

Validity of Signatures and Electronic Documents

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ABSTRACT

The various methods of communication and information in all spheres of human life have been penetrated. The use of these methods in business relations, leading to the emergence of a new type of electronic evidence is called. Electronics because of the nature is of different the traditional. Discovery, proof and hold it for the whole legal system, conditions and require special equipment. In relation to the recognition of new facilities at the national and international business and trade, legally entitled "E-commerce law" with the adoption of the UNCITRAL adopted e-commerce that any form of electronic data message is deemed to be valid. The documents, testimony, confession and oath are achieved electronically. By comparing the electronic evidence of rights and other legal systems of the world including the United States of America and the Union of Europe, can be seen and electronic evidence that the system of higher positive value of their rights.

KEYWORDS: electronic evidence, data, messaging, electronic signature, email, evidence, law, commerce, Uncitral, the national legal systems

1. INTRODUCTION

In the past, there was evidence in the traditional format. Today, with the increasing expansion of electronic transactions, due to the new type of electronic is formed. Electronic evidence can have an important role in the process of litigation or criminal prosecution. Basically, the electronic version can provide valuable information that there are no paper copies of such information. In this paper, the concept of express mail, express and discuss similarities and differences between the traditional proofs of electronic speak evidence. Comparative validity electronic evidence in proof of the legal system and other legal systems of the world including Europe and the United States of America and the Union will be subject to other countries. How to discover and collect electronic data, including discussions that special place in the regulation of different legal systems in the world; each of countries, special measures have been adopted for electronic evidence discovery and maintenance of the similarities and differences observed. The reason electronic court of law in the legal systems of other countries, including those discussed in this paper is an important.

2. The concept of electronic

Electronic for any given message that the parties prove or defend referred to a lawsuit. According to the definition contained in Article 2 of the message e-electronic for each symbol of the event, or the information is electronic, optical or information technology, manufacturing, sending, receiving, storing or processing and parties to establish or refer a defend a case. Given the broad definition, dynamic e-commerce law, the message has to offer, not only electronic tool but also all available tools, including a telegram, telex, tools, digital, magnetic, optical, electromagnetic, and other tools created by the technology of the future there will be electronic source of creation. (Wang, 2006, P.5) The data base, operating systems, application programs, computer-generated model, Electronic voice and mail message, all information stored in computer memory, ATM transaction log, Spread sheet, computer printout and digital audio and video files, any kind of electronics. (Gatn, pp. 44-43)

1. The differences between the electronics and the traditional since the electronic data message format is different from the traditional features of the electronic are the most important words are:

- Electronic data can be stored in a very compact, because they are so compact that it is easier to archive and on the other hand can easily hide them. For example, a hard drive (Hard drive) more than 5.1 million pages of data and an integrated tape backup (Corporate backup tape) around 4 million page rather than the data itself (Rockwood, 2005, P.12)

- Because, unlike electronic paper document is tangible and concrete, is not so easy to achieve simply through a software program that created it is readable and if it's not available, the instrument is not achievable;

- The electronic almost never goes away. Although it is often assumed that the user to delete (Delete) to remove the folder is deleted version is almost always recoverable. While electronic data easily and when created in many places such as log files (Log file) and letterhead documents (Document header) stored and hence is difficult to remove them all (Brereton, 2007,63)

- Because electronic often contain valuable information such as date created, date modified, and deleted the folder and change password UAE can be found in the paper while without this type of information. (ibid, 68)

- The electronic documentation to fulfill the traditional concept of "original" means a version that immediately reflect handwriting, signature or fingerprint cannot be signed for information on a computer screen visible in the electronic environment before they are transferred several times to different parts of the computer, version visible so why did not the original version;

- The traditional documents, handwriting and signed by the exporter or his fingerprints on the following document, the document is assigned to the issuer and his identity is positive denied if the document can be easily adapted and signed by the expert, confirmed the authenticity of the document but this is not possible in electronic documents, since the signing of the documents often contain features of biological and not the issuer (Nouri and Nakhjavani, 2003, 23)

3. The importance of electronic

With the increasing use of computer technology in the field of information management and increase the use of computer systems to replace paper files, valuable resources of information in computer systems is caused by the discovery and it is important to cite specific, over several decades in developed countries, so that the courts will work. Electronic evidence discovery discover the electronic media, also known as Electronic Media Discovery. In many cases of recent lawsuits developed countries, including sexual abuse, unauthorized publication, Fraud, the relationship of the victim and the accused in the murder case deliberately, to prove theft of trade secrets and discover what reason and evidence of other criminal acts, etc., of interest electronic evidence. (Wang, 2006, 22) how much information can be found in electronic evidence, but it cannot be found elsewhere. How much it is type printing. Perhaps due to an electronic read or are unaware of or to delete or save it remained unaware. For example, in many applications, log files are created when working with different types of information without user registers or can anyone think that deleting an e-mail message or email in a network, all data is lost, while other versions of the message to other nodes in the network. Electronic evidence does not lead to computer and any information obtained from electronic devices including cell phones, fax, pager, telephone, telephone answering, voice messages, e-mail messages and it is also included.

4 types of electronic reason

Since the level of safety tools and methods used in the production and storage of different electronic, the amount of the validity and the proof is different. The electronics can be classified into two simple reasons and for sure.

4-1 reason for electronic simple

Electronic simple reason, the message given by an unreliable information system, generated, sent, received, stored or processed and an electronic signature is uncertain if the document cannot be attributed to the issuer, or the entirety of his identity document, to ensure. Information system used to generate, send, receive, store and process data message is of high technology, such a system has been programmed properly and is not sufficiently accurate, for this reason there is always the possibility of incorrect data from the performance. Also, this system is not secure against intrusion and misuse and one can easily penetrate the network by entering the information on the access and change them or sending information received from the Internet, modify and resend. Log In such a system, a virus may be changing or deleting data, therefore, such a system cannot guarantee the integrity and confidentiality of information. (Puratayi, 216,2001) simply because an electronic signature authentication is normal; this signature can be inserted manually or simple image signature on the document name, email address, smart cards, selecting the "I agree" or passwords that cannot assign any document to the issuer, his identity and ensure document integrity because all of these are easily forged. Third party can easily picture the other hand signing the attached document on behalf of his or her password to discover her identity stolen smart card or falsify. Computers can of words, places and terms in a specific language to explore and test password and an eight-character password in a matter of seconds to find (Ahani, 41, 2005).

4-2 reason for electronic reliable

For secure electronic data message via a secure information system produced, stored or processed in a secure electronic signature. Safety level of technology used in this document the document is assigned to the issuer, his identity or to ensure document integrity. Such evidence irrefutable, indisputable and it is impossible to forge. In addition, after creating such reason must be kept secure; (ibid., 54) So information safe, secure electronic signatures and records safe, due to the structure of an electronic form, which is under review them: paragraph (h) of Article 2 Q.t.al criteria for a secure information system provides as follows:

Information system is the information system:

1. Reasonably be protected from abuse and influence;
2. Reasonable level of access and the right to have tenure;
3. Reasonably proportionate to the importance of the work they do is configured and organized;
4. Agrees with the procedure is safe.

The remarkable thing is that legislators are "reasonable level", the condition is necessary to ensure an information system. Given reasonable measure in paragraph 2 of this Article Q.t.al is presented, according to the circumstances of the transaction, including the nature of the message exchange, skills and position of the parties, volume parties in similar cases, the availability of options proposed and rejected the options from each of the parties, the cost of the proposed options, practices and techniques commonly used in this type of transaction will be assessed. Terms of secure electronic signature as defined in Article 10 Q.t.al, this article provides: secure electronic signature shall have the following qualifications:

1 is unique to the signer;

2. The identity of the signer's message is clear;
3. The undersigned by or under the patent will be issued;
4. Somehow connected to a data message is that any change in the data message, visible and discoverable.

Technically secure electronic signature or digital signature can be a reasonable trade is able to provide the functions of the law. The Uncitral Model Law on Iran following the signing of the "technology-neutral approach» (Technology-neutral) has chosen, in the sense that it is not required to comply with certain technical requirements determine the signature (Nouri, 2005, 42) the advantage of this approach is that if the introduction of new technical methods or the security of existing methods, need to be amended.

5. The validity electronic proof of evidence

Because electronic few rules have been defined, even in Europe is none of Union law definition of the electronic yet (Brown, 2010, 128) However, the definition of electronic is said, any information that is obtained from an electronic or digital medium, so that this information can be used to prove the truth of something. Q.t.al Article 12, without a definition of electronic evidence, and provides: Documents and evidence may have been a message and according to the rules of evidence in any court or government agency may not be available, the proof given solely for the shape and form of the rejected message. This article originally UNCITRAL Model Law on Electronic Commerce revocation of Article 19, the electronic evidence is generally accepted. It is clear that the terms of this matter so as to rule out any doubt the reason why electronic close. Q.t.al Article 14 provides: all the messages that have been created and maintained as a way to make the contents of the signature contained in it, or other obligations of the parties who committed and all those who are hiding their legal status, in order to implement its provisions and other books and documents referred to in the judicial and legal. Article 15 also has to make sure the message is not unheard of denial and doubt. So if the security procedures of the legislature, to be followed for any reason, with this interpretation, it is clear that the other evidence other than the document and electronic signatures can be equal to at least the equal of the electronic paper and the equality of electronic evidence with evidence-based paper or other traditional evidence was given. Some argue that since the provisions of Article 15 Q.t.al, the electronic make the most important official documents, "the inescapable question of" is these documents should also be a positive value, so in order to make the electronic official document in the event that such a peace, a gift, letters and documents that the real estate is an official document for the validity they need to know one reason for the electronic can meet this requirement. (Dost Mohammedan, 2006) However, the question is timely, given the ambiguity in Article 14 Q.t.al but looks cannot argue that, because the electronic in these cases, the official document is replaced, because they make electronic difference in a formal document that will be discussed below, most notably:

1. With respect to Article 1287 of the Civil Code, the Department of Real Estate Registration document official document or official documents or to other officials within their jurisdiction in accordance with the legal provisions set apart from these documents and other documents pursuant to Section 1289 of the Act, the document is considered to be normal; the principle of the common law definition of official documents and documents that have been defined, reasons not include electronic safe, although Certificate authority as an official document the process involved in this matter, however, the physical presence of the official document for the regulation requires that in these circumstances the material lies. Pursuant to Articles 50, 52, 57, 64, 66, 67 and 68 Registration Act, shall exordium identity, capacity and consent of the parties and non-parties to meet their compulsion. Although the identity of the parties will establish an electronic document through the electronic signature however, the apparent intention of the parties and the absence of coercion and duress health than the physical presence of the exordium not assume that this interest does not provide electronic reason.

2. In addition to the advantage of the ability to deny or doubt the official document has other effects, including the official document pursuant to Article 1926 of the Civil Code is valid against third parties without the need to reference these documents are binding court order the legislature, because it possesses electronic sure this does not work, and grant a certificate for electronic books cannot make it to the official documents indicate.

3. In addition to the above reasons, the legislator has some implications can be inferred that the legislature did not want to make electronic documents, such credit will be given. For example, Article 6 of the documents Q.t.al immovable property and drug sales to final consumers, data is not written to the message, also, paragraph (b) of Article 113 of the Fourth Development Plan, which the Organization of Real Estate, has granted permission to provide services to the computer, observe the regulation of transcription of the statement, if the delimitation and estate offices and official documents require that this shows that the legislature did not make for electronic credit of this document is the author.

6. Discover and collect electronic information

Concerning electronic information should be stated that the distribution and extent of these data and the need for specific skills, for these reasons it is important to discover and collect and the direction of the adjustment system and the evidence in the traditional legal system is very different; because the assumption, where the information can be presented in court is likely, millions of useful information and is ineffective. Often find these reasons, collection and adjustment and maintenance time and cost requirements. Because the costs of the proceedings for the collection electronic evidence as some have why should find that the cost of millions of other information on the basis of the information to be exposed. In countries such as the UK legal system of the costs of the proceedings in the case shall be responsible for the failure. (Center for Information Technology Development and Exchange, 2008) in the United States of America pursuant to the Federal Civil Procedure Code, if one of the parties to rely for electronic person who is in Him, if the information cited in the possession or under the control of his career, will be responsible for processing the data. (Brown, 2010,89) the rights

of the articles 515 and 519 of the Civil Procedure Code and due to the fact that the cost of finding and collecting this evidence is relevant to prove or defend, it must be said, anyone who can prove the costs incurred by the other party's fault, it's the other side. Information is as electronic result of the hearing, but more complex and more expensive, especially civil proceedings. But against this criticism cannot stand and said he thought that the emergence of new problems has led to the discovery of electronic information because, for example, the electronic exchange of information with respect to the information contained on paper much easier, less costly and faster done. The outcome of the search for electronic data discovery is that this process can lead to obtaining electronic evidence.

7. The information presented in court as electronic reason

This step is typically in the form of a tool such as CDs and DVDs are made; But not from other methods, such as offering on-line arguments overlook.

7.1 The status of the electronics in a court of law

In Iranian law, no rules on electronic evidence can be found to the new regulations adopted by the Computer Crime Act, particularly in civil and commercial litigation, whatever it is, the ones that come in e-commerce law. An important issue that needs to be addressed here is that some believe electronic Commerce Act prohibits or allows the reconstruction of the judicial process not specified in the electronic environment (Ahani, 2005). Only meant to Articles 6 and 7 of this law that are written or electronic signature of a hand written signature is known, it can be said where performance is due to writing or signing up text, providing the procedures in the electronic environment is also possible. Moreover, Article 8 of the Act which states: "If a law is deemed necessary that the information provided or stored, this is achieved by storing the information in a data message is also possible if any of. . . »; the judicial system can be used to comply with the legal requirements of electronic filing to replace their paper archives. Outside of these areas where the need to perform a physical or legal person facing the parties to the proceedings, and the like, indicating it is such as holding hearings, testimonies, and swearing. The silence of the Commercial Code and the allocation rules of procedure, there is no possibility of the legal procedures in the electronic environment. But in answer to the argument used in Article 12 of the law is not synchronized. Because the sentence in this matter clearly all kinds of electronics, ranging from document covers oath, and the permission to leave the object in its appliances, electronic requires the permission of the legislature for permission to cite the evidence presented to the court as well. In other words, being able to offer some of the reasons for lack of equipment to be delivered to the court legal nature they may not rise nor legally. When electronic equipment to provide testimony in court is not available, how can we expect the result in terms of maintenance tools and online electronic information is presented to the court? Apart from all these, the law of e-commerce with all his poor capacity of the complex issues related to the electronic world is not all. Therefore, the reasons for such electronic specific provisions have been applied in this context. For example, in all member states of the Union for electronic Europe of proof are the traditional reasons. (Zarkalam, 2005, 12) Paper or electronic document to a document manually, electronic signatures equivalent to hand-signed by regular mail or e-mail with the same known. Even in Portugal has been equated email and phone calls; and we know that the email could be included in your voice mail confession can be granted (Douglas, 2004,102) However, if one of the parties in electronic court case because they offer choice but to rely on traditional general principles embodied in the Civil Procedure Code and Civil Code have remained. Let me add that in our country, most recently with the creation of electronic records management system and the realization of hearing initial steps to establish electronic court has been removed. It is possible to amend the petition and the bill of complaint tracking, notification, time trials and provides notification of the decision. The question that arises here is whether the parties will be allowed for example, by providing the tools they need to be approved by the court, to submit documents, testimony and confession electronically (through the electronic or online data-protection devices) take? The answer should be noted that the law in this regard does not appear prohibitive. The other hand, Article 12 of the Law on Electronic Commerce as described later, the possibility of realizing any reason within the message is accepted. So it seems, if your presentation because the ordinary courts may or may not be necessary because electronic version, electronic your document as presented to the Court that it is possible to be allowed Citation by providing the necessary tools to verify that the court give electronic reason, or because it is expressed in the form of electronic court. In these cases it is clear that the other fights should provide this type of information obtained the opportunity through his defense, as alleged forgery, denial and doubt about the document to be presented. In the event that you cannot control or confessor is not available at trial, seems to be to allow the parties to provide the necessary tools to court approval, to provide reasons for its action. In the case of the, the other fights should be able to use their legal rights. The validity of such testimony and confession are studied in their place.

7.2 The status of electronic foreign law in court

The rights of small nations, especially the issue of electronic reason is given, so that it can be said that the new legal issues considered. United States of America, the Federal Court has attempted to create an electronic court. The court created a web-based electronic network that the federal court proceedings as a real meeting are on the line. For other orders and other provisional judicial decisions when using online networks, as well as a regular session of the trial court may by written statements and documents received certificates and statements issued. Both sides need to communicate with a user name and password that the trial court had issued import. This can post messages to the network on the topic of their choice to read and post messages them. (Brereton) is possible with the message, and send the evidence to the network. E Court of the Federal Court trial period, beginning in 2001 and continuing. During the trial period, access to electronic court is limited to the parties and their representatives. Technical and electronic court protocol used on the

network and the traffic court and the court's findings, will be appeal. Under the rules of the court, both sides in the civil suit, within the specified time are encouraged to do the following: (Ibid)

- Use of electronic information and documents submitted for making a list of reasons;
- Accept the results of the exchange of electronic information in accordance with the agreed protocol;
- The exchange of electronic copies of documents like bills and statement of reasons;
- Set the issues presented for review and investigation requirements, the use of electronic information;
- Due to the use of electronic information in the trial. If the parties agree that a data exchange protocol decisions, the protocol should include the following:
 - Exchange of court documents, and notices delivered in electronic form;
 - The electronic exchange of documents necessary to submit lists;
 - A means for the exchange of electronic information in the evidence;
 - The use of technology in the trial.

The court also, in some cases, encourages the parties to documents in electronic form before the hearing to deliver a jury trial. This solution can be stored on the hard drive and sign a document which is to be completed. The two sides started the lawsuit to examine ways to provide more information for inspection and trial proceedings have been encouraging. Provide appropriate information technology generally depends on the degree and level evidence and, as the case may be agreement between the parties or court order is dependent on limiting the scope of reason. If both the scope and limits of reason and evidence presented to define and determine, decide on the appropriate use of technology easier and more will be announced. Some states in the country, to provide guidelines facilitate the presentation of such evidence, taken action. The Court states, "New Hampshire" This recipe is visible. According to the guidelines, if any of the parties to the proceedings (criminal and civil), they provide evidence in electronic format for review by a jury, shall comply with the following conditions:

- Such a request must be in writing in case the request is set;
- The written request shall indicate the following:

A) The scope and areas

B) The manner in which the electronic is presented. For this purpose, either by the court or the parties to such equipment, mobile or desktop computers and other related equipment provided for.

C) A system that is required to apply. However, if the court system is required to provide, how to install and use, it should be followed by five days before the presentation. As well as the precautions and protect the system and electronic to avoid the changes described.

D) The precise method by which, the electronic can be received and evaluated by a jury, shall be followed. This description should be telling these things:

1. Whether the jury can receive electronic information and reviews the basic training?
2. Whether a jury instruction is required and whether the training was done with minimal skill to protect the integrity of the work is proportional to check the electronic? It has been suggested that the parties to provide the use of a computer equipped with the citation by the jury to use the CD store. Another point is that even if the Court itself provide the equipment needed to deliver the electronic, consumer or his lawyer should ensure that they have the tools needed to provide the reason why the process is available. Also, if the special software is needed manage because, by virtue of the court and both parties need become aware of its existence. (Ibid)

- If the application provider must provide the original and final version.

- The applicant is responsible for the rules and procedures as mentioned and is also responsible for ensuring that the equipment into court, software that provides the reason for that presentation is available electronically and will be applicable. In some states of the country, such as states, "Utah" and "CA" branch of the court dedicated to delivering the electronic. The two state offices to work with judge's electronic evidence and advanced facilities have been created. In Australia, the Federal Court has attempted to establish an electronic court which is similar to what is established in the United States of America. Create a branch to manage issues related to the advance of the hearing so that the wishes of the parties to fulfill orders online allows. Can petition the court, bills and other evidence requested by the parties are identical to the ordinary courts. (Rockwood) apart from civil law countries, international institutions regulate the process of collecting evidence established computer. Some of these institutions can be noted that the International Organization on Computer Evidence was founded in 1993 pointed out. The purpose of this organization is to provide legal assistance to the process of gathering evidence of their computer. (Ibid)

The Europe Union member states from 2005 up to conferences, project possible adoption electronic evidence in court are examined. The aim of the conference, the clarification of the court when faced with the issue electronic evidence is presented. The main goal is to illuminate challenges in the laws of the Member States and provide the best solutions to achieve additional assurance to the detriment of the victims and the development electronic evidence as a useful tool for combating electronic crimes charged. As a result of this study is to determine that the Europe Union countries accept the UK and Belgium to the discovery and collection electronic evidence has been given. (Ibid)

8. Electronic evidence proving the claim

8-1 Electronic Document

One of the arguments that can be realized in the form of a data message or electronic form, the written document is. Q.t.al of Article 12 expressly uses the word document. Electronic document should clearly what it claims to prove Citation and the electronic device that contains the documents presented the conventional sense of what are stated kinds. Also in the

case of a document originally created by means of computer, by creating such a document should be considered as a conventional document creator. Thus, for the reasons cited in the text in a computer or other electronic system must reason that conventional means by which the tool has been proven.

8-2 electronic testimony

Court witness testimony can be given in two forms: one form, the testimony recorded in electronic data-protection devices, such as compact discs and a long memory. The second form electronic evidence, the testimony offered online. These types of facilities are evidence based, so that the witness can testify to their live, such as voice, video, and he states clearly visible and understood by the judge and the parties. Also, the battery may be provided to the parties at the same time. The question that arises is to what extent can the validity this witness? Regulation of the study shows that the physical presence is required at court. The assumption testimonies offered online, although the evidence is not really in court but this relationship is such that the parties and the judge of the court to make good sense. Despite all this, it seems, because the physical look of the traditional civil law and civil procedure law because, in spite of all the advantages that this type of evidence can be named, its validity is only circumstantial evidence for the judge can not testify. Yet we're supposed to believe that the witness is excused by the court (referred to in Article 244 of Q..d.m.) for whatever reason could not attend court witness testimony submitted by online communication and audio. Although this method is better than that of the trial, but the certificate is preferred.

8-3 electronic confession

Electronic is also largely similar confession testimony, particularly in terms of the submission to the court. This expression can be recorded confession electronic, audio or video into the optical disk or memory. Confession can also be submitted online.

Conclusion:

With the advancement of information and communication technologies throughout the world, some of the reasons as electronic evidence to substantiate the claims of the parties in commercial disputes and criminal matters emerged. These reasons are no fundamental differences with the traditional arguments. Accordingly, electronic simple and reliable due to two reasons divided. Electronic simple reason both normal and traditional rock instruments, for sure, and certainly are undeniable. Discovery and access to the electronic and maintenance, to the Court, sort your electronic because it covers much of the process. Electronic evidence in the form of documents, confession and testimony can be presented in court. Electronic documents may be submitted in two ways. First, it can be within the means of transmitting the documents presented to the court; second, by providing online document in court. Confession and testimony presented at trial are also to be mentioned either.

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