

## **Criminal Evidence in Internet Crimes**

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### **Abstract:**

The adoption of expertise in proving crimes related to the Internet is a very important matter, as it is easy for those in charge of the investigation to quickly detect the offender, and this is only achieved by accessing modern technologies that facilitate the detection of the offender in the fastest time.

It should not be forgotten that keeping pace with the development in detecting Internet crimes makes it easy for evidence to help detect crime, and accordingly, it must keep pace with the latest developments in Western countries in the field of detecting Internet crimes through the development of study curricula at the Police College and the work of research bodies and investigation bodies to reach to the judicial authorities.

**Keywords:** Criminal Proof, Internet Crimes, digital data, Experience, Recognition, Certificate, Clues

### **Introduction:**

The beginning of the twenty-first century witnessed a great development in various fields of life, civil societies developed in various sciences, the latest of which was the amazing development of humanity in the field of the Internet.

At the beginning of the use of the network, the crimes associated with it did not exist, as its use was limited to a specific number of interested people, but with the rapid spread in its use and the increasing number of users, new phenomena of criminal behavior were launched, which naturally necessitated the mobilization of all security efforts in order to confront them, starting from the police factor through the investigation stage by the Public Prosecution to the criminal judge who sentences either the sentence or acquittal in the face of the accused.

The means of proof are by which the judge becomes aware of the incident committed either through

his personal perception as in the inspection, or through another person such as a witness or expert. The development in the methods used to commit crimes has led to the difficulty of detecting the real criminal, which prompted the competent people to search for the latest means of detecting the crime and ways to prove it through scientific evidence to link the crime and its perpetrator and reduce the chances of judicial error, and the means of criminal proof play a very important role in proving the digital fact, which requires placing them in the framework that is consistent with the legitimacy of the evidence extracted from them.

The means of criminal proof in cybercrime will be addressed through two requirements as follows:

First Requirement: Experience in proving digital data.

Second Requirement: Other means of proof.

The first requirement

Experience in proving digital data

Science and technology play the fundamental role in criminal searches, as it is not possible to rely solely on intelligence and human activity alone.(1), Experience plays an important role in proof when it is not possible to become familiar with the criminal incident, as it is related to matters of a technical or specialized nature that require some degree of knowledge and knowledge of the field of knowledge or technical aspect that involves those issues, which requires resorting to experts to clarify the truth of the circumstances and circumstances of the commission of the crime.(2), The experience in proving digital data will be addressed through two branches as follows:

Section I: Experience in traditional crimes.

Second Branch: Experience in the digital system.

Section I

Experience in traditional crimes

Proponents of the predominant view in jurisprudence believe that experience is the way to interpret evidence technically through available information, as it represents a technical assessment of the evidence and not an independent evidence.(3).

In order to clarify the concept of experience in traditional crimes, it must be clarified what is experience and the legal basis of expertise, which will be explained as follows:

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First: - What is the experience:

Experience means giving a technical opinion from an experienced person in an incident that is the focus of a criminal proceeding.(4),It is also defined as the technical advice on which the judge relies in evidence, to be used in crimes that require technical and scientific knowledge that the judicial investigator does not possess.(5).

The Court shall carry out it when it needs to obtain important information through the competent authorities, to adjudicate in all cases where the decision requires practical or technical matters of which the judge is not convinced, although the latter is obliged to investigate the facts and form his conviction without the need to use others.(6)

The expert performs his task of revealing the truth through scientific proof and providing practical evidence, which is complementary to the criminal investigation, unless the investigator or judge can perceive it or derive his information, the criminal laboratory performs this task, and the expert provides the scientific explanation or logical conclusion.(7)

Experience in proving the occurrence of the crime and the speed of reaching the offender guides us through some procedures such as examining the body of the dead person to determine the causes of death and also includes mathematical issues to prove the crimes of embezzlement, tax offences or crimes of counterfeiting and counterfeiting of currency.(8).

Experience is of great importance in view of the progress in the scientific field, which is a great support for the judiciary and the competent authorities in reaching the adjudication of the case filed.(9)

Experience, testimony and examination agree that the person conducting it gives information in the incident committed that is useful in revealing the truth and differs in several things, the first of which is that the person based on the experience provides information that is an opinion or judgment reached through the application of technical principles and scientific laws, while the witness is an ordinary man who provides information about what he perceives with one of his senses, as well as the person conducting the examination is one of the men of public authority who submits a report on the situation at which the place of commission is committed. The crime is committed through technical means and rules recognized for each individual incident without going into the scientific details that relate to the disclosure of the causes and circumstances of the commission of the crime.(10)

Experience deals with one of two topics: the first deals with the moral issues associated with the

offender, such as the psychological, mental, civil and discrimination that are adopted to impose the appropriate punishment on him, and the second is that the subject of experience is laboratory tests using scientific methods to analyze the physical evidence in the crime committed.(11).

Second: The Legal Basis of Expertise:

The general principle is that the expert performs his assigned work himself and may not refer it to another expert of his colleagues in the field of the same specialization and this origin applies to his release as long as the expert has been appointed personally in the matter of scarring. Unless this right is expressly vested in the order of assignment or if the order of assignment was not issued to his person.(12).

In any case, the expert has the right to use other "specialists" to benefit from their experience in this regard in limited work, he may not take an oath or assign them to perform a task that requires technical appreciation, since he must then submit a request to the authority that assigned him explaining to him the importance of the research and asking it to assign a specific specialist to perform. The right of the expert to use others is limited to material, preparatory or other work, which does not require the expression of an opinion or personal appreciation of the assistant specialist. The task requested is nothing more than a means of collecting data to examine the expert in clarifying and implementing certain procedures that are not possible for him because of their special nature.(13)

The expert submits his experience in writing and not orally on the date determined by the competent judge or tribunals and if he is unjustifiably late for the appointment, the Public Prosecution may assign another expert, but the failure to specify this time or the expert's bypass does not result in invalidity, since in this case it is not a violation of a rule of public order, but a rule intended for guidance and guidance.(14).

As to whether the expert is considered a public servant or not, Ray argues that if the expert is an expert of the Institute of Forensic Medicine or Forensic Evidence or other official departments competent and not competent in the expression of expertise, he is treated as a public official, but if the expert is not an official who is not an employee, whether he is a table expert or outside them, however, the Iraqi legislator has resolved this matter as a person assigned to a public service, as the taxpayer has defined In a public service, where it is stated that the person entrusted with a public service is: any employee, employee or worker entrusted with a task in the service of the Government and its departments, including the Prime Minister, as well as arbitrators, experts and, in general, anyone who performs a public service with or without pay.(15).

### Section II

#### Experience in the digital system

Digital expertise is one of the types of experience developed, as it is the product of the new scientific revolution in the field of computer use and the Internet. According to some jurisprudence, judicial experience requires the availability of two pillars: the first is formal, the other is theoretical, the formal pillar is the specialization in the level of study and the science acquired in a way that referred the subject matter of the case to it, it should be codified by a scientific institution such as a university, institute or otherwise. The judiciary uses experts classified in this regard from what is included in the Court's roster, which is called the system of rosters of experts, which distinguishes the Francophone system, but this roster is not restricted to the judge so that he can use experts from outside the roster, but some legislation - such as French legislation -The judge must cause his decision, otherwise the decision to assign the expert will be null and void, while the substantive element is related to the scientific freedom of the expert in his use of his scientific and laboratory tools, according to which he puts the answers to the questions posed by the judge in the decision to assign the case at hand.(16).

In order to clarify the concept of experience in the digital system, it is necessary to clarify what is digital experience and practical tests of digital data as follows:

First: - What is the digital experience:

The expert in digital facts begins to apply the scientific rules of electronic computer science in order to retrieve the data that is evidence of the commission of the digital incident, perhaps the information is on the computer and easy to access and on the other hand this information may be difficult to access or this data may be encrypted as well as the same thing for the examination of networks, work is carried out in the place of the data on the network through which the data was accessed or any entry opening to commit the crime, and through this Science the identity of the person who accesses the network can be identified by ID, and network investigators make sure that he or she is entering the network. and the place of access to the network through the URL uniform resource locator(17).Some argue that evaluating the process of expertise in the field of the Internet is met with great difficulties, in contrast to experience in other scientific aspects such as medicine, engineering and... However, the expert should be able to assist the judiciary in resolving the circumstances of the matter, and the level of the expert affects the extent to which his views are accepted in court and does not affect his recognition, the court does not reject the expert's opinion because he is not the best at the level of experience or because he does not possess appropriate specialized considerations in the case before him.(18)

Proponents of this view believe that it is necessary not to focus on the formal pillar that includes

certificates and scientific stages or a particular methodology of study in view of the development of information technology, and this development makes the expert express his opinion according to what his experience and knowledge in a science that has no limits to the process of development in his field. The art of difficulty with a population will not achieve full and total knowledge of the subject of this science, and the supporters of this trend demonstrate that the conflict between the extent to which the Internet can be determined and its lack of course constitutes a fundamental conflict in terms of The principle, and the most likely is that the Internet path cannot be determined even with the possibility of IP identification. In its place, this view gives an indication that the expert's opinion is always easily refutable before the Court.(19).

Second: - Practical tests of digital data:

The Criminal Laboratory is the technical body concerned with the application of forensic methods to achieve justice by studying and analyzing(20), the material effects of the crime scene and submitting technical reports in this regard to the competent court.(21).

1 - Extracting scientific evidence using scientific evidence in scientific laboratories, in a manner that constitutes the full conviction of the trial judge.

2. Through the results of scientific tests to infer evidence, these results can contribute to the determination of the legal description of the crime and the application of the law through that scientific description of the commission of the crime.

3 - Determining the relationship between the offender and the crime using the scientific means available in criminal laboratories in order to consolidate the conviction of the trial judge in order to issue a fair sentence.

4. Scientific laboratories shall use technical methods and the latest techniques of science to extract scientific evidence and link the incident to the offender, depending on the use of the latest techniques and the competence of the expert based on the extraction of scientific evidence.(22).

The task performed by the expert is characterized by several characteristics, the first of which is that it is technical, and the second: that it has a judicial character, but that it is technical, it requires the expert's use of his scientific or technical information, especially if the task depends on the senses only, the person in this case is not considered an expert, and the judge does not have the right to use an expert in relation to the legal information that he is supposed to be familiar with, considering that it is at the core of the jurisdiction of the judge that no one disputes him, and does not need to reach it with the help of The expert's task is limited to answering the questions posed by the competent judge in the case for which the expert was assigned, and he may not turn to another, or delve into matters on which questions have not been received unless he finds that they relate to that crime and

that they can help to reach the perpetrators.(23),as for the fact that experience is of a judicial nature, it means that the expert is considered to be an assistant or adviser to the judge who gives his expertise in the case before in order to reach a fair judgment.(24).

Second requirement

Means of proof for others

Confession is one of the most important evidence in the field of criminal proof, and the testimony is in second place, and the testimony plays a great role in helping the judge and consolidating his conviction in the conviction or innocence of the accused, as well as the evidence is one of the indirect evidence that supports the evidence and achieves the conviction of the criminal judge in proving cybercrimes.

We will address the subject of this requirement in three sections and as follows:

Section I: Recognition.

Section II: Certificate.

Section III: Evidence.

Section I

### **Acknowledgement**

Confession is the strongest evidence in general, and for confession in cybercrime, it greatly affects the evidence in light of the lack of technical tools necessary by the investigating bodies to extract electronic evidence in proving cybercrime, or the inability to obtain evidence for technical reasons.

A confession may be judicial or non-judicial, and a confession is considered judicial if it is made before the court competent to hear the case, and is not considered judicial if it is done otherwise.(25).A confession contained in the minutes of the investigators and the minutes of the collection of evidence has no legal value unless it is made before the trial judge who is hearing the case in question.(26).

This recognition is limited to guidance only.

The general rule governing implicit confession, which was referred to by the Iraqi legislator in the Code of Criminal Procedure, is that confession may not be interpreted if it is the only evidence in the case and in the sense of a violation, there is nothing to prevent the interpretation of the criminal confession by the court in the event that there is other evidence to support and support it in order to prove that the confessed accused committed the crime. At the stage of the preliminary investigation, in the event that the accused retracts him before the trial court, in the event that such confession is abstract and is not supported by evidence or presumption supporting (27)the validity of that confession, the trial court has absolute power to assess and take into account the defendant's express confession, whether that confession is made before it or before the investigating judge or another

court in the same case or in another proceeding, even if it is subsequently reversed.(28).

Recognition has several conditions:

First: - The procedural capacity of the confessor must be available:

In order for the confession to have an influential legal value in the results of the investigation, it must be returned from those who are qualified to initiate it and who possess the necessary capacity and awareness, since if such capacity exists, the confession becomes effective and entails all legal effects, including the construction of the court's judgment on the basis of it.(29).

In order for the procedural capacity of the confessor to be considered, two conditions are required:

The first condition is that the confession be made by the accused:

any person against whom a case is brought before the competent court and the availability of the elements of the criminal complaint shall be considered accused in order for the confession to be considered evidence against the accused himself.

The accused must be a real natural person, not a legal person, and must be present, i.e. still alive, and if he is unnamed, he must be specifically appointed, if he can actually be appointed with his distinctive descriptions.(30).\

The second condition is that the accused must have awareness and discrimination at the time of making a confession:

The procedural capacity of the confessor, that is, aware of the gravity, nature and effects of the act, and who does not have the capacity of both the minor and the mentally handicapped, must be complete.(31).

Second: - The accused enjoys the freedom of choice:

The confession of the existence of guarantees not accompanied by coercion, whether materially coerced or morally coerced, must be issued without threat or pressure and issued by the accused against himself with his full will and freedom, otherwise the confession would be worthless if taken under torture and coercion.(32)

Third: The recognition in its form must be based on a legally valid procedure:

That means that the confession comes on the basis of a legitimate procedure stipulated, because if it is the fruit of a void proceeding, it is also invalid, and in practice it is invalidated if it is the result of a false interrogation because of the failure to take an oath, or the confession is the result of a false arrest or search as a result of a false legal offer.(33)

Some divide a confession that is considered evidence in proof and is considered to be a theoretical confession, and a practical confession (34).

If the offender comes forward and confesses of his own volition and does not understand any of the things and techniques of the Internet or computer, it is not correct to take this confession, as in these



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crimes the commission of the crime must be re-enacted and the evidence of its commission extracted from the monitoring of this confession, that is, the confession must be issued by a person who understands the priorities of the computer and the arts of dealing with it.

### Section II: Certificate

The basis for proof in criminal cases is the testimony of witnesses to investigations and hearings before the court<sup>(35)</sup>, testimony is a report issued by a person in relation to an incident that the witness has lived with one of his senses<sup>(36)</sup>: here the testimony is considered productive evidence on which to build to issue a verdict of conviction or acquittal.<sup>(37)</sup>

There is a so-called auditory testimony, that is, the witness heard from others about the façade in question, which in the opinion of a side of jurisprudence is less valuable than direct testimony, and the judge has discretion over it if he wishes to take it and if he wishes to leave it.<sup>(38)</sup>

The testimony derives its content through the witness's retrieval of what he has seen with his senses of what has been stored in the witness's mind, and the report issued by the witness may require his knowledge of a specific technical specialization that enables him to testify for what he has seen in the incident in question, and be a summary of the mental processes of the witness based on his awareness of the science of the technical specialization in which he is good at working.<sup>(39)</sup>

There are several conditions that a witness must have:

First: The witness must be distinguished and free to choose:

Discrimination is the ability of a person to assess what his actions are and their effects in terms of their seriousness and punishment, and the extent of their impact on the victim or the interest infringed upon.

Second: Commitment to the oath:

Witnesses must take an oath before testifying that they are testifying to the truth and only telling the truth, "and therefore the witness has no right to refrain from taking an oath and neither the judge nor the parties to the proceedings have the right to exempt him from it, otherwise the testimony is invalid.

Third: The witness should not have a capacity that prevents him from testifying:

Such cases are consistent with the principle that a witness may not be of a capacity that imposes obligations on him or her that are incompatible with his duties as a witness, for example, the judge may not be a witness in the case under consideration, the member of the Public Prosecution representing him at the hearing may not be a witness, the clerk of the hearing in the case may not be a witness, and the testimony of another accused of the same crime may not be admissible but the victim may be a witness, since his litigation to the accused is limited to Civil lawsuit.

In practice, the accused is not fit to be a witness who has denied or substantiated but his questioning has replaced the testimony and the testimony of one accused against another is not admissible in the

same proceedings, and the legislator has not provided for that principle but it is necessary to do so.(40).There is disagreement about the admissibility of the testimony of investigators or police officers, but the most likely opinion is that the testimony of those investigators or police officers should be accepted before criminal courts or competent judges.(41).

Testimony must be committed as it is a duty imposed by morality and protected by law, but circumstances sometimes prevent the performance of this duty, and testimony in cybercrime has a special nature related to the form of crimes on the Internet.

The testimony must be based on a fact within the scope of a criminal case so that it is based on it in determining the occurrence of a crime and attributing it to an accused or not, and here the testimony varies in whether it is taken as an inference or taken within the scope of the investigation procedures, whether it is preliminary or final, and the testimony is given before the investigating authorities, whether this investigation is preliminary or final.

### Section III

#### Clues

Presumption is the conclusion of a vague order from a clear matter, and there is no dispute over the authenticity of direct evidence in evidence,(42), and the judge is obliged to take it, but his discretion is vested in relation to indirect evidence (evidence) if it refers to the commission of a particular person by a particular person to a crime if he wishes to take it and if he wishes to neglect it.(43).

The evidence is of two types: the first is legal, which is the cases in which the legislator has taken over from the judge the process of inferring a certain order from the establishment of a particular fact, which is specified exclusively(44), which is used in the field of traditional crimes, and this is confirmed by the fact that such evidence in general and in the electronic sphere in particular leads to the introduction of the judge's conviction into the virtual world and the consequent possibility of convicting an innocent person.(45)

However, the modern trend calls for the introduction of indirect evidence and the expansion of its use in evidence due to the great development of evidence and the forced adoption of intangible evidence by modern societies.(46).

#### The end

After we have dealt through this research with the means of criminal proof in cybercrime, we have reached a set of conclusions and recommendations as follows:

#### **First: - Results:**

- 1- Adopting expertise as a means of proving crimes related to the Internet through the extraction of digital evidence through tests conducted for the physical components of digital technology devices.

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- 2- The need to verify the authenticity of the digital evidence in accordance with the rule that doubt is interpreted in favor of the accused, where the judge must proceed according to systematic controls to reach certainty in the evidence on which he bases his case.
- 3 - The witness in cybercrime is obliged to provide digital information, the most important of which is the information of printing files stored in the computer's memory, the statement of the secret password and the provision of images of information in a simple and specific manner.
- 4 - Follow the technical guidelines that suit the nature of the digital environment of the crime scene in order to reveal the truth of the incident, identify the person of the accused and preserve the evidence.
- 5 - The seizure of digital evidence requires some technical rules, the most important of which is to take the fingerprint of the data subject to seizure to ensure that it is not modified while following the scientific method in the reservation of digital evidence and transfer it to the criminal laboratory.

### **Second: - Recommendations:**

- 1- We wish the Iraqi legislator to expedite the enactment of a law on cybercrime and prove it, as the application of general rules in criminal proof for such crimes is no longer sufficient due to the tremendous development in information technology.
- 2 - The need to benefit from the work of Internet security services in developed countries and create a space for cooperation between them and local security services and benefit from what is provided by international organizations and what is contained in international agreements and treaties concluded to combat cybercrime.
- 3 - The importance of raising the awareness of the control authorities about the legality of surveillance via the Internet as a summons procedure in the work of criminal search if the place of surveillance is related to personal information or data.
- 4 - The need to qualify the investigation and judicial control officers on how to use the appropriate technical means that develop a specific technical approach that reveals the evidence of the commission of the crime while taking care not to infringe on the right to privacy of the accused.
- 5 - The need to benefit from the rulings of comparative justice, especially those reached by European countries, with the training of investigators and the conclusion of evidence in the laboratory about these crimes so that the evidence is presented correctly.
- 6 - Review the curricula of the Police College and the training teams of the police and security agencies specialized in cybercrime and electronic extortion, and develop guidelines for research bodies in cases related to cybercrime.
- 7- We call upon the Iraqi legislator to develop special legislation for cybercrime by indicating the elements of the crime, the means of confronting it and the penalties prescribed with a view to

reducing it, and that this law keeps pace with the novelty of these crimes, and depends on modern techniques in proof.

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