Emerging Forensics Methods in the PRC

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Chinese courts heavily rely on evidence to rule a case, and conventionally, notarization is basically the only option when a party collects evidence by itself. However, conventional notarization has its limitations and is not always an efficient approach. With the development of technology, some new forensics methods are emerging and are being explored in trials in China. We believe there will be more to come in the future. So today we would like to touch on this topic and share some of our experience.

Article 11 of *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts*, which was implemented on 7 September 2018, stipulated that the court shall accept the probative force of evidence collected through technical approaches for collecting, securing and preventing the falsification of evidence, such as electronic signatures, trusted time stamps, hash verification, and block chain, or evidence that has been verified on an electronic evidence collection and storage platform. This article has officially recognized and legalized several technologies which can be used in evidence collection.

In practice, even before the implementation of the above judicial interpretation, some courts had already recognized and accepted evidence collected via Notarization Cloud ("□□□"), UniTrust Time Stamp ("□□□□□□□"), and Baidu Evidence Collection ("□□□□").

More forensics methods have been developed and are available on the market, including Cunzheng Cloud ("□□□"), An Cun ("□□"), and Yunfatong ("□□□"). Chinese courts, such as the Hangzhou Internet Court even provides its own electronic evidence platform to assist parties in preserving and submitting evidence in electronic form.

In this article, we will address some of the above-mentioned emerging forensics methods that we have studied or used, as the rest share similar technology solutions and application methods.

- **UniTrust Time Stamp**

This was the first electronic forensics method developed and used in the legal market. It was developed by a third party platform named UniTrust Time Stamp Authority (UTTSA). The tool encrypts the digest of an electronic file transferred to the UTTSA in real time with a time stamp. A time stamp is a mark of the exact time of the file being transferred and the clock of the UniTrust Time Stamp Authority is certified by the National Time Service Center, Chinese Academy of Sciences. In short, the time stamp is an electronic certificate issued by UTTSA that can prove the existence and integrity of the content of an electronic file even without obtaining the full contents of the electronic file.

The time stamp is quite an efficient tool to preserve webpages or documents existing at a specific time. Taking webpages as an example, the process is similar to webpage notarization. Instead of taking screen shots at the notary office, UniTrust Time Stamp allows a user to use software provided by the UTTSA to verify the integrity of the computer and its operation system, and then to record the webpages of interest. After completion, a copy of the recorded webpages will be encrypted and sealed with a time stamp by UTTSA, and a certified electronic copy will be produced for its user's use. Similarly, companies may use this tool to mark and prove the realization or creation time of an invention or copyright work or the execution of a contract.

In terms of evidence collection, the benefit of this approach is that it allows users to promptly secure evidence without any delay caused by the operation hours of the notary office or the availability of the notary officers. We have successfully preserved webpages from infringers right before they change the content of the webpages or shut down their websites entirely.

Evidence produced via this method has been widely recognized and accepted by courts in China.

- **Notarization Cloud**

Notarization Cloud is a cell-phone application jointly developed by a notary office and a technology company in Xiamen in 2012. It uses cloud/blockchain technology to save real time data collected from verified digital devices and encrypts them to prevent any tampering. After completion, the notary office can issue an electronic copy or a paper copy for its user's use.

As it uses a smart phone as a tool to collect evidence, it can record telephone calls, on-site sounds, photos, videos and webpages as evidence. Users can do this either online or offline, and the original data will be saved and transferred to the cloud system once the device is connected to the internet.

The benefit of this method is that it is more convenient for users to collect evidence in various scenarios. The exposure risk is also lower than conventional notarization. For example, when recording a small group seminar, it may be challenging to have three strangers (two notary officers and one investigator) present, but Notarization Cloud would allow only the investigator to be on-site and record the presentation using their smart phone.

This approach has been successfully recognized and accepted by courts (*Shenzhen Baoying Construction Group Co., Ltd. v. Jiangxi Baoying Dandi Decoration Engineering Co., Ltd.* and *Minoa Co., Ltd. v. Gang Li*).

- **Baidu Evidence Collection**

Baidu Evidence Collection is an electronic data preservation system jointly developed by Baidu and an appraisal center in January 2018. It uses a self-developed section forensics technology that can preserve the integral content in a webpage existing at a specific time.

This is a simple evidence collection method as it is easy to operate. The process will archive the entire webpage after a user inputs a URL such as www.baidu.com into the platform. After completion, a copy of the archived webpage will be encrypted and stored at an appraisal center, and an electronic certificate will be produced for the user's use. The evidence extraction code is written on this electronic certificate and can be used to review the archived webpage via the appraisal center's official website.

The benefit of this approach lies in the low cost and convenience. It can preserve the webpage promptly as the online contents are changed so frequently and easily.

This approach has also been successfully recognized and accepted by courts (*Dongping Qiu. v. Beijing Sina Internet Information Service Co., Ltd.* and *Jinqiang Zhan v. Yongkang Jiangtuo Industry and Trade Co., Ltd. and Hangzhou Alibaba Advertising Co., Ltd.*).

Though it remains challenging to collect evidence in China, these emerging forensics methods certainly lift some workload off in terms of cost and efficiency. We encourage you to explore these new tools when you consider IP enforcement in China, and feel free to contact us if you have any questions regarding the above.