

Appreciation of Electronic Evidence

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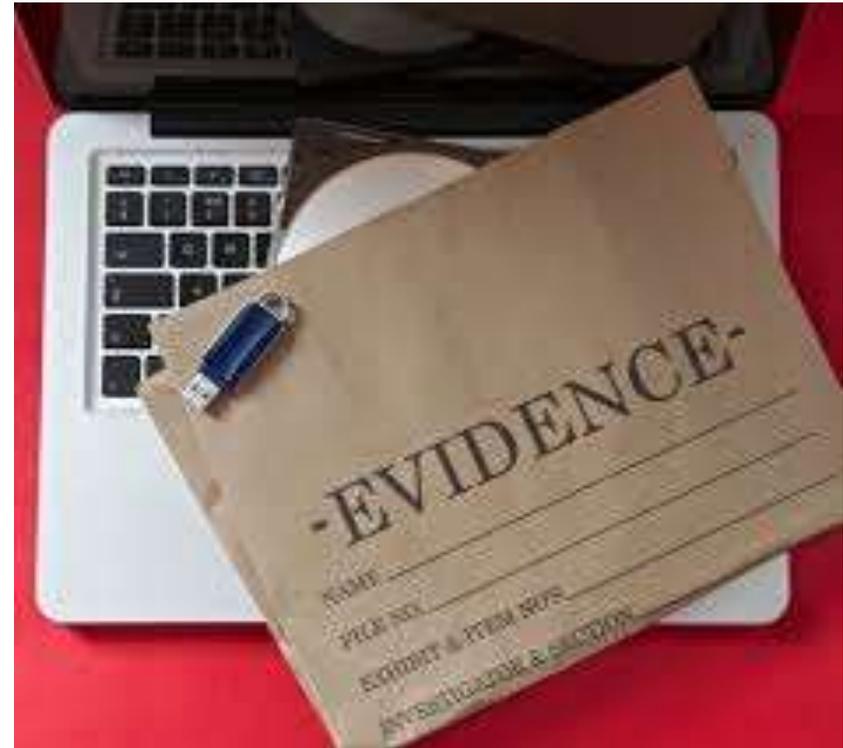
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ELECTRONIC EVIDENCE

Evidence means and includes all documents including electronic records produced for inspection of the court.



ELECTRONIC EVIDENCE

Electronic record means data record or data generated , image or sound stored, received or sent in an electronic form or micro film or computer generated attachment.



ELECTRONIC EVIDENCE IS FOUND IN

- 1)E-mails.
- 2)Photographs.
- 3)ATM transaction Logs.
- 4)Word Processing Documents.
- 5)Instant Message History.
- 6) Files Saved from Accounting Programs.
- 7)Spreadsheets.
- 8) Internet Browser History.
- 9)Databases.



Continued...

- 10) Contents of Computer Memory.
- 11) Computer Backup.
- 12) Computer Printouts.
- 13) Global Positioning System Tracks.
- 14) Logs from a Electronic Door Locks.
- 15) Digital Video or Audio Files.

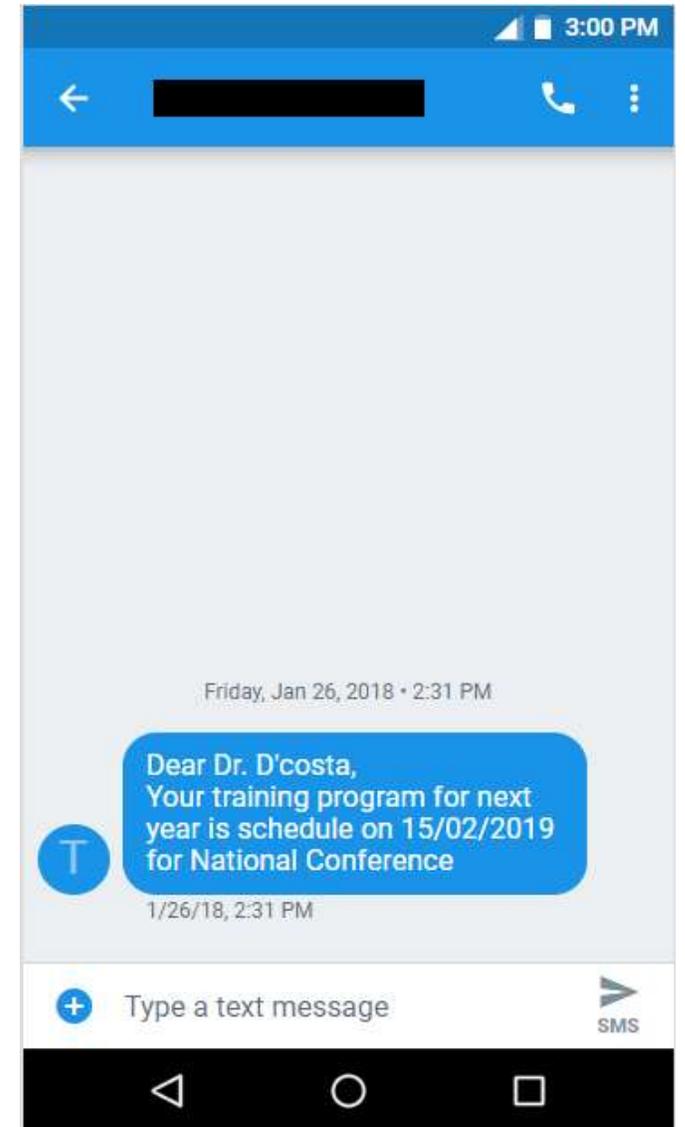


LEGAL RECOGNITION OF ELECTRONIC RECORDS

- The law provides that information or any other matter shall be in writing or in typewritten or printed form, then, notwithstanding anything contained in law, such requirement shall be deemed to have been satisfied if such information or matter is-
 - 1) provided made available in electronic form.
 - 2) accessible so as to be usable for subsequent reference.

Message Date and Time Modification

- Message date and time can also be fabricated to show that message has been received before/after the original date and time.



WhatsApp Chat Modification

- Even with end to end encryption WhatsApp messages can be modified.



IP ADDRESS AS EVIDENCE

IP Address provides only the location at which one of any number of computer devices, much like a telephone number can be used for any number of telephones.

Thus it is no more likely that the subscriber to an IP address carried out a particular computer function.



SECTION 65(B)(4)

Under the section 65(B)(4) the certificate which identifies the electronic record containing the statement and describes the manner in which it was produced giving the particulars of the device involved in the production of that records and deals with the conditions mentioned in Section 65(B)(2) and is signed by a person occupying a responsible official position in relation to the operation of the relevant device shall be evidence of any matter stated in the certificate.



CONTENTS OF THE CERTIFICATE

Following points are the necessary to be covered in the certificate to prove the authenticity of the evidence.

- ❖ That the information contained in the hard disks of the mentioned electronic device was regularly recorded into them in the ordinary course of activity.
- ❖ That during the period in question the mentioned device were operating properly at all times and there have been no such operational problems so as to affect the accuracy of electronic record.
- ❖ That the computer hardware and software used in the computer system have built in security systems.

WHEN IS IT APPLICABLE?

- When signed by a person occupying a responsible official position in relation to operation of relevant device.
- Source, authenticity which are the two hallmarks pertaining to electronic record sought to be used as evidence.
- Only if the electronic record is duly produced in the terms of the Section 65-B of Indian Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A- opinion of examiner of electronic evidence.

TEMPLATE OF THE CERTIFICATE

Certificate u/s 65B of the Indian Evidence Act, 1872.

This is to certify that I, _____, residing at _____, state to the best of my knowledge and belief that I have extracted the images from a mobile device having following details:

DEVICE DETAILS	
MODEL NUMBER	
DEVICE NAME	
SIZE	
SERIAL NUMBER	
IMEI NUMBER	

I state that the device used for extracting the photos was functioning normally at all times.

I further state that the device utilized by me was used to store and process data and were operating properly and there is no distortion in the accuracy of the contents of the copies of the images.

The above is stated to the best of my knowledge and belief.

CASES WHERE 65-B WAS NOT GIVEN, BUT THE EVIDENCE WAS CONSIDERED

<p>24. Om Prakash v. State (decided on - 23.05.2014)</p> <p>Dr. S. Muralidhar, J.</p>	<p>High Court of</p>	<p>2014 SCC OnLine Del 3213 : (2014) 143 DRJ 349</p>	<p>True caller report is admissible. While it is correct that no certificate under Section 65B of the Indian Evidence Act has been produced by the defence, an important fact that has been overlooked is that DWs 2 and 4, when shown the Truecaller Details, admitted that they were correct as regards their own mobile numbers. Therefore, to that extent the TDs could not be rejected as being inadmissible.</p>
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TIME OF 65-B(4) CERTIFICATE

31. Avadut Waman Kushe v. State of Maharashtra (decided on - 03.03.2016) R. P. Sondurbaldota J.	High Court of Bombay	2016 SCC OnLineBom 3236	The certificate need not be filed at the time of production of the electronic record. It can be filed at the time when the evidence is tendered in evidence and that subsequent filing cannot reduce its effectiveness. Section 65B is about the admissibility of the electronic record and the not the production of it.
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PRODUCTION OF A FRESH CERTIFICATE

33. Nyati Builders v Rajat Dinesh Chauhan (decided on - 18.12.2015)	High Court of Bombay	2015 SCC OnLineBom 7578	At the time of filing of electronic records (emails), certificate u/s 65B was not filed. The learned trial Judge via order, allowed application of plaintiffs to produce a fresh certificate. The issue of admissibility was kept open at the stage of final hearing and thus, emails were neither discarded nor admitted in evidence. The emails thereof, were treated as
			primary evidence which is upheld by the Bombay High Court.

PERSON COMPETENT TO PRODUCE THE CERTIFICATE

<p>35. Shradha Shipping Co. v. Adhithri Trading Co. (decided on - 25.11.2014)</p> <p>U.V. Bakre, J.</p>	<p>High Court of Bombay</p>	<p>2014 SCC OnLine Bom 2273 : 2015 Cri LJ (NOC 483) 158</p>	<p>Certificate under Section 65B of the Evidence Act must be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) so that the electronic record produced can be taken as admissible evidence.</p> <p>Held, private consultant with no responsible official position and no free access to computer cannot issue a 65B certificate.</p>
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ELECTRONIC EVIDENCE AS PRIMARY EVIDENCE (NO CERTIFICATE REQUIRED)

<p>12. Sunil Panchal v State of Rajasthan decided on - 03.06.2016) Mohammad Rafiq and Vijay Kumar Vyas, JJ.</p>	<p>High Court of Rajasthan</p>	<p>2016 SCC OnLine Raj 5140 : (2017) 1 RLW 566 : 2016 Cri LJ 4238 : (2016) 4 WLC 437</p>	<p>A tape-recorded cassette is a primary and direct evidence of what has been said and recorded. Difference between primary and secondary evidence is of utmost importance.</p> <p>Therefore, tape recorder attached to land line telephone to be considered, without a 65B certificate.</p> <p>Voice of accused recorded at the time when ransom call was made by him has matched with his voice recorded in another cassette.</p>
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MOBILE PHONE FALLS UNDER THE DEFINITION OF COMPUTER

<p>64. Syed Asifuddin v. State of Andhra Pradesh (decided on - 29.07.2005)</p> <p>V.V.S. Rao, J.</p>	<p>High Court of Andhra Pradesh</p>	<p>2005 SCC OnLine AP 1100 : 2005 Cri LJ 4314 : (2006) 1 AIR Kant R (NOC 4) 2 : (2006) 1 AIR Jhar R (NOC 4) 1</p>	<p>The judgment examines how a cell phone works and compares it to the definition of 'Computer' and 'Computer Network' under the IT Act, to hold that, "a cell phone is a computer which is programmed to do among others the function of receiving digital audio signals, convert it into analogue audio signal and also send analogue audio signals in a digital form externally by wireless technology."</p>
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DIRECTIONS ON ADMISSIBILITY OF EMAILS

67. Nidhi Kakkar v. MunishKakkar (decided on - 10.02.2011) K. Kannan, J.	High Court of Punjab and Haryana	2011 SCC OnLine P&H 2599 : (2011) 1 HLR 533	If the party denies having sent the email, a 65B certificate from the operator of the server of what the text contained will be required to authenticate the text of the transmission.
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*Thank
you*

