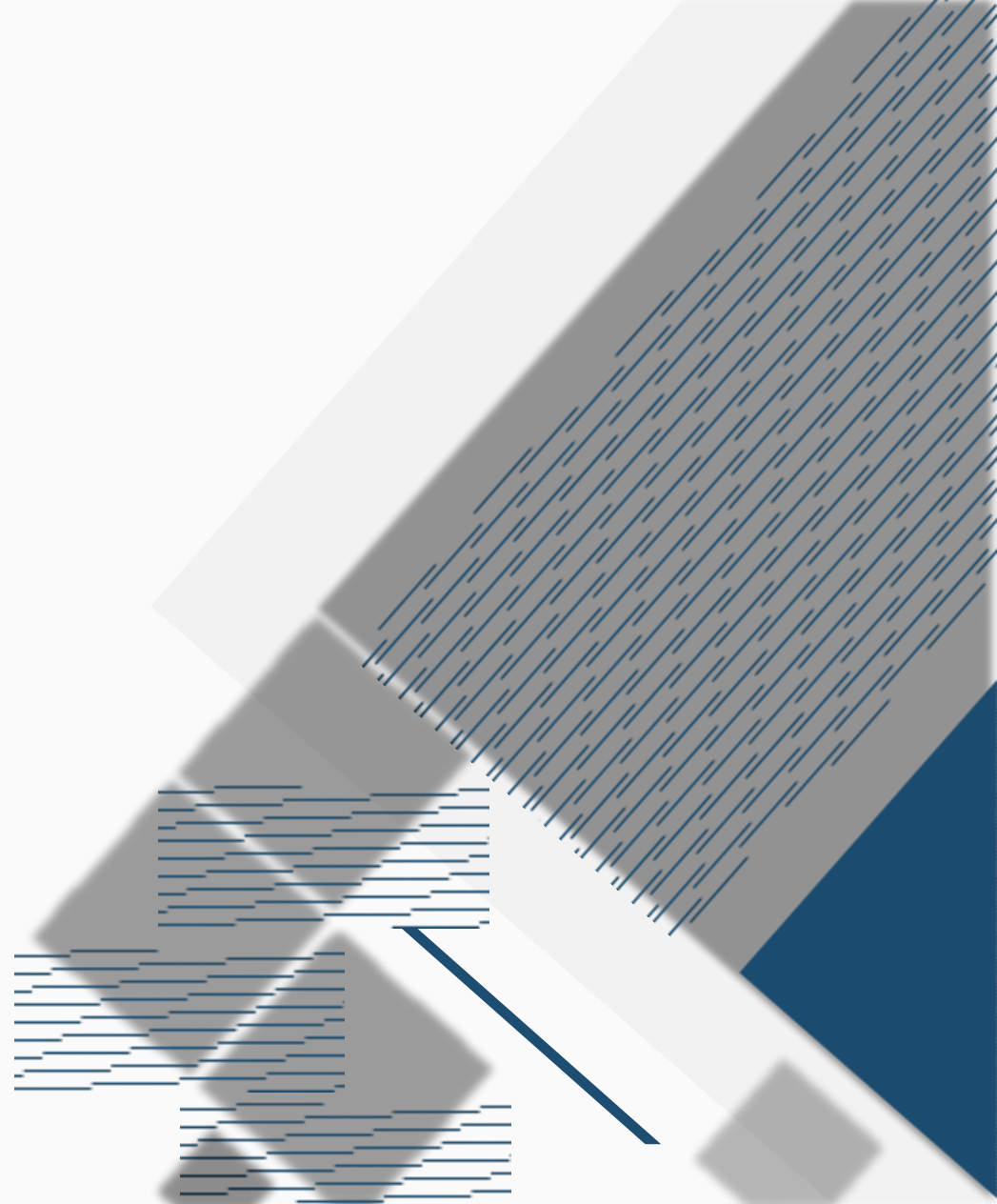


DIGITAL/ONLINE ACCESS





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INTRODUCTION

It has been said that there is an ongoing 4th revolution which is the digital revolution. This revolution is characterized by the fusion of digitalization with the physical and biological sphere, as there is a growing usage of technologies; artificial intelligence, internet facilities, cloud computing, block chain amongst others. These technologies have become an indispensable tool for realising a range of human rights, combating inequality, and accelerating growth. They allow access to resources, helps people in different parts of the world to connect with ease, enables development in key areas including education and healthcare and so much more. Infact, their uses cuts across every sector and contributes to the progress of mankind on a whole.¹ As a result of this, there has emerged a citizenry know as the digital citizenry, which has some core elements including Digital Access.



There is however, a need to answer the question of 'how the current generation who are regarded as tech savvy can fully leverage the Digital sphere?' The answer to this lies in Digital /Internet Access Rights. These Rights have been viewed to be a fundamental human right which everyone ought to enjoy and be guaranteed by all the countries and societies in the world. This work gives insight into what Digital Access are and what it entails. As we increasingly conduct our lives online – shopping, socializing and sharing information – our digital rights, particularly the rights to privacy and freedom of expression, are becoming more important. We need to understand how our data is being used by companies, government etcetera. This paper thus seeks to discuss that states have a responsibility to ensure that Internet access is broadly available to the public and that states may not unreasonably restrict an individual's access to the Internet without legal cause.



DEFINITIONS

Perhaps surprisingly, there is no commonly accepted definition of digital rights. Nor is it clear when the term first emerged.²

The European Digital Rights initiative (EDRi), a Brussels-headquartered “association of civil and human rights organisations from across Europe,”³ was founded in 2002, perhaps reflecting one of the earliest uses of the term.

People have, however, been drafting bills of internet rights since at least the mid-1990s,⁴ and over the last decade a strong body of interdisciplinary literature has emerged that considers digital rights as an extension of human rights with specific characteristics and implications.⁵ The UN Human Rights Council, for instance, has affirmed multiple times:

'The same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.'⁶



This is now firmly entrenched by both the African Commission on Human and Peoples' Rights.⁷ (ACHPR). The advent of the internet and information technology has occasioned a change in the way we enjoy and exercise our fundamental rights, such as freedom of expression, access to information, assembly, education and political choice. This gives rise to the need for proper implementation of digital rights which therefore comprises the rights that are implicated in our access to and use of these technologies.

In sum, those human and legal rights that allows individual access, use, create, and publish digital media on the internet using computers, other electronic device and telecommunications networks are what we refer to as Digital/Internet access rights. Digital rights are basically human rights in the digital era.⁸ The concept is particularly related to the protection and realization of existing rights, such as the right to privacy and freedom of expression, in the context of digital technologies, especially the internet. Internet access is the ability of individuals and organizations to connect to the internet using computer terminals, computers, and other electronic devices to access services such as World Wide Web.



LEGAL FRAMEWORK AND REGULATORY BODIES

Over the years, the idea that the right to internet access is a fundamental human right has gained popularity in the lips of citizens across the globe. The reason for this is that, the deprivation of citizens of internet access would ultimately result into a denial of their fundamental Human rights of freedom of speech, freedom of expression, freedom of association, amongst others. The international community has recognized this trend and in 2016 a non-binding resolution was passed by the United Nations (UN) which condemned intentional disruption of internet access by governments.³ This resolution was passed years after the UN Human Rights Council recognized right to internet access as a basic human right in its seventeenth session.⁴ The UN resolution affirms that the same rights enjoyed by people offline must also be enjoyed online. The legitimacy of this right can also be traced to Article 25 of the Universal Declaration of Human Rights (UDHR), 1945 which provides for, the right to a standard of living...including food, clothing, housing and medical care and necessary social services⁵. However, though this resolution is not binding, it has a persuasive influence on Nations of the world and it is supported by other international and regional frameworks, some of which would be discussed in subsequent paragraphs.



International framework: The APC Internet Rights Charter 2001, World Summit on the Information Society (WSIS) 2003, Digital rights landscape 2005, Internet Bill of Rights and Charter on Internet Rights and Principles 2007, Global Network Initiative 2008, amongst others.

The Association for Progressive Communications Internet Rights Charter 2001: The APC was signed at the APC Europe Internet Rights Workshop, held in Prague, February 2001. The APC states that "the ability to share information and communicate freely using the internet is vital to the realization of human rights as enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the elimination of All Forms of Discrimination against Women.



World Summit on the Information Society (WSIS): The summit was held under the supervision of the United Nations (UN) in December 2003. Among several resolutions of the summit was one in which freedom of information and expression via internet was stressed, stating: "We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits of the Information Society offers."



At the regional level, the European Union (EU) amended its Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services. The amendment replaced Article 4 of the 2002 Directive, and provides for network access at a fixed location and provision of telephone services. This Directive requires member states to ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking. The connection must be such that allows data communications and supporting voice at data rates that are sufficient to permit functional Internet access. EU member states are obliged to transpose the Directive to national law by 25 May 2011. However, this directive does not cover broadband, and so does not guarantee fast internet service.



Several countries across the world have adopted legislations that requires them to ensure internet/digital access broadly. Hence, preventing the government from unreasonably denying its citizens access to the internet. Below are examples of some of these Nations:

Estonia: The Estonian Parliament in February 2000, enacted the Telecommunications Act. Article 5 of the Act provides that internet service would universally available to all subscribers regardless of their geographical location, at a uniform price. The government regards the internet as essential for life in the 21st century.

Finland: In July 2010, broadband access was declared a basic right in Finland. This right became operative by virtue of an amendment in the Communications Market Act, which provides that universal service also includes a functional internet connection. In essence, every person in Finland would have access to a one-megabit per second broadband connection from telecom operations defined as universal service providers, and by 2015, access to a 100 Mbit/s connection.



Greece: The Constitution of Greece was amended and introduced Article 5A amongst other provisions. That provision states that, all persons have the right to participate in the Information Society. Articles 9, 9A and 19 makes it an obligation of the State to facilitate access to electronically transmitted information, as well as the production, exchange and diffusion of those informations electronically.

Spain: Starting from 2011, Telefónica, the former state monopoly that holds the country's "universal service" contract, shall guarantee to offer "reasonably" priced broadband of at least one megabit per second throughout Spain
The Court has played a vital role in giving effect to the rights of persons to internet/digital access irrespective of the lack of an identifiable legal framework that governs the subject. For instance in France, the Constitutional Council being the highest court in the country declared access to the internet to be a basic human rights in June 2009.



According to the Council, access to the internet facilitates the free communication of ideas and opinions enshrined in the Declaration of the Rights of Man and the Citizen of 1789. This decision rendered the Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet (HADOPI) law toothless. The law enabled the HADOPI to track people's internet activities.

Also, the Supreme Court of Costa Rica on 30th July, 2010 held that, access to digital technologies has become a basic tool to facilitate the exercise of fundamental rights and democratic participation (e-democracy) and citizen control, education, freedom of thought and expression, access to information and public services online, the right to communicate with government electronically and administrative transparency, among others.



In India, the Kerala High Court in September 2019 held that, the right to have access to the Internet is part of the fundamental right to education as well as the right to privacy under Article 21 of the Constitution. Justice P.V. Asha, on giving his decision ordered the Principal of Sree Narayanaguru College, Kozhikode, to re-admit a student who had been expelled from the college hostel for using her mobile phone beyond the restricted hours. The court observed, “When the Human Rights Council of the United Nations has found that the right of access to Internet is a fundamental freedom and a tool to ensure right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of law.”



Bhasin v. Union of India: The Supreme Court of India ruled that an indefinite suspension of internet services would be illegal under Indian law and that orders for internet shutdown must satisfy the tests of necessity and proportionality. The case concerned the internet and movement restrictions imposed in the Jammu and Kashmir region in India on August 4, 2019, in the name of protecting public order. In the end, however, the Court did not lift the internet restrictions and instead, it directed the government to review the shutdown orders against the tests outlined in its judgment and lift those that were not necessary or did not have a temporal limit. The Court reiterated that freedom of expression online enjoyed Constitutional protection, but could be restricted in cases of national security. In addition, Article 5A of the Constitution of Greece provides that all persons has a right to participate in the Information Society and that the state has an obligation to facilitate the production, exchange, diffusion, and access to electronically transmitted information in name of national security.



Digital/Online Access

The effects that these laws have on the economy cuts across every sector, putting in place the appropriate digital right laws safe guards the lives of citizens, technological advancement and the overall development and progress of a country.



NIGERIAN/LOCAL FRAMEWORK

Some laws and bodies has been setup to control and regulate digital/internet access rights of individuals in Nigeria. Some of the framework includes; The 1999 Constitution of the Federal Republic of Nigeria, the National Information Technology Development Agency (NITDA) Act, and the Nigeria Data Protection Regulations 2019 (NDPR). NITDA is a regulatory agency in Nigeria, that facilitate consumers sending communications to each other via the internet in text, picture or video format. It is empowered under the Act to make regulations and issue guidelines for the development, monitoring, evaluation and regulation of information technology practices, activities and systems in Nigeria and all matters related to and for that purpose. It is also empowered to provide guidelines for electronic governance and to monitor the use of electronic data interchange and other forms of electronic communication transactions. 22



The Constitution of Nigeria provides for freedom of thought and also guarantees right to privacy of citizens of the country.²³ This right gives Nigeria the freedom to express their thought to a reasonable extent even on the internet and also balance the right with that of privacy of individuals. The Consumer Code of Practice Regulations, 2006. Also regulates internet access in Nigeria by controlling the actions of Internet Service Provider.

The Cybercrime (Prohibition, Prevention, etc.) Act 2015, providing a framework for addressing the country's cybercrime epidemic. The law, however, includes provisions that violate citizens' rights to privacy; Section 38, and freedom of expression. Section 24 of the law penalizes "cyberstalking" or messages that are "false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another..."²⁴ Section 26 penalizes distribution of "racist or xenophobic material to the public through a computer system or network".²⁵



Okedara v. Attorney General: The Court of Appeal in Lagos dismissed a challenge to the constitutionality of Section 24(1) of the Cybercrime Act, 2015 on the ground that it lacked merit. Affirming the judgment of Buba J. of the Federal High Court, the Court disagreed with the Appellant that the provision was vague, overbroad and ambiguous and threatened his rights to freedom of expression under Section 39 of the Constitution and was not within the permissible restrictions pursuant to Section 45 of the Constitution. Instead the Court of Appeal found Section 24(1) of the Cybercrime Act to be clear and explicit and not in conflict with the provisions of Sections 36(12), 39 and 45 of the 1999 Constitution.²⁷

Although there seems to be an explosion of digital/ internet access in the last decade, data laws simply have not kept up in Nigeria, There's one thing to have a law, and infact another for how its going to be adhered to, its accessibility and where liabilities lie.²⁸

There are still huge gaps in our digital laws, gaps which needs to be covered for these law to serve their purpose efficiently.



Consequences of the lack of appropriate digital/ internet rights laws in a country and the world at large

When in the wrong hands, personal information can be wielded as a powerful tool. Everyone has things they don't want certain people to know. Having the right to establish boundaries is important for healthy relationships and careers. In all relationships, trust is essential. If it's your data, you should have control over it.

Internet and digital rights dictate that your data can only be used in ways you agree to and that you can access any information about yourself. Due to the absence of appropriate laws on digital and internet laws, the government is able to spy on people without cause. It is reasonable to say that it is wrong for a government to do this. The government is meant to protect its citizens but it often crosses the line when it comes to monitoring citizens without cause. There's just a thin line between maintaining national security and violation internet and digital rights such as freedom of expression and privacy rights. Also, absence of digital and internet laws have led to theft and abuse of personal information.



Laws on digital and internet rights will prevent organisations that store personal information from using for their personal goal. For example, in March 2018, there was an uproar about Cambridge Analytica scandal that involved the latter acquiring personal information about Facebook users for years, without the users consent, to build a "psychological warfare tool" to support Donald Trump in the 2016 presidential election.²⁸

Persons and organizations involved with misuse or theft of personal data are mostly not persecuted as there are very few laws on this. This shows that in most countries, digital and internet rights are not taken as basic human rights. If not, there'd be consequences for violators. This makes it hard for people to trust others with their personal



CONCLUSION

The right to digital and internet access has over the years developed to be a recognised fundamental human right. Infact, according to the United nations, denying internet access to anyone in the world is a breach of human rights. This is the extent to which people's lives are dependent on the internet.²⁹

One of the aims of United nations sustainable development goals is to achieve universal and affordable access to the internet.³ It's uses, not just to individuals, but to an entire nation and the world at large is so numerous, making it pertinent for every individual to have access to the internet. Countries of the world including Nigeria has developed some laws to guarantee access to the internet and digital resources online. However, inspite of the increasing availability of the internet and the laws being made around the world, still just 43% of the global population has internet access.



Of even greater concern is that, the rate of internet growth is slowing down, especially in developing countries.³⁰

The Nigerian government must understand the legal and social implications of threats to digital/ Internet access and seek to maximize Citizen Participation and implement what is needed to create a safe and free Internet, and government should not seek to intimidate individuals and organisations that bring these rights violations to the attention of all stakeholders. It is important also, that people are educated about their rights as digital citizens and how this rights can be enforced. Also the Government should promote accountability and proper funding of agencies saddled with responsible to foster Digital Access.



1. See link below; [https://www.apc.org/en/pubs/internet-rights-arehumanrights#:~: Enter title here text=ICCPR%20article%2019&text=Everyone%20shall%20have%20the%20right%20to%20freedom%20of%20expression%3B%20this,other%20media%20of%20his%20choice](https://www.apc.org/en/pubs/internet-rights-arehumanrights#:~:text=ICCPR%20article%2019&text=Everyone%20shall%20have%20the%20right%20to%20freedom%20of%20expression%3B%20this,other%20media%20of%20his%20choice)
2. We theorise that it could have emerged as a derivative or truncation of the phrase “digital rights management” or DRM, a process by which code embedded into multimedia files, like movies or songs, prevents users from sharing files. Searching the archive with the term “digital rights” brought up 98 pages of results from as early as 2003. Until the late 2000s, most of the results containing “digital rights” pertained to DRM, a key advocacy issue for the Electronic Frontier Foundation. See link below; <https://www.giswatch.org/en/report-introduction/methodology-reserch-laws>
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20. S37 and 38 of the 1999 Constitution of Federal Republic of Nigeria.
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