

Control per MLETR

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MLETR and the concept of “control”

Adopted by UNCITRAL in 2017

- The UNGA has recommended MLETR to States for enactment (A/Res/71/114)
- It has also appealed to UN system bodies and other organizations to coordinate their legal activities in the area of electronic commerce to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of legislation on electronic commerce



UNCITRAL

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL Model Law on
Electronic Transferable Records



MLETR and the concept of “control”

Purpose is everything

- Alongside “singularity” and “integrity”, the concept of “control” allows **existing** law governing paper-based transferable documents to be applied to the electronic environment
- It is not part of a **new** legal framework for the electronic environment

“ A reliable method is used:
(i) To identify that electronic record as the electronic transferable record;
(ii) To render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and
(iii) To retain the integrity of that electronic record ”



MLETR and the concept of “control”

MLETR

- Control (of electronic record) is simply the functional equivalent of possession (of paper)
 - Key to applying **other law** (eg law governing paper-based documents)
- Control is not defined (but implies exclusivity and allows concurrency)
- Control is a question of fact
 - Effect of custodian arrangements governed by other law



DAPL Principles

- Control (of digital asset) is more than simply the functional equivalent of possession (of physical asset)
 - Key to applying **DAPL Principles** (eg innocent acquisition and TPE rules)
- Control is defined (Principle 6, which requires exclusivity)
- Control is a question of fact
 - Effect of custodian arrangements governed by DAPL Principles

Thank you!