EXPLORING THE INTEGRATION OF ELECTRONIC INFORMATION INTO THE DOCTRINES OF ENGLISH COMMON LAW OF EVIDENCE*

Abstract

The conventional classifications of evidence in the English Common Law which include hearsay evidence, oral evidence, documentary evidence and real evidence, 'original and copy' and 'primary and secondary evidence' present novel challenges in the integration of electronic information. The diversity of these devices, their uses, and their complexity has only made it harder to apply evidentiary procedures to them. The evaluation of current common law principles indicates that data messages either fall into the category of real evidence or documentary evidence and at this point, such an analysis will reasonably conclude that the rules that regulate either documentary or real evidence shall obviously apply to such data messages. This paper examines the practicality of applying common law doctrines of evidence to electronic information. It finds that a broader approach to the transient nature of electronic information is required to adequately accommodate electronically stored information in the extant rules of evidence.

Keywords: Evidence, Electronic data, Admissibility and Weight, Common Law

1. Introduction

The cardinal rules of admissibility of evidence have essentially remained unchanged in several jurisdictions: evidence must be relevant, authentic, and reliable and must conform to the best evidence rules. 1 It is imperative that in applying these rules to electronic evidence, the peculiarities of its nature ought to be considered in creating the applicable rules.[2] Such peculiarities include the fact that the same standards applicable in considering the best evidence rule of a written document cannot adequately be applied to electronic evidence because of its transient nature.[3] Evidence that will otherwise suffice as secondary evidence might not contain all the information in the primary source and just as well, a piece of evidence considered to be an original can be a transferred copy that might omit some information from the original source.[4] In the same light, rules applicable to issues of authenticity and In England, both Section 69 of the Police and Civil Evidence Act (hereinafter referred to as PACE Act), 1986 and Section 5 of the Civil Evidence Act of 1968 (hereinafter referred to as Eng CEA, 1968) regulating computer-generated information are also considered.[5]

2. Regulation of The Admissibility and Weight of Electronic Information in England

The relevance, admissibility, and weight of electronic evidence have been the object of special interest and legislation in England for several years now.[6] The recognition of the unique nature of electronic evidence has seen the establishment of rules that differ from those applicable to traditional documentary evidence.[7] This transformative process is reflected in provisions of legislation such as the Civil Evidence Act 1995, the Police and Criminal Evidence Act 1984,[8] the Criminal Justice Act 1988 and the Youth Justice and Criminal Evidence Act 1999.[9] In England and Wales, the Civil Evidence Act 1995and the Criminal Justice Act 1988 regulate civil and criminal matters respectively.[10] Legislation covering electronically generated evidence has taken two forms in its recent transition; the first of which is legislation dealing with the receipt of documents in general and legislation dealing specifically with computer-produced records.[11] The transition in the evidentiary rules in England is due to the fact that electronic evidence has evolved in its physical form. The various means by which electronic gadgets

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[1] *Lorraine v Markel Am. Ins. Co.*, 241 F.R.D. 534 (D. Md. 2007).

[2] G Michael Fenner 'The admissibility of Web-based evidence' 47 *Creighton L. Rev*. 63 2013-2014.

[3] Ibid.

[4] Ibid.

[5]Chris Reed 'The Admissibility and Authentication of Computer Evidence- A Confusion if Issues' http://www.bileta.ac.uk/content/files/conference%20papers/1990/The%2520Admissibility%2520and%2520Authentication%2520of%2520Computer%2520Evidence%2520-%2520A%2520Confusion%2520of%2520Issues.pdf last accessed on 5 December, 2021. It is pertinent to point out that references to the rules pertaining to England in this paper also apply to Wales.

[6]Johanne Gauthier 'The admissibility of computer-generated Evidence' http://www.cmla.org/papers/Admissibility%20of%20Computer%20Generated%20Evidence.Johanne%20Gauthier.28.Nov.1997.pdf last accessed on 6 June 2021.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Allyson Stanfield 'The authentication of Electronic Evidence' Doctoral thesis submitted to the Faculty of Law, Queensland University of Technology, 2016.

[11] Colin Tapper 'Evidence from computers' 8 *Georgia Law Review* 562 1973-1974.

can be utilized and interrelated around the world has resulted in a multitude of sources of electronically generated evidence.[12] Peter Sommer provides apt illustrations as follows:

> A computer is not necessarily 'just like' a filing cabinet and as a result computer 'documents' may not be 'just like' the paper equivalent. Again, it is not necessarily the case that computer errors are nearly always manifest in that the result is either no read-out or print-out of any kind or gross nonsense. Depending on circumstances, a computer print-out can look plausibly correct but nevertheless be misleading or be misinterpreted. Increasingly too, the courts are being presented with configuration, logging, and other system files which would not normally be viewed by the ordinary computer user - indeed such a user may not even know of their existence - but which investigators and prosecutors are tendering as evidence of an accused's activities or intentions.[13]

Despite these landmark transformations, the English common law has been criticised for its reluctance to review some of the traditional rules of evidence to changing realities.[14] The common law has been described as 'too erratic and too insular to make a comprehensive, systematic, and timely response to this widespread, important, complicated, and rapidly developing area' thus its nature has accounted for a substantial part of criticism on the attitude to electronic evidence.[15] An example of this is conservative approach is the fact that the common law still recognises modern technology as performing the same function as paper documents.[16] This is reflected in Faber's opinion as follows:

> The definition of 'writing' in the Interpretation Act 1978 includes 'typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form'; Mr. Justice Vinelott held in *Derby &Co. v Weldon* (No. 9) ([1991], 1 WLR 653) that the database of a computer's online system or which is recorded in the backup files is a document for the purposes of the High Court rules governing discovery of documents; Section10 of the UK Civil Evidence Act 1968 (dealing with the admissibility of hearsay evidence) defines 'document' as including 'any disc, tape, sound track or other devices in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom'; The UK Copyright (Computer Software) Amendment Act 1985 provides for the application of the 1956 Copyright Act to a computer program in the same way as it applies in relation to a literary work. (This is re-enacted in the 1988 Copyright Designs and Patents Act) These examples demonstrate that English law is prepared to treat modern technology as performing the same function as paper documents.[17]

Regardless of the pace of adaptation of the rules of evidence to the growing field of technology, there is no doubt that there have been substantial changes to the evaluation of their adequacy. Much of the history of the law of evidence over the last hundred years has been the painful and ponderous adaptation to the reception of documentary evidence by the creation of exceptions to the hearsay rule.[18] Many functions in the field of collection, collation, and calculation previously held by humans are being assumed by the machines[19] and this has been the pivotal reason why the technological aspect of electronic information complicates conventional legal procedure that regulates matters of custody and jurisdiction of potential evidence.[20] When a computer is used, the information will first be translated into machine language on punch cards, magnetic or paper tape, or similar devices, and then stored in the computer's 'memory bank'.[21] The computer may receive this information from human beings, from other computers, or by wire or radio signals. The computer can then be called upon, by using proper instructions in a program, to search its memory for data, perform arithmetic computations, and print out the result thus, storage and reproduction of records is often a completely automated process.[22]

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[12] Peter Sommer 'Digital Footprints: Assessing Computer Evidence' http://www.pmsommer.com/CrimLR01.PDF last accessed 30 July 2021.
[13] Ibid.
[14] Note 11.
[15] Ibid.
[16] Diana Faber 'Shipping Documents and Electronic Data Interchange' *Law, Computers & Artificial Intelligence*, Vol 2(1), 1993.
[17] Ibid.
[18] Colin Tapper 'Evidence from computers' 8 *Georgia Law Review* 562 1973-1974.
[19] Ibid.
[20] J S Atkinson 'Proof is not binary: The pace and complexity of computer systems and the challenges digital evidence poses to the legal system' *Birkbeck Law Review* Vol 2(2) 2014.
[21] Note 11 562.
[22] Ibid.

The English legal system has been facing the issues of how to address the nature of electronic devices in relation to the rules governing hearsay, best evidence, and documents. It appears that earlier decisions considered that certain electronic devices could be documents.[23] An example is the 1997 case of *Rollo v Her Majesty's Advocate*[24] where information recorded on a Memo Master fulfilled the requirements to be classified as a document in law.[25] In this case, the police officers seized a Memo Master and utilised it in establishing a case of contravention of the provisions of the Misuse of Drugs Act 1971 (Eng) against the accused.[26] The accused person upon conviction appealed on the grounds that the information contained in the Memo Master did not fall into the category of documents in law as contemplated by Section 23(3)(b) of the Misuse of Drugs Act 1971 (MDA Eng). The court reached the decision that despite the fact that the meaning of the word 'document' in ordinary utilisation does not refer to the medium of recording and preserving information, the definition can reasonably extend to such a medium as envisaged by the law.[27] The court also pointed out that the essence of a document is that it is a medium upon which information has been transcribed and the whether or not is protected from foreign interference or alterations is not a necessary requirement in excluding the Memo Master from being a document as envisaged by law.[28] The implication of the Rollo case was that the common law had no room for a classification that didn't fall either into documents or real evidence. The meaning of documents in the MDA Eng was extended to cover electronic devices.

However, while it is becoming less disputed that a storage device of electronic information is itself a document,[29] the more intricate issue is whether the nature of electronic information itself qualifies it as a document. In *Victor Chandler International Ltd v Customs and Excise Commissioners and Another*,[30] the court was faced with determining whether information created on Teletext pages, as they showed up on the display screens constituted documents. The court decided that the information as displayed, were just the projection of the actual information so that the Teletext pages only served as a medium to view the information[31] Lightman J defined a document in the case, as a medium containing information that can be extracted from it.[32] The court held that the criteria for determining what falls into the classification of documents do not include just a piece of information in itself and the process of sharing and receiving information cannot in law, be deemed to be the sharing of a document.[33]

3. The Application of the Police and Civil Evidence Act and The Civil Evidence Act to Electronic Information in England

Both Section 69 of the PACE Act, and Section 5 of the Eng CEA required some proof of the accuracy of electronic devices before electronic evidence could be admitted in court.[34] The prevalent stance of the procedural legislation was that the court must not only be convinced of the plausibility of the content of a statement as corroborated by the testimony of the witness in support of it, it must also be convinced of the reliability of the process of how it was created as what was intended.[35] The parliament at the time, demonstrated a rather unfounded suspicion of electronic devices as it seemed to have anticipated that there would be numerous situations where the information created by those devices may turn out to be tainted by programming errors or malfunctioning equipment thus rendering it important to demonstrate that the time of creation of such information, the device used had been fully functional, or that where there has been a malfunction, it did not influence the integrity of the information.[36] Section 5 Eng CEA, 1968 provided that information contained in a statement produced by an electronic device may be admitted in proof of the facts contained therein on the condition that oral testimony of those facts are also admissible and some other criteria are met as contained in Section 5(2) as follows:[37]

> 'a. That the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activity regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;

[23] Note 10.
[24] 1997 SLT 958.
[25] Note 10.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] *Phaestos Ltd v Ho* [2012] EWHC 2756 (QB).
[30] [2000] 1 All ER 160.
[31] Note 10.
[32] Ibid.
[33] Ibid.
[34] Note 5.
[35] Ibid.
[36] Ibid.
[37] Section 5 Civil Evidence Act, 1968.

b. That over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
c. That throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
d. That the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.'[38]

The conditions can presumably be regarded as a guarantee of reliability compensating for the absence of any requirement of personal knowledge and did little more than impose technical requirements which unduly restricted the admissibility of computer evidence, with little mitigating effect on the statute's difficulties discussed above.[39] Section 69 of the PACE Act outlines its requirements as follows:

'69(1) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown –
(a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
(b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and
(c) that any relevant conditions specified in rules of court under Subsection (2) below are satisfied.
(2) Provision may be made by rules of court requiring that in any proceedings where it is desired to give a statement in evidence by virtue of this Section such information concerning the statement as may be required by the rules shall be provided in such form and at such time as may be so required.'[40]

The complexity of both Section 5 of the Eng CEA,1968 and Section 69 of the PACE Act has generated several uncertainties and controversies over the approach to dealing with the admissibility of computer-generated evidence, causing the courts to have divergent views resulting in contradicting case law.[41] The most often expressed criticism of Section 5 of the Eng CEA, 1968 relates to its ambiguity opening the door to a number of technical arguments which could result in the exclusion of vital evidence stored or produced by a computer.[42]

4. Challenges in the Integration of Electronic Information in Common Law Doctrines

This is one of the primary challenges on whether electronic evidence constitutes hearsay or real evidence. This was evident in the case of *R v Spiby*,[43] where the Court of Appeal held that information contained in printouts from a hotel phone's call log to be admissible on the premise that they classified as real evidence in law and also concluded that in the absence of proof to the contrary, the phone was functional and in order at the all the relevant times.[44] This issue was also considered in the case of *Camden London Borough Council v Hobson*,[45] where the court stated that computer-generated evidence constituted real evidence if the statement originated in the computer and that it will then be such a statement will also be admissible as proof of the functionality and operational condition of the device in which information from a human had played no part. On the contrary, any information contained in a statement created by a wholly by a human being which was then processed by an electronic device is subject to the rules regulating hearsay information.[46] Further, regarding the admissibility of electronic evidence, the reliability of electronic devices is another primary issue of consideration as shown in *Director of Public Prosecutions v McKeown*[47] where the House of Lords accepted into evidence the information provided by an intoximeter, although the computer clock was inaccurate.[48] The House of Lords found that the inaccuracy did not affect the processing of the information supplied to the computer and that Section 69 of the PACE Act should be

[38] Ibid.
[39] Note 11.
[40] Section 69 PACE Act, 1986.
[41] Note 6.
[42] Ibid.
[43] (1991) *Crim. L.R.* 199 (C.A.Cr.D.).
[44] Ibid.
[45] Note 6.
[46] Ibid.
[47] [1997] NLOR No. 135, (House of Lords).
[48] Note 6.

interpreted according to its purpose so as to not exclude otherwise accurate evidence.[49] The court opined as follows:

> The purpose of Section 69, therefore, is a relatively modest one. It does not require the prosecution to show that the statement is likely to be true. Whether it is likely to be true or not is a question of weight for the justices or jury. All that Section 69 requires as a condition of admissibility of a computer-generated statement is positive evidence that the computer has properly processed, stored and reproduced whatever information it has received. It is concerned with the way in which the computer has dealt with the information to generate the statement which is being tendered in evidence of a fact which its states.[50]

In response to the complications of the application of these rather stringent rules, the Law Reform Commission produced a consultation paper entitled 'Evidence in Criminal Proceedings: Hearsay and Related Topics'[51] in May 1995 and published its report in June 1997.[52] The Consultation Paper and the Report were concerned about the practical problems of assessing the reliability of electronic devices and their output, as well as the uncertainty of their nature as either real evidence or statements which required certification with a particular focus on Section 69 of the PACE Act.[53] The Commission identified the following as reasons why 'the present law was unsatisfactory': [54]

> 13.7 First, Section 69 fails to address the major causes of inaccuracy in computer evidence. As Professor Tapper has pointed out, 'most computer error is either immediately detectable or results from an error in the data entered into the machine'.
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> 13.8 Secondly, advances in computer technology make it increasingly difficult to comply with Section 69: it is becoming 'increasingly impractical to examine (and therefore certify) all the intricacies of computer operation'. These problems existed even before networking became common.
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> 13.9 A third problem lies in the difficulties confronting the *recipient* of a computer produced document who wishes to tender it in evidence: the recipient may be in no position to satisfy the court about the operation of the computer. It may well be that the recipient's opponent is better placed to do this.
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> 13.10 Fourthly, it is illogical that Section 69 applies where the document is tendered in evidence, but not where it is used by an expert in arriving at his or her conclusions, nor where a witness uses it to refresh his or her memory. If it is safe to admit evidence which relies on and incorporates the output from the computer, it is hard to see why that output should not itself be admissible; and conversely, if it is not safe to admit the output, it can hardly be safe for a witness to rely on it.
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> ... Finally, it should not be forgotten that Section 69 applies equally to computer evidence adduced by the defence. A rule that prevents a defendant from adducing relevant and cogent evidence, merely because there is no positive evidence that it is reliable, is in our view unfair.[55]

The Commission recognised that the intent of the legislation was to legislate too protectively the admissibility of evidence from electronic devices rather than addressing these doubts as matters that ought to go to the weight of the evidence.[56] The dangers of overprotective legislation become evident when courts are faced with the task of authenticating electronic evidence. The courts have, generally, responded very positively in addressing this issue liberally as is evident in the case of *R v Mawji (Rizwan)*[57] where the accused was alleged to have sent an Email threatening to kill the victim.[58] The appellate court did not agree with the accused that it was necessary to authenticate the messages by tracing its origin, as there was ample information to corroborate the prosecution's claim that the Email was drafted and sent out by the accused.[59] The court held that the information contained in the Email was sufficient to show authenticity especially in consideration of the circumstances surrounding the

[49] Ibid.
[50] *Director of Public Prosecution v McKeown* [1997) NLOR No. 135, (House of Lords).
[51] Law Commission, Consultation Paper No 138 Evidence in Criminal Proceedings: Hearsay and Related Topics, 1995.
[52] Law Commission, Report Law Com No 245 Evidence in Criminal Proceedings: Hearsay and Related Topics, 1997.
[53] Note 12.
[54] Law Commission, Report Law Com No 245 Evidence in Criminal Proceedings: Hearsay and Related Topics, 1997.
[55] Ibid.
[56] Note 12.
[57] [2003] EWCA Crim 3067, [2003] All ER (D) 285 (Oct).
[58] Note 10.
[59] Ibid.

case and the totality of the evidence.[60] The same attitude was shown in *Greene v Associated Newspapers,*[61] where messages were alleged to have been exchanged between the applicant and one Peter Foster.[62] Greene denied sharing those messages with Foster, claiming they were fabricated Emails.[63] An expert was brought in to examine Greene's electronic device and he confirmed that there were no such mails on it.[64] A different expert examined Foster's computer and found some Emails between them (Greene and Foster) and was able to carry out a trace of the IP addresses on the headers of both sets of Emails.[65] The court relied on the examination conducted by the second expert on Foster's computer in holding that there was sufficient proof to suggest that the emails were indeed sent to and from a server where Greene resides and that the times recorded by the Email header also were accurate and corroborated the assertions.[66] This liberal approach goes against the intention of Section 69 of the PACE Act but appears to be a more realistic and rational method of addressing electronic evidence, particularly evidence created with little or no direct involvement with a person. The commission, against the background of issues it identified, recommended as follows:

> We are satisfied that Section 69 serves no useful purpose. We are not aware of any difficulties encountered in those jurisdictions that have no equivalent. We are satisfied that the presumption of proper functioning would apply to computers, thus throwing an evidential burden on to the opposing party, but that burden would be interpreted in such a way as to ensure that the presumption did not result in a conviction merely because the defence had failed to adduce evidence of malfunction which it was in no position to adduce. We believe, as did the vast majority of our respondents, that such a regime would work fairly. We recommend the repeal of Section 69 of the PACE.[67]

The recommendations of the Commission were adopted and were reflected in Section 60 of the Youth Justice and Criminal Evidence Act, 1999 which repealed Section 69 of the PACE Act: 'Section 69 of the Police and Criminal Evidence Act, 1984 (evidence from computer records inadmissible unless conditions relating to the proper use and operation of the computer shown to be satisfied) shall cease to have an effect.' The recommendations were also echoed in the Eng CEA which declared that evidence shall not be excluded merely on the ground that it is hearsay of 'whatever degree' in any civil proceeding and defined hearsay to mean information contained in a statement made by any other person than the individual tendering and testifying in support of the content of such a statement.[68] Sections 2 to 6 of the Eng CEA, 1995 define a number of guidelines for the regulation of admissibility and weight to be ascribed to hearsay information.[69] However, no statutory regulations regarding the probative value of electronic evidence exist leaving the courts to decide whether electronic evidence falls within the nature of a statement which will translate to hearsay regarded as evidence created exclusively by the electronic device, making it real evidence.[70] For example, a printout from an electronic device was held to be real evidence in the *Sapporo Maru (Owners) v Statue of Liberty (Owners)*[71] and *R v Wood*,[72] while in *Director of Public Prosecution v Bignall* information contained in a printout from an electronic device was held to fall in the category of hearsay.[73]

As to the form of the evidence presented for admission, courts in England and Wales have been gradually relaxing the application of the traditional best evidence rule.[74] The courts have even proposed that a strict application of the laws applies only to information contained in written documents and not data from electronic devices, noting also that where the original version of a document is reasonably unavailable then it should suffice as a valid

[60] Ibid.
[61] [2005] QB 972.
[62] Note 10.
[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Law Commission, Report Law Com No 245 Evidence in Criminal Proceedings: Hearsay and Related Topics, 1997.
[68] Section 1 Eng CEA, 1995.
[69] Section 2 Eng CEA, 1995 deals with notice of a proposal to adduce hearsay evidence, Section 3, Power to recall witnesses for cross-examination, Section 4, Considerations relevant to weighing of hearsay evidence, Section 5, Competence and compellability and Section 6 Previous statements of witnesses.
[70] K A Aljeneibi 'The Regulation of Electronic Evidence in the United Arab Emirates: Current Limitations and proposals for Reform' Thesis submitted to Bangor University for the award of the degree of Doctor of Philosophy, 2014.
[71] (1968) 1 WLR 739.
[72] (1982) 76 Cr App R23.
[73] (1998) 1 Cr App R 1 cited in K A Aljeneibi 'The Regulation of Electronic Evidence in the United Arab Emirates: Current Limitations and proposals for Reform' Thesis submitted to Bangor University for the award of the degree of Doctor of Philosophy, 2014.
[74] Note 71.

substitute.[75] In *Kajala v Nobel*,[76] where the admission of a copy of a video tape of news footage by the BBC was in issue, Ackner LJ said as follows:

> The best evidence rule had been completely ruled out by the board now, whereby only the best evidence had to be presented in court. What remains of the rule is that original documents are required when they are available. In such a case, a secondary or copy of the document would not be enough. Therefore, at present, the rule of the board is not limited to the best evidence. In fact, all appropriate evidence can be submitted... In our judgment, the old rule did not encompass videos or tapes and was limited to written records, while in the new rule videos and tapes are included and the positivity or negativity of evidence affects weight and not presentability.[77]

This approach is also reflected in the Eng CEA, 1995, which states that where information in a documentary statement is admissible in civil proceedings, its plausibility can be demonstrated by the production of the document it is contained in or, in the case of a duplicate where the original can't be produced, can be duly verified in such a way as the court may require.[78] Further, for this reason it is irrelevant how many versions there have been between the original copy and the duplicates.[79] The liberal application of the best evidence rule is further supported by the Eng CEA, 1995 which also states that a document that is deemed to be a portion of a business records may be presented in civil trial without any more corroboration and additionally that such a document will be deemed to be a part of the business records if there is an accompaniment in the form of a certificate assented to by a valid representative of the business that owns the records.[80] Acknowledgment of records with no limitation of the medium of its production enables the information obtained from electronic device to be regulated under the same rules thus, Section 9 will be applicable.[81] To make this clear and to include electronically stored documents, Section 9(4) clarifies that 'records' mean the collection of information in any medium.[82]

5. Conclusion

This paper examines the conventional criteria for determining admissibility and ascription value of ESI in the England with a view to determining its adequacy. The criteria considered include relevance, authenticity, reliability, rules of hearsay, best evidence rule and probative value ascription. [83] It is determined that there is still a major hindrance in the application of conventional rules of evidence to ESI particularly as regards information created with little intervention by humans for the purpose of appropriately authenticating such evidence and ascribing value to it. [84] In examining the PACE Act and the Eng CEA in England this paper highlights the complexities of both Section 5 of the Eng CEA and Section 69 of the PACE Act, especially how they generated several uncertainties and controversies over the approach to dealing with the admissibility of computer-generated evidence, causing the courts to have divergent views resulting in contradictory case law. For example, a computer printout was regarded as real evidence in the *Sapporo Maru (Owners) v Statue of Liberty (Owners)*[85] and *R v Wood*[86] but as hearsay in *DPP v Bignall*.[87] This led to criticisms as to the ambiguity of these statutes which was seen as opening the door to a number of technical arguments which resulted in the exclusion of vital evidence stored or produced by a computer.[88] It is concluded that there has been a gradual relaxation of the application of the traditional best evidence rule.[89] The courts have even suggested that the strict application of the rule was reserved for written documents and not tapes or films taking the stance that, where the original version of a document is not available, the rules should not apply.[90] It is recommended that this approach will be most helpful in improving the rules regulating electronic evidence as such definitions allow the drafters take into consideration the various types of electronic information that can be created and define the respective rules appropriately.

[75] Ibid.
[76] (1982) 75 Cr App R 149.
[77] Ibid.
[78] Section 8 Eng CEA, 1995.
[79] Ibid.
[80] Section 9 Eng CEA, 1995.
[81] Note 71.
[82] Ibid.
[83] Kenneth N Rashbaum, Matthew F Knouff & Dominique Murray 'Admissibility of Non-U.S. Electronic Evidence' XVIII *Rich. J. L. & Tech.* 9 (2012), http://jolt.richmond.edu/v18i3/article9.pdf.
[84] D Collier 'Evidently not so Simple' *The Quarterly Law Review for people in business* Vol 13(1) ISSN 1021-7061 2005.
[85] (1968) 1 WLR 739.
[86] (1982) 76 Cr App R23.
[87] (1998) 1 Cr App R 1 cited in K A Aljeneibi 'The Regulation of Electronic Evidence in the United Arab Emirates: Current Limitations and proposals for Reform' Thesis submitted to Bangor University for the award of the degree of Doctor of Philosophy, 2014.
[88] Ibid.
[89] Note 71.
[90] Ibid.