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Communication of Acceptance in an Electronic Age

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ABSTRACT

The prospect of earning revenues generated by electronic commerce has driven many countries to amend existing legislation or enact new laws to deal with important legal issues arising from electronic commerce activities. Policy framework and regulations are laid out for the purpose of promoting facilitative environment for electronic commerce. Despite the fact that the internet has been around for almost two decades, the existing or amended laws have not been expounded in real case situation as there has been no case law brought to courts. An analytical evaluation is therefore required to examine the issues raised by internet communication relating to acceptance rules. This paper aspires to examine the application of the common law as well as the relevant regulation in the context of acceptance via internet medium. The result clarifies the acceptance rules for different method of internet communication.

Key words: acceptance, dispatch rule, information rule, receipt rule.

Introduction

The UK’s electronic commerce has been flourishing. In 2011 the Interactive Media in Retail Group reported that online sales in the UK have reached almost £70 billion, with the growth rate at 16%. Almost 40 million people have participated in internet shopping with the percentage of online and high street shopping at 17 and 83 respectively (IMRG Reports). IM3 reported that the total sales for online shopping for 2010 were in the region of £56 billion. This is a huge increase compared to the last ten years which saw an average of £25 billion for online sales. It was also reported that the number of internet shoppers was around 6 million ten years ago, and online sales were less than £2 billion (IM3).

Retail electronic commerce mostly takes place via web or electronic mail contracting. Despite the fact that internet contracting has been conducted for more than a decade, the existing laws have not been expounded in real case situation as there has been no case law brought to courts. An analytical evaluation is therefore required to examine the issues raised by internet communication relating to acceptance rules.

As far as position under the common law is concerned, the acceptance takes effect upon three alternative rules: the information rule, upon receipt or upon the dispatch of the acceptance letter or telegram (Bradgate, 2003). The information rule and in appropriate circumstances the receipt rule are the rules of general application, and the dispatch is the exceptional rule. The following explains each of the rules with a view to see which rule fits electronic mail and web acceptances. It may be mentioned that as opposed to web acceptance, there has been no consensus among commentators as to the rule applicable to electronic mail. Some designate the information/receipt rule (Dickie, 1998) and others prefer the dispatch rule (Murray, 2000); the differing views stem from their disagreement as to the speed of electronic mail.

Rules of acceptance:

(a) The information rule:

The information rule under the common law requires the acceptance to be communicated. Several decisions confirm that the acceptance would take effect upon being notified to the offeror, such as Carlill v. Carbolic Smoke Ball (1893) 1 Q. B. 256, Entores v. Miles Far East Corporation (1955) 2 Q.B. 327 and Holwell Securities Ltd v. Hughes (1974) 1 All ER. The requirement of notification as a general rule is reconcilable with the notion that a contract is founded on an agreement. Nevertheless in certain circumstances where the delay in reading the acceptance is contributed by the fault of the offeror, insistence on the information rule would not be
fair to the offeree. As explained in the following, the common law has made the acceptance effective upon the receipt rule in such a situation.

(b) The receipt rule:

Under certain circumstances, the receipt of the acceptance is quite adequate to constitute the point of the acceptance. The necessity of the receipt rule was recognised in Tenas Steamship Co Ltd v. Owners of the Motor Vessel Brimnes (1974) 3 All ER 88. The case did not concern the communication of an acceptance but a revocation of contract. The case illustrates the application of the receipt rule when the delay of reading of the message was caused by the recipient’s negligence. In this case, a message terminating a contract sent during the office hours i.e. between 17.30 and 18.00 hours but claimed to be read only the next morning, was held to have been delivered at 17.45 hours. In Brinkibon Ltd v. Stahag Stahl Und Stahlwarenhandelsgesellschaft M.B.H (1983) 2 AC 34, the House of Lords had to consider the situation in which telex may be sent at night, where Lord Wilberforce stated that “the time of the acceptance is to be determined on the basis of the intention of the parties, sound business practice and the decision where the risk should lie”. Brinkibon’s case has been applied in Schelde Delta Shipping BV v. Astarte Shipping Ltd (1995) 2 Lloyd’s Rep. 249, where it was held that if an acceptance is sent outside the normal business hours, the communication is not effective until the opening of business the next day. In this case the receipt rule was not adequate as the delay in reading the acceptance was not the fault of the offeror.

(c) The dispatch rule:

This dispatch rule which was first established in Adams v. Lindsell (1818) 1 B & Ald 681, was meant to be applied to acceptance transmitted by letter and telegrams. Hence, where the offeror authorises acceptance by post, acceptance may be communicated simply by posting a properly addressed letter of acceptance. The acceptance is effective when the letter is handed to the post office, on the authority of The Household Fire And Carriage Accident Insurance Company (Limited) v. Grant (1879) 4 Ex D 216.

Case decisions have offered various explanations for the dispatch rule under the English law (Treitel, 2003). First, the offeror must be considered as making the offer all the time that his offer is in the post, and the agreement between the parties is complete as soon as the acceptance is posted. Further, another suggested reason for the dispatch rule was that the Post Office is a common agent for both parties, and that communication to this agent immediately completes the contract. This is on the authority of The Household Fire And Carriage Accident Insurance Company (Limited) v. Grant (1879) 4 Ex D 216. Nevertheless it was decided in Henthorn v. Fraser (1892) 2 CH 27 that the content of the letter cannot realistically be said to have been communicated to the Post Office, which in any case is at most an agent to transmit the acceptance (Evans, 1996). Further, it has been suggested that the rule minimises the difficulties of proof, as it is said to be easier to prove that a letter has been posted than that it has been received. Nevertheless this depends on the efficiency with which the parties keep records of incoming and outgoing letters (Treitel, 2003). Finally, Gardner has given a different perspective in justifying the dispatch rule, where he argued that the perceived reliability of the postal communication in its early days of introduction is the reason for the application of the postal acceptance rule (Gardner, 1992).

The reason underlying the dispatch rule under the English law is the practicality and convenience provided to the contracting parties, or what is described as commercial expediency justification. The leading authority on this issue is Adams v. Lindsell (1818) 1 B & Ald 681 and later confirmed in Lord Brandon in Brinkibon Ltd. V. Stahag Stahl UndStahlwarenhandelsgesellschaft M.B.H. (1983) 2 AC 34.

Acceptance via electronic mail:

It is thought that under the English law, the information rule, i.e. the rule of general application would not apply to electronic mail acceptance. There are three justifications forming the basis of the application of the information rule, consisting of instantaneous transmission, direct communication and the ability to check failure of transmission through record of delivery (Glatt, 1998). The following discussion indicates that the justifications found for the information rule, in particular the determining justification of the ability to check the failure of the transmission of the acceptance message, are not present with the electronic mail communication.

(a) The first justification; the instantaneous transmission:

The instantaneous transmission justification is derived from Entores v. Miles Far East Corporation (1955) 2 Q.B. 327 where Denning L.J said that:
"Communications by these means (telephone and telex) are virtually instantaneous and stand on a different footing", and ‘my conclusion is that the rule about instantaneous communications between the parties is different from the rule about the post’.

In the context of telex communication, the instantaneous justification may refer to two points; the speed of the message while it is in the course of transmission, and the immediateness of the message in being brought to the attention of the offeror after receipt in the receiving machine. The second point, i.e. the immediateness of notification, is not strictly insisted upon. The message is deemed communicated upon its receipt. This is evident in Lord Fraser’s judgement in Brinkibon Ltd v. Stahag Stahl Und Stahlwarenhandelsgesellschaft M.B.H. (1983) 2 AC 34. The delay was acknowledged in certain circumstances, such as where the operator has no authority to conclude the contract. It was said that:

“There is very little, if any, difference in the mechanics of transmission between a private telex from one business office to another, and a telegram sent through the post office - especially one sent from one large city to another. Even the element of delay will not be greatly different in the typical case where the operator of the recipient’s telex is a clerk with no authority to conclude contracts, who has to hand it to his principal. In such a case a telex message is not in fact received instantaneously by the responsible principal”.

Despite the delay, Lord Fraser concluded that telex is an instantaneous communication for the following reasons:

“Nevertheless I have reached the opinion that, on balance, an acceptance sent by telex directly from the acceptor's office to the offeror's office should be treated as if it were an instantaneous communication between principals, like a telephone conversation. One reason is that the decision to that effect in Entores v. Miles Far East Corporation (1955) 2 Q.B. 327 seems to have worked without leading to serious difficulty or complaint from the business community. Secondly, once the message has been received on the offeror's telex machine, it is not unreasonable to treat it as delivered to the principal offeror, because it is his responsibility to arrange for prompt handling of messages within his own office”.

In electronic mail, the speed of transmission refers to the journey of the message from the point the message is sent, transmitted to and received in the sender’s ISP, transmitted to and received in the ISP of the recipient, and finally transmitted to and received in the recipient’s computer when the recipient logs into the ISP server. The delay, if any, on the part of the recipient in retrieving the message from the mail box would not be relevant on the basis of the sufficiency of the receipt rule as reflected in the judgement of Lord Fraser quoted above. It is the responsibility of the recipient to check the mail box within a reasonable time to see if the acceptance message has already been received. For business recipient, reasonable time is likely to be within the business hours. It is difficult to ascertain what amount to reasonable time in the case of consumer recipient, previous course of dealing may provide a useful guideline.

The general view with regard to the speed of electronic mail transmission is that it is non-instantaneous. Thus, electronic mail fails to satisfy the instantaneous justification of the information rule.

(b) The second justification; direct transmission:

The information rule anticipates the communication to be direct. This justification is derived from the third party requirement of the dispatch rule, which arises from the dictum of Thesiger L.J in The Household Fire and Carriage Accident Company v. Grant (1879) 4 Ex D 216. There Thesiger L.J said that: “the acceptor, in posting the letter, has, to use the language of Lord Blackburn, in Brogden v. Directors of Metropolitan Rl. Co., put it out of his control and done an extraneous act which clutches the matter (emphasis added), and shews beyond all doubt that each side is bound”.

A question would arise as to whether intermediary-based electronic mail is or is not a direct communication. It is thought that the correct view should be that it is not a direct communication, given the role of the service provider, which is more than merely enabling and facilitating the transmission. The service provider stores the message received from the sender, to be collected by the recipient. The holding of the message by the server is comparable to the role of the P. O. box from which letters have to be picked up (Glatt, 1998). The role of the service provider to store the message on a host computer which is external to the recipient is not present in the conventional fax and telex. With this role, it is not possible to treat the intermediary-based electronic mail as a case of a direct transmission.

(c) The third justification; the ability of the offeree to check the status of transmission:

This justification can be extracted from the deliberation on the rule made in Entores, Ltd v. Miles Far East Corporation (1955) 2 Q B 327. Denning’s judgement indicates that the acceptance is effective upon receipt when the offeree has the chance to know the failure of the communication of the acceptance. In the telephone acceptance, the offeree can trace the problem when the conversation is abruptly broken off, and in the telex acceptance, the offeree knows the failure of the communication when he receives a ‘non-receiving’ message,
which is automatically generated. With the ability to detect the problem of transmission, the offeree can resend the acceptance until it is finally received by the offeror. In this way the receipt rule evades the risk of no contract to the offeree. Apart from the answerback in telex, the transaction report in fax and recorded delivery in postal communication also enable the offeree to confirm whether transmission of the acceptance has been successful or otherwise.

It may well be said that the ability to check the status of transmission constitutes the determining justification of the information rule. Chitty suggested the definition of ‘instantaneous’ should depend on whether the sender knows of any failure in the communication (Chitty, 2004). Some commentators observe that the term instantaneous as used in Entores does not refer so much to the speed of transmission, but it refers more to the system in which it is possible for a party to notify the other party immediately if the message is not clearly received, so that the other party could respond and clear up the confusion without delay (Forder and Quirk, 2001). The tolerability of delay in the communication of acceptance by telex which is received by a clerk who has no authority to conclude the contract, as shown in the judgement of Lord Fraser in Brinkibon’s case, is made partly for the reason of this ability to check the status of transmission.

The return receipt and the bounced back message could enable the offeree to know the status of transmission of the acceptance message, nevertheless these mechanisms are not fully reliable (Kadir, 2012). Hence, given their non-reliability, it is likely that the information rule could not govern electronic mail acceptance under the English law. The offeree would not be able to monitor the failure of transmission fully. The return receipt and the bounced back messages confirm the receipt of the message in the ISP of the offeror e.g. his Yahoo computer and not the offeror’s computer (Glatt, 1998). Any failure of retrieval of the message by the recipient offeror would not be known to the offeree. Problem may arise such as when the internet connection fails or the ISP computer, e.g. the Yahoo computer, is not operative. Despite this fact, some commentators view the availability of the return receipt as equivalent to a recorded delivery letter (Murray, 2000). This is not quite true, as at this point receipt in the intermediary may not guarantee successful transmission to the recipient’s computer. It may be noted that the receipt of the confirmation of receipt is not equivalent to the receipt of the answerback in telex or the transaction report in fax. The receipt of the answerback or transaction report would mean that the acceptance is readily available to be collected or printed by the recipient. In electronic mail, the received message at the recipient’s ISP is not within the control of the recipient. The ISP server could be inoperative or inaccessible.

Another control mechanism to check the status of transmission is the confirmation of reading. This mechanism enables the offeree to check the status of transmission up to the computer of the recipient. The receipt of the confirmation of reading proves that the message has been opened by the recipient. However, as with the return receipt and the bounced back message, the confirmation of reading could not serve as a reliable record of delivery. The facility is not fully reliable in certain circumstances, for example when the client programs use mail filters to filter mail and file it into different mailboxes, the system may state that the user has accessed the mail. What actually happen is that the user has not read the mail (Davies, 1997). Further, the facility of the confirmation of reading is not generally available unless it is enabled in the system, and finally, being transmitted via the internet, it can suffer from failure of transmission. Hence the confirmation of receipt is no better than the return receipt or the bounced back message.

Finally, a sender will not be able to know in case the acceptance is received in a garbled condition (Gringras, 1997). Garbled message may be due to the disruption in the computer of the sender or the computer of the intermediary as well as while the message is in the course of transmission, with no fault on the part of either the sender or the recipient (Kadir, 2012). It is thought that garbled acceptance should be effective as the sender is in no position to learn of the defect with the message (Chitty, 2004).

The point of dispatch:

Acceptance via the electronic mail is found in the above discussion to be effective by means of the dispatch rule. The dispatch rule could in theory refer to any of these points; the dispatch of message from the computer of the sender, or the entry of the message into the offeree’s ISP, e.g. the Yahoo computer (Glatt, 1998). The determination of which time the contract is concluded is significant if there is a delay between the sending and its entry into the intermediary computer, in particular for contracts with fluctuating prices such as shares. The determination of which point constitutes the point of dispatch would also be significant in the event of a failure in the entry of the acceptance into the computer of the offeree’s ISP; there would be no contract if dispatch is taken to refer to the entry.

The first point, i.e. that dispatch refers to the pressing of the button, finds its authority from the case involving postal letter. “A man does all that he can do…” (Per Bagallay LJ in The Household Fire and carriage Accident Insurance Company (Limited) v. Grant (1879) 4 Ex D 216). Another authority is provided by the judgement of Thesiger LJ in the same case where it has been said that “the acceptor, in posting the letter, has,
put it out of his control and done an extraneous act which clench the matter…” In electronic mail the sender cannot always retrieve the message once sent.

The second point, i.e. the entry of the message into the offeree’s ISP e.g. the Yahoo computer, could also be argued as the point of dispatch. In the context of postal letters, the sender is required to hand the letter to the post office. The rationale is to enable the post office to get hold of the message; only then can the offeree reasonably rely on the delivery of his acceptance (Chitty, 2004). The second point also derives its authority from analogy to the case of telegram service, where it is necessary for the message to be actually communicated to the telegram service. It has been suggested that the second point will apply to electronic mail on the basis of analogy to the telegram service as both shares the feature of a store-and-forward messaging system (Reed and Angel, 2003).

It is thought that dispatch should appropriately refer to the computer of the offeree rather than the computer of the service provider of the offeree. The need to secure certainty requires the pressing of the send button by the sender to constitute the point of dispatch; the act of the sending of the message clearly marks the formation of contract, by contrast, the receipt of the message in the service provider of the sender is uncertain. The possibility of delay also applies in transmission between the computer of the offeree up the computer of his service provider. Electronic mail may well share a common feature with the telegram in terms of its store and forward system, but the application of the point of dispatch of the telegram communication in the context of electronic mail would not enable the offeree to know of the effective moment of the acceptance with certainty, hence defeating the purpose underlying the dispatch rule. It must be noted that there is almost no risk of loss or delay of the acceptance in transmission between the sender and the intermediary in the case of telegram communication, given that the telegram message is often dictated to the telegram service via the telephone.

The dispatch rule only applies to electronic mail if it is reasonable to use the electronic mail as a method to communicate the acceptance. The following states the circumstances where electronic mail is a reasonable method of communication to convey the acceptance.

**Limitations on the application of the dispatch rule to electronic mail:**

In the context of the postal communication, the dispatch rule only applies if it is reasonable to use the post. It follows that the application of the dispatch rule to electronic mail as a result of the preceding analysis, can only be supported if electronic mail has been the reasonable method to communicate the acceptance. The use of electronic mail is reasonable if it has been prescribed by the offeror. Nevertheless it is not clear whether the offeree could use electronic mail to communicate his acceptance when the offeror has electronically mailed the offer to him, or when the offeror has sent the offer via fax or telex with the electronic mail address in the letter head. The use of electronic mail may be less reasonable in these circumstances as electronic mail does not deliver the acceptance to the offeror, but requires the offeror to collect the message from his ISP. The answer to this issue may depend on whether the offeree expects any acceptance to be electronically mailed to him.

Under the common law, what constitutes a reasonable method in communicating an acceptance involves the considerations of the speed as well as the reliability of the medium (Chissick and Kelman, 1999). In determining the reasonableness of using electronic mail as a medium to communicate the acceptance, analogy may be drawn from postal communication, given the common feature of the presence of an intermediary. The use of postal communication to communicate the acceptance would be reasonable in three circumstances: firstly, when the offer has been made by the post, and secondly, when the postal communication has been prescribed by the offeror. Thirdly, in the context of the postal communication, it may also be reasonable to use the post even though the offer was made via a different method of communication if immediate acceptance was not contemplated and the parties lived at a distance. On the other hand it would not normally be reasonable to attempt to make the acceptance by post to an offer made by some speedier means of communication, such as telex or telephone (Chitty, 2004).

The first situation, i.e. if the offer is made by post it is reasonable to accept by post, may not necessarily apply to electronic mail (Gringras, 1997). It may be reasonable to communicate the acceptance the same way the offer has been communicated if the methods used are letter, telegram, fax or telex. The reasons are because these methods of communications deliver the acceptance to the offeror. As opposed to that, the offeror has to collect his acceptance by contacting his internet service provider. It is submitted that the answer to this issue may depend on whether the offeror expects any acceptance to be electronically mailed to him, as only in this situation will he check his mail box frequently.

The second situation is a clear case in which it is reasonable to use electronic mail as a method of acceptance. If the offeror exclusively prescribes that acceptance has to be electronically mailed, the offeree will have no other choice except to abide by that mode of communication prescribed for him. Doing otherwise might give rise to a risk that acceptance has not effectively been made.

The question of reasonableness is also relevant when the offer is communicated through other means of communication such as letter or fax with an electronic mail address in the letterhead. The reasonableness of
using electronic mail in sending the acceptance hinges on the expectation of the offeror of receiving the acceptance by electronic mail. It may be argued that incorporating an electronic mail address in a letter may not be a strong indication that that is the mode of acceptance expected to be used by the offeree, especially if the letterhead also displays other possible modes of communication, e.g. telephone numbers or address. Finally, the prior course of dealing between the parties as well as the usage of trade will also determine the issue.

**Acceptance via the web:**

Like any other internet communication which is run through the workings of the IP/TCP, web communication is not always instantaneous. The delay may occur depending on the work load on the web server as well as the network. However the delay does not support the case of the dispatch rule as the sender is capable of tracing any failure of the communication. It has been established in the above discussion on the justifications of the information rule that the third justification, i.e. the ability of the sender to check the failure of transmission, is the determining justification. This justification determines the applicability of the information rule. The information/receipt rule fits the feature of the web as a two way communication system. A problem of transmission such as the web server suddenly becoming inaccessible, or busy traffic in the internet route which inhibits transmission to the web server will be notified to the sender. The sender would be alert that the message may not have been sent successfully, and can resend the acceptance. That the information rule is applicable to acceptance by world wide web seems to be a settled opinion (Reed, 2000, Gringras, 1997, Davies, 1997, Lubbock, 2000, Chissick and Kelman, 1999, Atiyah and Adams, 2005, Glatt, 1998). The receipt rule will be applied in circumstances where delayed retrieval of the acceptance is due to the fault of the offeror. In web communication, this includes a situation where the computer monitor turns blank after the acceptance is received by the user offeror.

**The Electronic Commerce (EC Directive) Regulations 2002: does it address rules of acceptance?**

In relation to acceptance via the electronic mail, the acceptance could take place in several situations under the Regulations; first, the acceptance via electronic mail is made in response to the previous correspondence via the electronic mail. In this case the limitation of the Regulations would apply, which may result in the non-applicability of the Regulations to the case and the acceptance would possibly be governed under the common law. Like the Directive, the Regulations do not apply to individual communications, such as to contracts concluded exclusively by electronic mail. Regulations 9 (4) and 11 (3) states “the requirements of paragraphs … above shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications”. The case of individual communication between the business and the consumer is viewed as equivalent to individual negotiations in the offline transaction. This is because the consumer will either have some knowledge about the business or be more likely to enquire (Nordhausen, 2005). Second, acceptance is made by sending an electronic mail in response to web advertisement, such as in passive web advertisement, or where the customer avoids using the steps in web contracting in interactive web advertisement. This acceptance by electronic mail escapes the limitation of the Regulations. Thirdly, acceptance via electronic mail is made by the vendor. As with the second situation, acceptance via electronic mail in this situation is feasible under the Regulations. Further, the Regulations certainly cover web acceptances, which could be made by web vendor or web user.

It is not fully clear whether the Regulations prescribe any rule for the communication of the acceptance. On the one hand, as with the case of other formation issues, it is possible to argue that the Regulations only require the service provider to stipulate the rule as reflected in regulation 9(1)(a). The service provider is thus required to state the information on the technical steps under regulation, which include the rule on the acceptance via the web and electronic mail. Where the service provider fails to state the rules applicable to the communication of the acceptance, the default rules should apply (Ramberg, 2003).

On the other hand, Murray (2005) argued that Article 11(1) which has been adopted in regulation 11(2)(a) establishes a receipt rule, i.e. that the acceptance is to take effect upon being received. The provision reads: “the order and the acknowledgement of receipt (read as the acceptance) are deemed to be received when the parties to whom they are addressed are able to access them”.

Accordingly, it was argued that acceptance, both via electronic mail and the web, will take effect upon being received. The receipt rule may be argued on the basis that, by defining receipt only and not dispatch, the regulation can be taken to imply the receipt rule as the rule governing acceptance. It is thought that the argument is open to criticism as the provision merely defines the moment of receipt, where receipt occurs when a party is able to access the communication. It does not prescribe that the acceptance is to be effective upon the receipt of the message.
The meaning of receipt under the Regulations may also attract criticism. It is noted that unlike the UNCITRAL Model Law on Electronic Commerce 1996 which defined ‘receipt’ as entry or retrieval of message, the Directive defined ‘receipt’ in terms of accessibility of message. Generally, in web acceptances, which take place when the ‘order’ or the ‘acknowledgement of receipt’ constituting acceptances is sent via the web communication, the message can be accessed once it is available in the computer system of the recipient, i.e. the web server or web user, and in electronic mail, the message can be accessed once it is available in the server of the recipient’s service provider. However, the focus on the accessibility of electronic message as the point of receipt is not fully satisfactory in all circumstances. For example, it may be difficult to know when there is ability to access electronic message; the message may have entered into the recipient’s information system, but it may not be in a form capable of being processed (Ramberg, 2003). Other instances of difficulty include situations where the recipient could not access the message due to the server of the electronic mail service provider being inoperative, or the failure of internet connection at the time the access is attempted. It is possible to view that the definition of ‘receipt’ has not been satisfied in these situations involving the receipt of the message in a garbled form, or involving problems with server or internet connection, as access to the message could not be made. As a result it is not easy to establish when the acceptance is effectuated.

Concluding remarks:

The preceding discussion seeks to identify the applicable rule to the electronic mail and web acceptances under the common law. The discussion demonstrates that the dispatch rule is likely to apply on the basis of the commercial expediency. The information and the receipt rules are not relevant to electronic mail given the non-instantaneous feature of the electronic mail transmission, the role of the third party service provider as well as the non-reliability of the confirmation mechanisms. Web acceptance may most probably take effect by means of the information rule. The adoption of the Electronic Commerce Directive under the Electronic Commerce (EC Directive) Regulations 2002 by far and large did not bring about substantial change to the common law rules.

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