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## The Implications of The Legal and Policy Framework For E-commerce in Nigeria.



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### Abstract

**T**his article reports the policy implications for E-commerce in Nigeria, both for e-consumers and e-vendors. A review of available literature from agencies of the Nigerian Government, United Nations and research organizations was conducted to show landmarks achieved and further actions required in terms of legislations and policy executions that will strengthen trust and confidence in virtual transactions. Researchers also threw some light on guidelines for potential e-commerce firms. Considering the trend towards digitalized economy, a holistic legal framework that adequately protects users and punishes offenders can ultimately address the recurrent issue of trust in online transactions in Nigeria.

### 1.0 Introduction

**T**he advent of novel Corona Virus first recorded in Wuhan, China in December 2019 has currently spread round the world, necessitating global lockdowns, minimized physical interaction and subsequently, increased online transactions. The Pandemic has hit strongly on the economy of nations. As stated in UNCTAD 2020 report, "it is now evident that the pandemic mitigation efforts and lockdowns around the world will have devastating effects on all economies, independent of their links to global supply networks". Increased online transactions has brought E-commerce (a significant aspect of digital economy) to the front burner in every business circle in Nigeria.

Covid-19 is first a public health issue, which has claimed thousands of lives worldwide. Economic meltdown in both the formal and informal sectors is a heavy burden, which the pandemic throws at businesses and their stakeholders. A business success at these awry times depends on the economic systems of the nations where it is located and where the bulk of its customers exist. The economic system in turn depends on the combination of policies, laws and choices made by a country's government to establish the structures that define what goods and services are to be manufactured and their allocation procedures (Onoja, 2020). As rightly pointed out by a senior Lecturer of Mass Communication at University of Lagos, "Covid-19 gave life to E-commerce in Nigeria and in other parts of the globe" (Adepetun, 2020). To thrive in the new normal, companies must invest in areas they had hitherto ignored before the crisis. Agenda will now, more-than ever, focus on digital and data driven projects rooted in e-commerce and cybersecurity. This is because Covid-19 has redefined how digital platforms can be used in supporting and guaranteeing stability in the business environment through and beyond the crisis (Onoja, 2020).

This article seeks to throw light on the legal implications of E-commerce as it affects users in Nigeria. It outlines basic requirements for smooth running of online business in Nigeria from registration to full operations.

It also looks at the preparedness of the Nigerian Government to position the country alongside its peers on the digital business map in terms of cyber space security.

This paper is structured in the following manner:

Conceptual review of E-commerce is discussed in the first section while the second section outlines Nigeria's Preparedness and the journey so far. The third section briefly explains the global Cyber laws in existence followed by requirements for owning and running online firms in Nigeria. The final section deals with the theoretical concept and recommendation.

### 2.1. Conceptual Review

Electronic commerce commonly known as e-commerce refers to the internet based industry of buying and selling products or services via electronic means using a combination of internet technology, mobile commerce, electronic funds transfer, escrowing services, electronic data interchange, supply chain management, inventory management systems, internet marketing, data collection systems and many other technologies and innovative business systems(hg.org). It is in simple terms, a process that allows the exchange of goods and services with no barriers of distance and time (Franco & Bulomine, 2016). Developed countries have utilized it to gain competitive advantage over the developing ones. Any nation that fails to join this global trend or develop its E-commerce potentials cannot be a significant player in the global economy currently driven by high-powered e-technology (Akintola, Akinyede & Agbonifo, 2011). Many have hailed E-commerce as an opportunity for developing economies to gain a stronger foothold in the multilateral trading system. This is because it has the ability to play an instrumental role in helping developing nations like Nigeria benefit from trade. It offers potential benefits in the form of enhanced participation in international value chain, increased market access and reach, improved market efficiency and lower transaction costs (Khan, 2016). E-commerce is no doubt growing rapidly in developing countries thereby offering stimulus for economic growth (UNCTAD, 2020)

#### 2.1.1. E-commerce and Policies

The pandemic era has witnessed increased rates of cyber-attacks with African countries as major targets (Paul, 2020). Today, digitalization and the social media occupy important positions on our scheme of doing things and has strong impacts on business. Companies have no options than to review their structures and policies to reflect the new normal (Adepetun, 2019). The new normal is closely tied to information and communication technology (ICT)

and as rightly noted by UNCTAD "making ICTs work for development means adapting to the benefits and the legal challenges that go along with their use" (UNCTAD,2020).

### 2.2. Contextual Review

Nigeria like other countries in the world is invariably pulling its weight in the field of convenient and fast online transactions. Many online stores now operate all over the country, specialising in various merchandise. However, relevant laws that will ensure the smooth running of E-commerce transactions are yet to be adequately provided for (Opemuti, 2020). Worldwide, Nigeria ranks first in data leakages and ranks in the top five for other forms of attack: malware, crptojacking, ransomware etc. (Paul, 2020). A survey by Sophos Group plc, a British security and hardware company showed that the major method of hacking was by a misconfiguration in company's server and through stolen credentials. This is despite the existence of the Nigerian Data Protection Regulation (NDPR), which compels organizations to handle data responsibly (Paul, 2020).

In UNCTAD 2015 information economy report, Nigeria ranked 101 out of 130 countries falling far behind Mali, Egypt, Zambia and Zimbabwe on E-commerce readiness. This means that substantial efforts still needed to be made by the Nigerian state. State policy, specifically legislation, affects in no small measure, the growth and development of E-commerce in any country. A supportive legal and regulatory framework ensures that barriers are tackled headlong. This framework covers enabling laws relating to E-commerce, regulations on consumer protection, online marketing and advertisements, e-transactions, e-banking and cybercrimes. These laws are vital for doing business online as the internet by its very nature exposes customers to possible instances of exploitation, deception and outright fraud (Alyoubi, 2015). The need for consumers to trust online transactions is a recurrent issue both in the developed and developing countries. The utmost need for legal protection for users and providers alike cannot be overemphasized considering that the gains from E-commerce dynamism are only possible where legal, institutional and policy frameworks are in place whether via the internet, mobile phones or the cloud (UNCTAD.org). In Nigeria, e-consumers are exposed to many challenges in the course of and even after conducting online transactions. The Nigerian Government has no doubt made efforts to bridge the

gap but a lot still needs to be done in terms of regulations, legislations and policies. E-commerce revolution in Nigeria has lasted about ten years now and yet despite the opportunities inherent in the industry, not fewer than ten operators have exited the space or completely divested their operations to other sectors. These include OLX, Effritin.com, Dealdey, Gloo.ng, Buyam.com.ng, Buyright Africa.com, Cribpark etc. Among the reasons cited for their exits are policy inconsistencies and tax burdens (Adepetun, 2020). These are issues directly covered by law enactment and executions. It is pertinent to put in place a comprehensive legal framework for the protection of E-consumers in particular and E-commerce as a whole. All the legislations that address issues in electronic transactions, consumer protection, privacy/data protection and cybercrimes in Nigeria are yet to be signed into law (see Tables 1 and 2). The adoption of laws may not be compulsory for E-commerce to commence but laws are indispensable for its sustainable growth. Governments of developing countries are confronted by various bottlenecks in attempts to adopt and enforce E-commerce legislations. Due to bureaucratic hitches, the adoption is delayed and by the time the laws are adopted, the technologies for which these laws are made may have changed. Surveys by UNCTAD for 38 developing countries showed the need to build capacity among lawmakers in order to ensure the making of informed policies and laws in the area of E-commerce and to execute them effectively (Information Economy Report, 2015). Possible legal issues that tend to arise in the course of E-commerce transactions, and for which a robust legislative response is required comprise:

- the degree to which communication between parties is protected (data protection);
- the time of establishment of a contract online;
- legal means of carrying out payment online; and
- concerns around the conflict of laws (Ajayi, 2015)

**Table 2 : Availability of legislation or draft legislation in key areas of cyberlaws(2020)**

		Nigeria (2020)		
		Legislation	Draft	
1	Electronic transactions	No	Yes	Pending: Electronic Transaction Bill, 2019 (HB.384). First reading 10/10/2019
2	Consumer Protection	Yes	No	Consumer Protection Council Act
3	Privacy & Data Protection	Yes	No	Nigeria Data Protection Regulation, ( by NITDA)* Pending: Protection of Personal Information Bill, 2019 (SB 07). First reading 26/11/2019
4	Cybercrime	Yes	No	Cybercrime Act 2015( cited as Cybercrime Act, 2013)

Source: Fieldwork adapted from UNCTAD Cyber law tracker, National Assembly

\* National Information Technology Development Agency

### 2.3 Key Areas of Cyber laws

As covered by the model law on electronic commerce (MLEC)

- i. E-transaction Legislation: A prerequisite for conducting commercial transactions online is to have e-transaction laws that recognize the legal equivalence between paper-based and electronic forms of exchange. This has been adopted in 158 countries.
- ii. Data Protection and Privacy Legislation: More social and economic activities are currently happening online making privacy and data protection a big subject. Collection, use and sharing of personal information to third parties without notice or consent of consumers is a concern covered by this legislation. One hundred and thirty two countries out of 194 countries have set up legislations to protect the consumers' data and privacy.
- iii. Cybercrime Laws: Cybercrime affects both buyers and sellers. It is a growing concern for all countries irrespective of status (i.e. developed, developing or least developed). One hundred and fifty four countries (79%) have enacted cybercrime legislation (UNCTAD, 2020)

The model currently in use in Nigeria is the UNCITRAL (United Nations Commission on International Trade Laws) model, which makes provision for the validity of

contracts, electronic signatures and other business transactions carried out on the internet. This model was adopted on 12th June 1996 by UNESCO, and has the core purpose to equip the legislative arm of Government with internationally accepted rules on transacting business online without legal obstacles. The fundamental principles of the UNCITAL model are non-discrimination, technological neutrality and functional equivalence.

- a) **Non-discrimination:** This ensures electronic documents and communications are accorded legitimacy and validity, bringing additional legality to the use of e-signature. "A communication shall not be denied validity on the sole ground that it is in electronic form"
- b) **Technological Neutrality:** This tackles the dynamic and evolving nature of technology and stipulates that no further legislation will be required in future for provisions whose technological sources have advanced. It creates room for future innovations and technological developments.
- c) **Functional Equivalence:** This principle explains the benchmarks and conditions under which electronic communication matches paper-based communication in achieving stated or required purpose. For example, the requirement is met if the electronic communication is accessible for future reference (Castellani, 2020).

#### 2.4 E-commerce Business in Nigeria

Prior to opening an E-commerce store in Nigeria, it is important a vendor arms himself with knowledge concerning restrictions and regulations that may affect the business directly or indirectly. Knowing the laws prevalent or governing a particular business sector aids in planning and cost saving (Estav, 2020).

1. **Registration:** A business (E-commerce business inclusive) is illegal in Nigeria if it is not registered with the Corporate Affairs Commission. Detailed processes for registration is available on their website [www.cac.gov.ng](http://www.cac.gov.ng). It is also compulsory that all companies or individuals engaging in E-commerce activities must register with the National Information Technology Development Agency (NITDA) (Opemuti, 2020). NITDA is the agency authorized by the NITDA Act, 2007 as the ICT policy implementing arm of the Federal Ministry of Communication. The NITDA Act 2007 mandates the agency to create a framework for the planning, research, development,

standardization, application, co-ordination, monitoring, evaluation and regulation of Information Technology practices, activities and systems in Nigeria. ([nitda.gov.ng](http://nitda.gov.ng)).

2. **Online Tax Laws:** As noted by Organization for Economic Co-operation and Development (OECD), the digital economy is increasingly becoming "the economy" by itself. There is currently no international consensus on taxation policies on the digital economy. Nigeria has however been proactive on this issue by imposing value added tax (VAT) on online transactions. The VAT covers transactions arising from local and foreign businesses with activities within Nigeria's digital space (Iloka & Dushime, 2020). The Finance Act 2020 signed into law on 13th January, 2020 introduced changes to various tax regimes in Nigeria including companies income tax and VAT rate increase from 5 per cent to 7.5 per cent. The Finance Act includes provisions that create nexus for the taxation of income earned by foreign companies from technical, management, consultancy or professional services that are remotely provided to a person resident in Nigeria. *The Finance Act also introduced provisions to tax any foreign company that "transmits, emits or receives signals, sounds, messages, images or data of any kind from cable, radio, electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, among others, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity"*. Prior to this Act, a company was subject to taxation only if it had a fixed base in Nigeria. In the new dispensation, non-resident companies involved in e-commerce and related online activities such as filming, computing, ride-hailing, media that previously had no fixed base in Nigeria, are now liable to Nigerian income tax provided they meet the significant economic presence (SEP) threshold (KPMG, 2020).
3. **Payment Gateways:** There are many payment gateways available for e-commerce transactions, such as the PayPal class. As the Central Bank of Nigeria regulate financial transactions with rules restricting or limiting certain products, the gateways also have their rules restricting or limiting certain products. It is therefore important to know these rules as related

to particular gateways so as not to break them or jeopardize one's business interests (Opemuti, 2020).

4. Licenses and Permits: It is important for E-commerce firms to note that there are products that are specially licensed and cannot be sold by just any vendor. Licensed personnel sell certain medical devices and drugs only. The Pharmacists Council of Nigeria Act (1992) regulates all aspects of pharmacy practice in Nigeria. Pharmaceutical practice is also regulated by the National Agency for Food and Drug Administration (NAFDAC) Act. (Igwe, 2017).
5. Intellectual Property: Intellectual property in Nigeria are protected through the paths of trademark, copyrights, patents, trade security and confidential information (Scoth, 2020). It is important that e-commerce platforms acquaint themselves with relevant intellectual property regulations and avoid breaches.
  - (i) Trademark is a word, phrase, symbol or design that clearly identifies a product distinguishing it from every other product. By registering a trademark with the Nigeria Trade Marks Registry, an E-commerce business gets exclusive rights to use the trademark in connection with the product and thus prevents any other person or firm from marketing their product/ company under similar trademark.
  - (ii) Copyright ensures the works of authorship (writings, music) and creative arts enjoy legal protection.
  - (iii) Patents confer legal rights to invent a product protected by law through registration (Opemuti, 2020).
6. Shipping Restrictions: Different shipping companies have varying restrictions on certain products (such as explosives, animals, arms etc.) usually stated on their websites. Insurance, shipping and maritime laws are available to guide potential E-commerce firms and remove bottlenecks.

### 3.0 Theoretical Framework

#### 3.1 Systems Theory

Systems theory was proposed by Von Bertalanffy in 1945 and explains how complex physical, biological,

economic and social systems operate. A system is defined as a set of several independent and regularly interacting or interrelated units (also known as subsystems) that work together to achieve a set of pre-determined objectives. System theory therefore provides a base for detecting the substance of focus, creating a standard model of it and makes studying this substance of focus possible to arrive at results. Systems theory boasts interesting concepts, which adds to its basic advantage. These concepts of system approach include input, output, feedback, control, boundaries- and are very useful in understanding business situations.

E-commerce is a subsystem of the information system that uses information practices to achieve customer acquisition, customer retention and value creation. E-commerce activities are internet related, leaving room for technological uncertainties. The risk associated with these uncertainties heighten the role of trust in virtual business transactions (Kumar & Sareem, 2012). A strong and reliable policy framework minimises suspicion and distrust in online transactions. Thus, systems theory is relevant and relates to our topic as it borders on the issue of trust in E-commerce.

#### 4.0 Conclusion and Recommendation

E-commerce has come to stay and there is no going back on this assertion. More businesses are migrating to the online platform as shown by available data. Covid-19 largely increased digital adoption by Nigerians (the lower class inclusive), consequently increasing their exposure to risk bordering on cyber-attacks and abuse. Significant efforts are thus needed to make Nigeria resilient to cyber-attacks and consequently increase the level of trust accorded to online transactions as is obtainable in Europe. In recognition of the important role of the internet in today's business transactions, Nigeria adopted the UNCITRAL model on e-commerce, which clearly provides for the validity of contracts, matters of evidence, electronic signatures, payment systems and other laws that pertain to business transactions online. There is however need for the Nigerian Government to strengthen existing indigenous laws and convert pending bills that relate to E-commerce into laws in order to ensure e-consumers and e-vendors alike are able to transact businesses online without prejudice of any form.

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