

ANNEX 1: M1'S COMMENTS ON IDA-AGC'S CONSULTATION ON THE REVIEW OF THE ELECTRONIC TRANSACTIONS ACT: PROPOSED AMENDMENTS 2009

Reference	Description	Comments
<p>Section 16 of the Proposed Electronic Transactions Bill and Part 2.9.4 of Report (LRRD No.1/2009)</p>	<p>Error in Electronic Communications</p>	<p>We propose that the Section 16 of the ETA under the Proposed Amendments be further revised as follows, by reinstating the condition deleted by UNCITRAL and adding a qualification:</p> <p><i>“16.—(1) Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made.</i></p> <p><i>(2) Subsection (1) shall not apply unless the person, or the party on whose behalf that person was acting</i></p> <p><i>(a) notifies the other party of the error as soon as possible after having learned of the error and indicates that he made an error in the electronic communication; and</i></p> <p><i>(b) has not used or received any material benefit or value from the goods or services, if any, received from the other party; <u>and</u></i></p> <p><i>(c) <u>takes reasonable steps, including steps that conform to the other party’s instructions, to return the goods or services received, if any, as a result of the error or, if instructed to do so, to destroy the goods or services, unless otherwise agreed or provided by a rule of law.</u></i></p> <p><i>(3) Nothing in this section affects the application of any rule of law that may govern the consequences of any error other than as provided for in subsections (1) and (2).”</i></p> <p>We generally agree with UNCITRAL that consequences of error should be left for national law to determine.</p> <p>However, we are of the view that, by specifically enumerating only (a) and (b) and not (c), Section 16 under the Proposed Amendments may be misconstrued to substantively imply or even state that the party in error has the right to withdraw the erroneous portion as long as conditions (a) and (b) are fulfilled – even if such party fails to return (or destroy, if instructed) the goods or services.</p> <p>Thus, while the deletion of (c) may have been correctly</p>

		<p>intended to maintain media neutrality in respect of substantive matters of contract law, such deletion may have the opposite effect – especially when read with the last part of subsection (3) (“other than as provided for in subsections (1) and (2)”).</p> <p>Such risk of misconstruction of Section 16 may create confusion in electronic commerce – where there is a heightened need for certainty – and prejudice providers of goods and services who are not the party in error in the first place. In fact, it may be argued that because of the heightened need for certainty in electronic commerce, Section 16 should not be media neutral, but rather, should contain provisions specifically aimed at reducing risks in electronic transactions.</p> <p>Our proposed revision removes the risk of misconstruction by providing a default requirement, without affecting any agreement or rule of law to the contrary.</p>
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