

Individual problems of collecting evidence from electronic media

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Abstract. The scientific work deals with the legal aspects of the normative consolidation of the concept of electronic media. The problems of collecting evidence from electronic media and ways to solve them are analyzed. In this paper, only one of the most common problems of criminology was analyzed. Namely, some problems of the process of collecting evidence from electronic media. All problems require additional discussion and solution. Ways to solve this problem were also suggested.

Keywords: evidence, electronic media, electronic evidence, Criminal Procedure Code, investigative actions.

Introduction

Currently, science and technology do not stand still, day by day, undergoing significant modernizing changes. Not an exception are the ways of transmitting information, which are also developing significantly. This development of the technosphere has an impact on all types of social relations, including the criminal environment.

So, as a rule, the latest technologies can be used not only with a plus sign, but also to commit specific types of crimes. Due to the increasing number of crimes using the latest technologies, there is a need in criminology to develop new techniques and methods for their disclosure and investigation.

The development of scientific technologies has led to the formation of a new type of evidence in law – electronic evidence, which is currently a little-studied area, regardless of the legal industry.

So, to date, the Criminal Procedure Code of the Russian Federation classifies electronic evidence into physical and other documents. As a result, this type of evidence is not allocated to a special group, but is combined with other existing ones. These issues, in one way or another, are regulated by Articles 84 and 86 of the Code of Criminal Procedure of the Russian Federation.

Purpose of the study – to establish the legal definition of electronic media, to investigate the procedure for collecting evidence from electronic media by specialists, to develop recommendations for improving the current legislation.

Materials and methods

The methodological basis of this research is based on the general scientific dialectical method of cognition of objective reality, as well as on the use of system analysis, structural-functional, comparative-legal, system-structural, formal-legal, and other particular methods of scientific cognition.

Results and discussion

In order for the evidence to be recognized by the court as admissible, it is necessary to collect it in accordance with the current criminal procedure legislation. Thus, the evidence must be collected through certain investigative actions, which include inspection, search and seizure. It should be noted that various omissions made during the investigation of criminal cases may lead to the termination of criminal prosecution and this will allow the guilty persons to avoid criminal punishment [4, p. 118].

Thus, the legislator does not give a clear definition of the term "electronic media" and uses it in the production of investigative actions: search, seizure and investigative inspection.

The collection of electronic evidence must be recorded in the protocol of the investigative action. The protocol is drawn up by an authorized person with the participation of a specialist who has knowledge in the field of computer technology. The participation of a specialist is particularly important, since he will directly examine the received electronic evidence. Thus, the specialist examines the evidence, and the investigator and interrogator creates and saves screenshots, as well as directly and inspect the site [5, p. 21].

It is important to keep in mind that electronic evidence must be recorded in a timely manner. The urgency of fixing is that electronic evidence, by its very nature of origin, can be quite easily changed or destroyed in an instant.

The following features of recording evidence in electronic form can be distinguished:

1. It is performed promptly;
2. It is necessary to involve a specialist;
3. It is carried out with the help of technical means, on which information is recorded, stored and reproduced [6, p.122].

The Code of Criminal Procedure of the Russian Federation specifies in Part 2 of Article 164.1 the need to involve a specialist in the seizure of an electronic data carrier, as well as to ensure that information is copied to another medium at the request of its legal owner [2].

Part 3 of Article 164.1 of the Criminal Procedure Code of the Russian Federation obliges the investigator to copy information from electronic media in the course of conducting investigative measures, making an appropriate entry in the protocol. An electronic media of the copied information is attached to the protocol. The participation of a specialist in this case is not required [2].

To date, a clear regulatory definition of an electronic carrier is not given. This makes it possible to equate almost any electronic, computing and other equipment that allows you to accumulate information with electronic media [8, p. 186].

To date, such a definition as "electronic information carrier" is fixed in GOST 2.051-2013, which states that an electronic medium is "a material medium used for recording, storing and reproducing information processed using computer technology" [3].

Taking into account the concept under consideration, it can be concluded that any technical means that allows you to accumulate information (from a CD/DVD disc to a computer) can be recognized as an electronic medium.

Due to the breadth of the definition of the concept of electronic media, there is a problem of equating any technical means with electronic media.

When collecting evidence from electronic media, the investigator is forced to invite a specialist. This can serve as a problem of a shortage of personnel in the IT field in large cities or in remote, remote areas of the country, where the probability of bringing a specialist from one area to another is extremely difficult.

It should be noted that the investigator, as an independent procedural person, has the right to withdraw and seal a simple (small equipment: an MP-3 player, a mobile phone) or complex (large - sized and multi-component elements) electronic media. In the process of studying the content of information on complex electronic media, it is worth resorting to the help of a specialist [7, p. 41].

Conclusion

To date, large-scale work is needed in the field of solving the problem of collecting evidence from electronic media, namely:

- in the current Code of Criminal Procedure of the Russian Federation, it is necessary to fix the exact concept of electronic media;

- Article 164.1 of the Code of Criminal Procedure of the Russian Federation should reflect the requirement to attract a specialist to conduct procedural actions with electronic media, as well as the need to train investigators to continue working with electronic media when withdrawing and copying information from them independently;

- divide the concept of electronic media into types: simple and complex. Accordingly, to use the services of a specialist in relation only to complex media, some complex types have connections that require the help of a specialist, because if the connection is incorrect, the equipment may malfunction.

Also, it is necessary to legislate the right of the investigator to make an independent decision on the need to attract a specialist. Since, during the production of investigative actions, only the investigator can objectively assess the situation and the possibility of independent seizure of electronic media in order to use them as admissible evidence in the future.

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