Legal article

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How to Collect Evidence of Online Defamation That Carries Weight

By Eksiam Chaisorn, Legal Consultant
Eksiam & Partners Co., Ltd.

> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamdefamationlaw.com/en/articles/digital-evidence.html

Key points

- **Section 11** of the Electronic Transactions Act B.E. 2544 (2001) prohibits denying the admissibility of a data message as evidence in legal proceedings merely because it is a data message.
- Admissibility and weight are two different questions. The court still weighs the authenticity of the evidence together with the other evidence in every case.
- The first set of evidence you need is whatever proves the element of "imputation to a third person" under **Section 326** of the Criminal Code: screenshots showing the statement, the poster's name, the date and time, and the page address.
- If a post was published to the public, the extent of access is also a fact that must be recorded, because it goes to the aggravated offense under **Section 328**.
- Several consistent forms of evidence are stronger than a single item, while editing or altering images opens the door to later challenge.

Eksiam & Partners Co., Ltd. | Tax ID 0105569142001
300/90 Premium Place, Nawamin Road, Nawamin, Bueng Kum, Bangkok 10240, Thailand
Tel. +66 81 654 5922 | contact@eksiamlegal.com | eksiamlegal.com
Online version https://eksiamdefamationlaw.com/en/articles/digital-evidence.html

- Collect the evidence before the other side deletes it, and only then assess your options, because defamation is a compoundable offense under **Section 333**: a criminal complaint must be lodged within three months from learning of the offense and the identity of the offender, under Section 96.

The strength of an online defamation case depends on the evidence collected from the outset. Section 11 of the Electronic Transactions Act B.E. 2544 (2001) prohibits denying the admissibility of a data message merely because it is in the form of a data message, so the remaining questions are completeness and credibility, both of which depend entirely on how the evidence was collected.

What to collect

The evidence you need first is whatever proves the element of "imputation to a third person" under Section 326 of the Criminal Code: screenshots showing the full statement, the poster's name, the date and time, the page address, the original unedited text, any available metadata, and witnesses who saw the statement at the time.

- **Screenshots** showing the statement, the poster's name, the date and time, and the surrounding context
- **The page address (URL)** of the post or comment
- **The original text**, unedited, together with any related image, video, or audio files
- **Metadata** where available, such as the date and time a file was created
- **Witnesses** who saw the statement at the time

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This set of evidence supports the criminal complaint, which must be lodged within three months from the day the injured person learns of the offense and the identity of the offender, under Section 96 of the Criminal Code. The complaint procedure, and the cases in which a police report does not count as a criminal complaint, are explained in the article Defamed online: can you file a police complaint? (Thai)

Electronic evidence is admissible

Section 11 of the Electronic Transactions Act B.E. 2544 (2001) prohibits denying the admissibility of a data message as evidence in legal proceedings, whether in a civil case, a criminal case, or any other case, merely because it is a data message. The dispute is therefore not whether the evidence is admissible, but how much weight it carries.

Thai law accepts data messages as evidence. The Electronic Transactions Act B.E. 2544 (2001) establishes that information cannot be refused merely because it is in electronic form, but the court still considers the credibility and authenticity of the evidence.[1]

What makes evidence more credible

Once admissibility is not an issue under Section 11 of the Electronic Transactions Act B.E. 2544 (2001), what decides the matter is weight. Several consistent forms of evidence, such as screenshots together with the page address and witness testimony, are stronger than a single item, while editing or altering images gives the other side room to challenge their authenticity.

- Collect several consistent forms of evidence, such as screenshots together with the link and witness testimony.
- Avoid editing or altering images, which may invite a challenge later.
- Record a clear timeline of when you saw the statement and when you collected the evidence.

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> Collect first, consult first
>
> If you expect a dispute, collect the evidence in full before the other side deletes it, and consult a legal consultant to assess whether the evidence is sufficient for the course of action you want to take.

Footnotes

1. Electronic Transactions Act B.E. 2544 (2001), on the admissibility of data messages as evidence, read together with the principles for weighing evidence under the Codes of Procedure.

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