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The Auxiliary Questions Approach to Electronic Evidence

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Abstract:

In a society where ICT and computer networks are ubiquitous, triers of fact are frequently confronted with real evidence in electronic and digital format. Computer data can be crucial in proving both online and offline events, but it is often difficult for the trier of fact to determine the exact meaning and evidentiary value of such material. I propose a set of auxiliary questions to aid triers of fact in evaluating electronic evidence rationally. The proposed auxiliary questions relate to the origins, processing, and content of computer data proffered as evidence, as well as relations between such data, other evidence, and background knowledge. While the proposed auxiliary questions do not provide exact, definite and correct answers in all situations, I argue that they can be a practically useful complement—not a replacement—to previously established methods of evaluating evidence.