

ARTICLE:

# QQ MESSENGER CHAT RECORD AS CRIMINAL EVIDENCE IN CHINA

By **Minyan Wang**

**QQ Messenger chat record; proof of rape; digital evidence; admission; authenticity; integrity; criminal evidence in China**

## Introduction

In China, electronic evidence has been used in many cases, including civil and criminal cases. Electronic evidence has several forms, such as mobile text, e-mail, QQ Messenger chat record, etc. In the early stage of the internet, judges considered the admission of electronic evidence cautiously, partly because judges were not familiar with the new form of evidence, and because the technology is developing so fast that electronic evidence is difficult to categorize. This article will provide a note on a criminal case using QQ Messenger chat record as evidence. It is the first criminal case using QQ chat record as evidence in China.<sup>1</sup>

## Brief facts

On 22 October 2004, a father reported to the Jinghu police station in the Wuhu city of the Anhui province that his daughter Li, under 14 years old, was raped in a hotel. The police investigated the complaint. The suspect was Feng Tangxin, who got to know Li through QQ in early August 2004. On 8 September 2004, Feng Tangxin told Li that he was on business in Wuhu and asked Li to meet him in a hotel, where he raped her.

At first, Feng Tangxin confessed that he had sex with Li, and he knew that Li was under 14 years old. However, after a period of time, Feng Tangxin denied what he had said, and claimed that he did not know the real age of Li, and he did not have sex with her.

When the case was transferred to the People's Procuratorate of Jinghu District, the prosecutor returned it to the police for further investigation.

The difficulty in investigating this case was that Li's father reported the matter to the police station 44 days after the incident, and there was no other direct evidence to prove that Feng Tangxin raped Li. In a rape case, the evidence usually has to be obtained in a timely manner, otherwise it is difficult to collect the evidence. The problem was that 44 days are too long to collect relevant physical evidence.

After a detailed analysis, the police decided to focus on the electronic evidence. They collected Feng Tangxin's QQ number, username, and QQ address list. With corroborative evidence from his friends on the internet, the police confirmed that Feng Tangxin was the person who used the QQ number. The QQ username and number was also on Li's QQ address list. With the aid of digital evidence specialist, the police obtained the QQ chat record between Feng Tangxin and Li. The police printed out the chat record, which was 53 pages long. The chat record shows that Li told Feng Tangxin that she went to the second year of the high school, that she would obtain a national identity card two years later, which is only issued when a person reached the age of 16 years. At the same time, the police also obtained evidence from Feng Tangxin's internet friends that Feng Tangxin discussed with other internet friend the details of his rape of Li.

The court admitted the electronic evidence. The verdict indicated that "electronic evidence collected by the police and the police's investigation built the fact, which is integrate and stable." Feng Tangxin was convicted of committing rape and was sentenced to a

<sup>1</sup> *People's Court of Jinghu District, Wuhu City, Anhui Province, September, 2005.*

fixed term of imprisonment of 4 years. In this case, the electronic evidence had an important role in proving Feng Tangxin's behaviour, and thus in this case QQ chat record has great evidential value.

## Comments

### Whether the QQ chat record could be adopted as criminal evidence

The first issue that arose was whether the QQ chat record could be adopted as criminal evidence. Electronic evidence is a form of evidence, and could not be refused just because it is in electronic format.<sup>2</sup> To be admitted in criminal proceedings, it must possess three characteristics: authenticity, relevancy and legal validity.<sup>3</sup>

According to the provisions of the electronic signature law, a QQ chat record is a form of data message.<sup>4</sup> When considering the authenticity of a data message, a number of factors need to be taken into account, such as the reliability of the methods used for generating, storing or transmitting the data messages; the reliability of the methods used for keeping the completeness of the contents; and the reliability of the methods for distinguishing the addressers, etc. In this case, the police with the aid of a digital evidence specialist acquired the QQ chat record. This process of collecting the evidence of the QQ chat record complied with the law. With the aid of the digital evidence specialist, the reliability of generating, maintaining the completeness of the contents, and storing the QQ chat record demonstrated the evidence could be trusted.

Article 5 of the electronic signature law provides as follows:<sup>5</sup>

A data message shall be deemed to be in its original form as required by laws and regulations where it satisfies the following requirements:

- (1) It can present the information contained effectively and is accessible for use and investigation at any moment;
- (2) There exists a reliable assurance that the information has remained complete and unaltered from the time when its final form was

first generated. However, the addition of any endorsement and any changes that may arise in the course of communication, storage or display of data does not affect the integrity of the data message.

In this case, the evidence of the QQ chat record indicated the content of the exchange between Feng Tangxin and Li effectively, and its content was complete and unaltered under the guarantee of the actions carried out by the digital evidence specialist. Therefore the evidence was deemed to be original copies, and thus the QQ chat record was considered to be authentic.

A QQ number can be connected to a real person. In this case, the QQ number under investigation was connected to Feng Tangxin. As a result, the electronic evidence of the QQ chat record was relevant in this case. To ensure the QQ number belonged to Feng Tangxin, the police investigated other internet friends on Feng Tangxin's QQ address list, which corroborated that fact that Feng Tangxin used that QQ number. In this respect the chat record was relevant as evidence.

As to the legal validity of the QQ chat record, although the law protects personal information and privacy, criminal investigations are an exception.<sup>6</sup> The process of collecting the evidence of the QQ chat record complied with the law, which meant that the QQ chat record acquired by the police was valid, permitting the QQ chat record to be used as evidence.

### The weight to be given to the evidence

Second, even if the QQ chat record can be admitted as evidence in criminal proceedings, the next question was the value it has as evidence.

According to article 236 of the Criminal Law, a person who has sexual relations with a girl under the age of 14 years shall be deemed to have committed rape and shall be sentenced appropriately. There is an exception where the person is not aware that the girl is under the age of 14 years.<sup>7</sup> Therefore, it does not matter whether Li was willing or unwilling to have sexual relations with Feng Tangxin. It also does not matter whether Feng Tangxin had sexual relations with her by force, under threat or by any other means. If Feng Tangxin knew that Li was under 14 years old and he had sexual relations with her, he committed rape.

<sup>2</sup> Article 7 of the electronic signature law.

<sup>3</sup> Articles 42 and 43 of the Criminal Procedure Law.

<sup>4</sup> Article 2 of the electronic signature law.

<sup>5</sup> Taken from the translation of the law: Minyan Wang and Minju Wang, 'Translation and Introduction to the Electronic Signatures Law of

China', *Digital Evidence and Electronic Signature Law Review*, 2 (2005) 79 – 85.

<sup>6</sup> Article 45 of the Criminal Procedure Law.

<sup>7</sup> Interpretation Supreme people's court of certain issues concerning trial rape case.

In this case, at first Feng Tangxin confessed that he knew that Li was under 14 years old and that he did have sexual relations with Li. However, he later denied what he said. In the chat record, it was found that there were conversations such as:

“I will go to the second year of high school”

“I will get the identification card two years later”

Given this information, it can be referred that Feng Tangxin knew that Li was under 14 years old.

From the testimony of Feng Tangxin’s internet friend, Feng Tangxin told other internet friends the detailed process of having sexual relations with Li. Particularly, the story that Feng Tangxin told internet friends was consistent with what Li said when she was raped. Therefore, it was concluded that Feng Tangxin did have sexual relations with Li. In this case, the QQ chat record played a vital role in proving Feng Tangxin committed rape.

### Concluding comments

Compared with traditional forms of evidence, electronic evidence has some special characteristics, such as high-tech, diversity, and being copied without leaving a trace. These characteristics require electronic evidence to be treated in a different way to

traditional forms of evidence.

First, the acquisition, confirmation, delivery and storage of electronic evidence must comply with the law. The court determined the authenticity of electronic evidence. As electronic evidence is easily copied, changed, and deleted without leaving a trace, the process of collecting electronic evidence is particularly essential for ensuring the authenticity of the evidence.

Second, the value of electronic evidence is decided in a particular case and shall be considered with other form of evidence. For example, in this case, even if the content of the chat record was undoubted, it was still necessary to connect the QQ number to Feng Tangxie. Other forms of evidence are necessary to prove that Feng Tangxie was the person who used the QQ number. In this case, the police investigated other internet friends who knew Feng Tangxie to ensure the QQ number belonged to him, indicating that traditional methods of investigating crimes remain in the cyber age.

© Minyan Wang, 2011

Dr Minyan Wang is a member of the editorial board