



The Chartered Institute of Legal Executives (CILEX),
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Ministry of Justice
Computer Evidence Call for Evidence Team
Via Email Only

14 April 2025

To whom it may concern,

RE: Use of Evidence Generated by Software in Criminal Proceedings

CILEX would like to take the opportunity to respond to the Ministry of Justice's consultation relating to the Use of Evidence Generated by Software. CILEX represents a substantial number of practitioners who frequently engage with software generated evidence in criminal proceedings.

The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).

CILEX represents over 17,500 members of which 77% of the membership are female, 17% of members are from an ethnic minority background, 4% are LGBTQA+ and 6.2% have a disability. Additionally, in terms of social mobility, 64% of CILEX members attended a state-run or state-funded school and 49% have an undergraduate university degree. 15% of members come from households which received free school meals.

Common law (rebuttable) Presumption

CILEX is of the view that the current common law presumption relating to computer evidence is a complex and difficult issue. CILEX overall hopes that any changes to this area of law allows trials to be fair and ensures that convictions are safe.

CILEX believes that a core reason for the presumption is one of expedience. CILEX recognises the overriding objective in criminal cases, and specifically the need to deal with cases efficiently and expeditiously.¹ CILEX believes that forcing all computer-generated evidence to be proven to be working correctly for each trial, could be an unnecessary burden on parties, and especially on prosecutors.

This will lead to substantial costs for whichever party is seeking to introduce the evidence and will also have additional costs for parties who are required to instruct expert witnesses. Additionally, in an era where the criminal court backlog stands at 74,651,² CILEX questions whether additional burdens on cases is advisable, given the detrimental impact which it will have on complainants and defendants. CILEX also notes that previously, the former section 69 PACE 1984 was considered '*rather cumbersome and impractical*'.³

However, CILEX also recognises the recent scandals relating to computer-generated evidence, namely the Horizon Post Office computers. CILEX also accepts that in 2025, especially in light of developments with artificial intelligence, all computer-generated evidence must be suitably scrutinised. Furthermore, given the chain of custody required for physical evidence in criminal cases, and the inferences and admissibility of incorrectly handled evidence, CILEX questions whether a similar chain of evidential integrity is needed for digital evidence.

Given that the vast majority of software code is a) illegible to untrained individuals, b) commercially sensitive, and c) becoming exponentially more complex, it is vital that the trier of fact can trust and rely upon evidence generated from it. As such, the use of experts, and statements of truth, are vital to provide the necessary confidence in the evidence and ensure that it is suitably probative.

CILEX also believes that if the presumption were to be removed, then it would quickly become established practice that certain thresholds and evidence is required to demonstrate the integrity and condition of the computer-generated evidence. Once established, practitioners will adjust, and this will hopefully limit the burden to the producers of the evidence over time.

¹ Criminal Procedure Rules, Rule 1.1(1)(f)

² Criminal Court Statistics Quarterly, <<https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2024/criminal-court-statistics-quarterly-october-to-december-2024>> Accessed 11/04/2025

³ Bird & Bird, 'Computer-Generated Evidence – Time for a New Approach' <<https://www.twobirds.com/en/insights/2024/uk/computer-generated-evidence-time-for-a-new-approach>> Accessed 11/04/2025

As a result, CILEX could contemplate the removal of the burden so long as suitable remuneration and support was put in place to minimise any additional burdens placed on those who seek to admit computer-generated evidence. Given the substantial effect this will have on practitioners and on the courts system, these safeguards must be put into place before the presumption should be considered for removal.

Defining Computer-Generated Evidence

CILEX supports defining computer-generated evidence within the criminal procedure rules. CILEX advocates for the inclusion of a section similar to s69 of the Police and Criminal Evidence Act 1984. However, CILEX believes that this should have specific caveats. The Maryland Code and Court Rules provides some suggested caveats. Whilst this is for civil procedure, CILEX believes it could be amended for criminal procedure:

“Computer-generated evidence” means (1) a computer-generated aural, visual, or other sensory depiction of an event or thing and (2) a conclusion in aural, visual, or other sensory form formulated by a computer program or model. The term does not encompass photographs merely because they were taken by a camera that contains a computer; documents merely because they were generated on a word or text processor; business, personal, or other records or documents admissible under Rule 5-803 (b) merely because they were generated by computer; or summary evidence admissible under Rule [X] spread sheets, or other documents merely presenting or graphically depicting data taken directly from business, public, or other records admissible under Rules [Y].”⁴

Specifically, CILEX believes that evidence should be excluded from the definition of ‘computer-generated evidence’:

- Merely because it was typed on a computer;
- Merely because it has been duplicated electronically; and
- Merely because it is held or stored on a computer.

CILEX believes that evidence such as photographs should be certified by those who took the evidence. This should be certified with a statement of truth to confirm that a) the device used to take the photograph/image does not distort the image (e.g. through AI enhancements or filters), and that b) the photograph has not been distorted after the photograph was taken, either manually or via software (e.g. Photoshop or AI).

Summary

⁴ Maryland Code and Court Rules, Rule 2-504.3. Computer-Generated Evidence

CILEX welcomes development in this area given the recent cases demonstrating failures on software's part, and the devastating impact it has had on individuals. However, CILEX also requests that any amendments must be proportionate, and not overly burdensome on those seeking to admit software-generated evidence. CILEX believes that part of this burden can be removed through carefully used caveats. CILEX also recommends advance training and support for all practitioners who wish to engage with this change.

CILEX looks forwards to the next stage in the Ministry's review on this area of law.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Simon Garrod', with a stylized flourish at the end.

Simon Garrod,
Director of Policy and Public Affairs