine the properties of both\(^5\).

The direct evidence include those that are generated by a computer without human subdivided into two categories:

\(^3\) The Convention on the crime in the computer information (ETS N 185) concluded in Budapest 23.11.2001. Decree of the President of the Russian Federation of 15.11.2005 № 557-p Russian Federation decided to sign the Convention, a statement about the condition of a possible revision of the provisions of paragraph "b" of Article 32 of the Convention. In 2008, the Order of the President of the Russian Federation of 22.03.2008 № 144-p, the Order of the President of the Russian Federation of 15.11.2005 № 557-p invalidated.


- Computer-generated records;
- Computer-stored records).

There is also quite a reasonable view on the allocation of the third category, which includes a combination of two this\textsuperscript{16}.

Hearsay contain the result of human activity (personal letters, memos, documents, accounting, etc.), created by people, not the magazines or computer record of the processes that the rules of the study of indirect evidence. Some computer data is fully compliant with hearsay.

The classification is determined by the form of presentation of the fact that there are two formats of electronic information: hard copy (hard or hard copy) and machine readable format (machine-readable copy).

The shape of the proof electronic documents are divided:
- Raw data (source data) including data entered by the person and related documents in general;
- Databases (database);
- Codes necessary to interpret computer information (codes needed to decrypt the e-information);
- Commercial software (commercial software);
- Computer systems (computer systems), which are defined as computers, servers, local area networks, magnetic media of various kinds.

The U.S. experience in the form of an electronic document as evidence of procedural shows that Federal Rules of evidence\textsuperscript{17} require the provision of information in a usable form. In many cases such recognized hardcopy-print file contents on the paper. However, the rule does not contain any provision prohibiting or restricting the use of the second format. Sets a number of precedents that, under certain circumstances, hard copy can not be recognized as "fitness for use" and requires parties to provide data in machine-readable format - in the form of punched cards, magnetic tapes, floppy disks, CD-ROMs, zipp-drive or directly to your hard drive.

So, Russian Federation can use results of the experience of other countries, or recommendations of International organizations for using electronic documents to cover matters arising from all relationships of a commercial nature, whether contractual or not. Of course, we need to integrate our actions with other countries in this question for the best results of using an electronic document as evidence.

Thus, the possibility of using an electronic document as evidence in Russia complicated by the existence of problems:


\textsuperscript{17} Federal Rules of Evidence. 34
- At present the conditions for the equivalence of only electronic document (only electronically signed) - paper documents, without proper equality between electronic documents and paper documents;
- The use of an electronic document as evidence in criminal cases the focus is on the material component of an information object, but not on its information component;
- Not the place and role of the electronic document as evidence in criminal cases;
- No measures for the integration of approaches in this regard to existing international agreements and practical achievements in this field in other countries.

The elimination of these problems be overcome as changes in procedural law, and through the development and adoption of the Information Code, the Law "On Electronic Document". Of course, such a problem must be overcome as a result of integration of the lot of countries and their scientists.