

Search and Seizure of Digital Evidence

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Abstract

Digital records are playing a very attractive role in the contemporary age. In many cases, digital records are important evidence for the prosecution to prove material facts. However, digital records is intangible, cannot be directly accessed by people, and must be stored in drivers so, in order to conduct computer forensic, law enforcement must seize drivers, even computer equipment , for a long time. Undoubtedly, this would deeply intrude people's property rights. In addition, private information, which is stored in electronic media and is not related to any crimes, may be accessed by law enforcement officers in the process of computer forensic. From this perspective of privacy intrusion, computer forensic constitutes search within the meaning of criminal procedure. Therefore, in order to properly protect people's constitutional rights, no matter what name law enforcement may use, computer forensic must follow the procedure requirements governing traditional searches and seizures.

From the aspect of privacy and property rights, and court opinions of the United States, this article introduces the process of the searches and seizures of digital records, reasons the differences between traditional searches and seizures and the searches and seizures of digital records, and indicates the rules and principles regulating the searches and seizures of digital records. This article also provides the suggestions to explain and apply the contemporary statutes when conducting the searches and seizures of digital evidence, and to amend the current Criminal Procedural Code.

Keywords: search, seizure, electronic records, privacy, computer forensic, the plain view doctrine

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