

# UNRAVELING THE CONCEPT OF DIGITAL RIGHTS LAW IN NIGERIA.

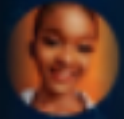
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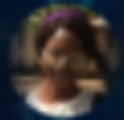
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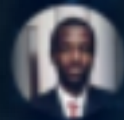
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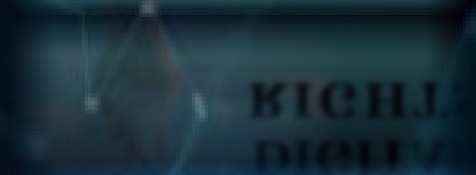
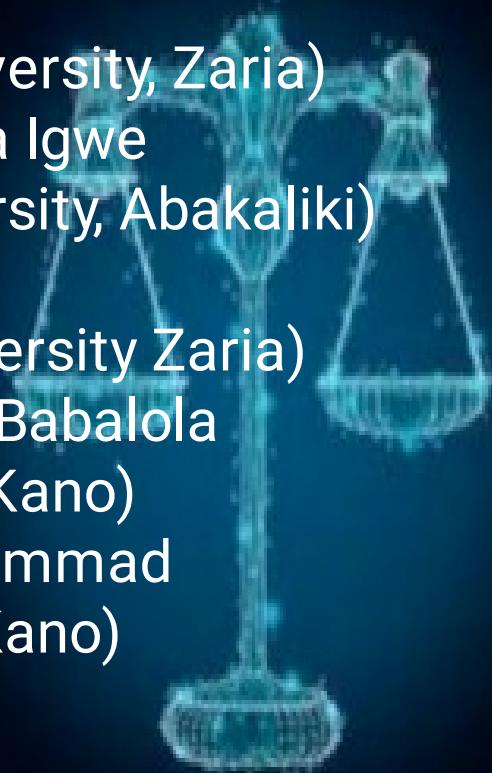
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# INTRODUCTION



Technology in Nigeria today is competing with other revenue contributing sectors of the economy, which is predicted to have almost taken over the oil and gas sector, with this speedy development in cyber space, the Nigerian government is limited of standard legal framework regulating the activities of the vulnerable users and protect their privacy online, it is important to note that Digital rights are not limited to Human rights, a 2012 United Nations resolution affirmed that the civil, political, economic, and social rights that people enjoy offline must also be protected online.

The digital rights<sup>1</sup> in Nigeria is vague reason being there is no single handedly a statute law protecting the interest of online users in Nigeria limited of such laws. With the advent of technology, the Nigerian economy is growing faster than expected, over the past two decades; internet use has exploded in Africa's largest economy.

“Digital rights “here refers to human and legal rights as related to digital media and technologies”

<sup>1</sup>“Digital rights “here refers to human and legal rights as related to digital media and technologies”



At the beginning of 2001, a paltry 200 000 Nigerians used the internet, by 2020, that figure had increased to over 126 million – a factor of almost 630 – with a 61.2 percent penetration of the population . In 2018 98 percent of the adult population used some type of mobile phone (56% smart phones) to access the internet, while computers and tablets were used by only 23 percent and 9 percent, respectively

This unexpected rise in the use of cyber gadgets has drastically increase over the years, contributing a whopping of 13.8 percent to nominal GDP in 2019<sup>4</sup>, competing with almighty oil and gas sector. Despite this tremendous achievement the communication sector is able to bring to the Nigerian GDP, the legislation of the Digital Rights remains a topic of discussion in the hollow chambers (National Assembly). The digital rights and freedom bill was aborted when the president declined the bill on the basis that the bill is lacking in clear explanations of some specific terminologies/technical subjects which include; lawful interception of communication, digital protection and retention. With the internet penetration and its contribution in Nigeria, the need for a law that governs, protects, enforces the digital human rights becomes important.

<sup>2</sup> Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet: Resolution Adopted by the Human Rights Council, 18 July 2016, A/HRC/RES/32/13, [https://www.article19.org/data/files/Internet\\_Statement\\_Adopted.pdf](https://www.article19.org/data/files/Internet_Statement_Adopted.pdf)

<sup>3</sup> Simon Kemp, Digital 2019: Nigeria, slide 18, 31 January 2019, <https://datareportal.com/reports/digital-2019->



Section 37 of the constitution of Federal Republic of Nigeria 1999 (as amended) provides that "the *privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected*", while Section 39(1) asserts that "every *person shall be entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference*".<sup>4</sup>

The sections reproduced above are not limited to the offline Nigerians alone and it could be interpreted to accommodate the online users. A 2018 report co-authored by Privacy International and Paradigm Initiative was highly critical of Nigeria's lack of protection for privacy rights, It observed that the mandatory registration of SIM cards, the establishment of a central database containing information about mobile phone users, and compulsory data-retention by internet service providers all contravene international human rights standards because they are neither necessary to achieve a legitimate aim nor proportionate to the aim pursued.<sup>5</sup>



<sup>4</sup>Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999, <https://constitution.lawnigeria.com/2018/03/26/1999-constitution-with-amendments-nigerian-constitution-hub/>

<sup>5</sup>Paradigm Initiative and Privacy International, Stakeholder Report Universal Periodic Review 31st Session, March 2018

# DEFINITION OF DIGITAL RIGHTS

Many times, when the question "*what are digital rights*" is asked, the simplest reply is "human rights in a digital environment". While human rights have been clearly defined through the UN Declaration of Human Rights (UDHR), the same can not be said for the terms "*digital*", "*internet*" or "*technology*". The term digital is often confused with online or the internet but not everything digital is always connected to the internet for example Biometric data such as facial recognition and fingerprint checking.<sup>6</sup>

According to Wikipedia, digital rights are those human rights and legal rights that allow individuals to access, use, create and publish digital media or to access and use computers, other electronic devices and telecommunications networks.<sup>7</sup> . 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.<sup>8</sup>

<sup>6</sup>Coconet digital rights camp 2019

<sup>7</sup>Wikipedia.com/digital rights

<sup>8</sup>Digital freedom: the case for civil liberties on the Net". BBC News. 1999-03-04. Retrieved 2010-05-01.

Digital rights are basically human rights in the internet era .The rights to online privacy and freedom of expression, for example are really extensions of the equal and inalienable rights laid out in the UN Declaration of Human Rights<sup>9</sup> According to the United Nations, disconnecting people from the internet violates these rights and goes against international law.<sup>10</sup> Digital rights are considered to be the same fundamental human rights that exist in the offline world but in the online world. In 2012, 2014 and 2016 , the UN human rights council agreed in a resolution that the “same rights that people have offline must also be protected online.”<sup>11</sup> This means that rather than the United Nations seeking to define new rights for the online space, they have recommended extending existing human rights to cyber space. Digital rights are rights of individuals as it pertains to computer access and the ability to use, create and publish digital media. Digital rights can also be referred to as allowed for fair use of digital copyrighted materials.

<sup>9</sup><https://www.weforum.org/agenda/2015/11/what-are-your-digital-rights-explainer/>

<sup>10</sup>Rights Council, Seventeenth session, Agenda item 3; Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. 2011

<sup>11</sup><https://www.google.com/amp/s/amp.dw.com/en/what-are-digital-rights/a-36703292>



The extent to which digital rights are recognized varies from country to country but internet access is a recognized right in several countries.<sup>12</sup>

The definition of digital rights and responsibilities is having the rights and freedom to use all types of digital technology while using the technology in an acceptable and appropriate manner. As a user of technology, you also have the right to privacy and freedom of expression.<sup>1</sup>

Digital rights are your legal and moral entitlements to access, use and create digital media. They are also the cyberspace equivalent of each person's inalienable human rights to life, liberty and the pursuit of happiness.<sup>14</sup>

The term digital rights comprises of rights that are implicated in our access and use of various technologies. It also necessitates the conditions of what commensurate obligations that are on states and other actors to protect these rights.<sup>15</sup>

<sup>12</sup><https://whatis.techtarget.com/definition/digital-rights>

<sup>13</sup><https://sites.google.com/site/digitalcitizenshipdferris/digital-rights-and-responsibilities>

<sup>14</sup><https://www.techslang.com/definition/what-are-digital-rights/>

<sup>15</sup><https://www.mediadefence.org/wp-content/uploads/2020/06/MLDI-Training-Manual-on-Digital-Rights-and-Freedom-of-Expression-Online.pdf>



Digital rights are human rights which are inherent of ICT (information and communication technology) users and non-users. They ensure access to equal rights to information, technology and knowledge; being free from violence, surveillance and discrimination; and respects privacy, and self-determination.<sup>16</sup>

According to the ICANN community, they are the rights to know, seek information, blog, share, access the internet, the right to privacy online and the right to online security.<sup>17</sup>

All-together, digital rights are a set of universal human rights that ensures everybody—regardless of their gender, age, race, sexuality, and more — has equal access to an open internet that is governed in an inclusive, accountable, and transparent manner to ensure people's fundamental freedom and rights

<sup>16</sup>Coconet digital rights camp 2019

<sup>17</sup><https://community.icann.com>



# Digital Rights Laws

Some digital rights laws are; the Constitution of the Federal Republic of Nigeria, 1999 as amended (Constitution), the National Information Technology Development Agency (NITDA) Act, 2007, and the Nigeria Data Protection Regulations 2019 (NDPR) and the cybercrime act.

## A .The Constitution

The constitution is the overarching law and the basis upon which law and government is organized in Nigeria. It aims to promote the good government and welfare of all persons in Nigeria on the principles of freedom, equality and justice. The Constitution guarantees the privacy of every Nigerian citizen as a fundamental human right. It provides that "*the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.*"<sup>18</sup>

<sup>18</sup>Section 37 of the constitution

## B.NITDA Act, 2007

Nigerian users are therefore entitled to their privacy in their communications and online platforms must consider privacy issues when sharing user data.

NITDA Act establishes NITDA as the regulating agency for all information technology matters in Nigeria.<sup>19</sup> NITDA is the principal regulatory agency in Nigeria for online platforms that facilitate consumers sending communications to each other via the internet in text, picture or video format. It is the agency responsible for regulating online platforms that enable the creation and sharing of amateur and professionally produced content. NITDA 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.<sup>20</sup> It is also empowered to develop guidelines for electronic governance and to monitor the use of electronic data interchange and other forms of electronic communication transactions.<sup>21</sup>

<sup>19</sup>Sections 1 and 6 NITDA Act, 2007

<sup>20</sup>Section 6(a) NITDA Act, 2007

<sup>21</sup>Section 6(c) NITDA Act, 2007



## **C . NDPR, 2019**

Further to its powers under the Act, NITDA issued the NDPR in 2019. The objectives of the NDPR are to safeguard the rights of natural persons to data privacy, to foster safe conduct for transactions involving the exchange of Personal Data and to prevent manipulation of Personal Data.<sup>22</sup>

## **D . The Copyright Act**

The Copyright Act governs copyright issues in Nigeria. According to section 1 of the Copyright Act, copyright eligible works include literary works, musical works, artistic works, cinematograph films, sound recordings, and broadcasts.<sup>23</sup> Professionally produced editorial content in video and picture format may be categorized as copyright-eligible artistic works, cinematograph films, and broadcasts. In such cases, copyright concerns will arise.

## **E. Cybercrime Act, 2015**

Cyber crime can be defined as crimes in which a computer is the object of the crime or is used as a tool to commit an offense.<sup>24</sup>

<sup>22</sup>Paragraph 1.1 of the NDPR

<sup>23</sup>Section 1(1) of the Copyright Act, C28 LFN 2004.

<sup>24</sup><http://financerworldwide.com>





Cybercrimes Act 2015 is the first legislation in Nigeria that deals specifically with cyber security. Passed in May 2015, it gives effect to the 2011 ECOWAS Directive on fighting cyber crime and is broad in its scope.

The Cybercrime Act prohibits dealing with data stored in a computer system or network in a fraudulent manner for fraudulent purposes.<sup>25</sup>

The Act also requires financial institutions to protect customers' data,<sup>26</sup> while Section 12 of the Cybercrime Act prohibits unlawful interception of electronic communications<sup>27</sup>

<sup>25</sup>Section 14 and 16 of the Cybercrime Act 2015

<sup>26</sup>Section 19 of the Cybercrime Act 2015

<sup>27</sup>Section 12 of the Cybercrime Act 2015



# CASE LAWS

In **VISAFONE COMMUNICATIONS LTD v. MUSICAL COPYRIGHT SOCIETY OF NIGERIA LTD/GTE & ANOR**,<sup>28</sup>The Respondents had alleged in the suit that the Appellant infringed the Respondents copyright. 'The first plaintiff is also the sole and exclusive agent of the second plaintiff for the territory of Nigeria in respect inter alia of the recording and mechanical reproduction right in the said work, "La Bamba." Therefore it is clear that the Respondents operation comes under Section 17 of the Copyright Act and it must obtain approval from the commission to file an action.'

<sup>28</sup>(2018) LPELR-46791(CA)

<sup>29</sup>(2016) LPELR-42264(CA)

See the case of **NIGERIA COPYRIGHT COMMISSION & ORS v. MUSICAL COPYRIGHT SOCIETY OF NIGERIA LIMITED GTE & ORS.**<sup>29</sup> Here, the respondent filed an application under the Fundamental Rights Enforcement Rules, seeking relief guaranteed by sections; 34,35 and 41 of the 1999 Constitution. Also by Article 2,3,4,5,6,10,11 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, LFN 2004. The trial court, delivered that: *“On the whole, I agree that the Copyrights Act has endowed its inspectors to carry out the burden of enforcing the provisions of the Act, they however, also have the responsibility to carry out such burden with care and trust for the citizenry. They must not get intoxicated by enormous powers made available to them by law... The arrest, detention and seizure of the properties of the Applicants lacked semblance of Legal justification...”* Rights of individuals to demand for digital grade of service from Digital Mobile Licenses was seen and applied effectively in the case of **BARRISTER MIKE NKWOCHA & ORS v. MTN NIGERIA COMMUNICATIONS LTD. & ANOR**<sup>30</sup> where, the appellants alleged several breaches of contract by the respondents. They also alleged breaches by the respondents of their Digital Mobile Licenses in that the respondents failed (according to the appellants) to ensure that the traffic capacity provided in their systems would be dimensioned to guarantee a satisfactory grade of service.

<sup>30</sup>(2008) LPELR-8494(CA)



The appellant therefore sought, inter alia, an order directing the defendants jointly and severally to render accounts of money received on behalf of the plaintiff's the sum representing the monetary value of dropped and uncompleted calls.

Also, in **SOLOMON OKEDARA v. ATTORNEY GENERAL OF THE FEDERATION**, the lower Court agreed with the Respondent and held the view that the provisions of Section 24(1) of the Cybercrime Act are not in conflict with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Thereby making the appellants approach the Supreme Court.

In **CONTINENTAL SALES LIMITED v. R. SHIPPING INC**, Clark .J JCA, delivered that; "*... There is no reason why, in this context, delivery of a document by e-mail – a method habitually used by businessmen, lawyers and civil servants – should be regarded as essentially different from communication by post, fax or telex.*" Therefore, the court appeal agreed that E-mail (a means of digital communication) is acceptable and no different from any means of communication.

(2019)LCN/12768(CA) <https://lawcarenigeria.com/solomon-okedara-v-attorney-general-of-the-federation-2019/> Date accessed: 8th December, 2020.

(2012)LCN/5319(CA) <https://lawcarenigeria.com/continental-sales-limited-v-r-shipping-inc-2012/> Date accessed: 8th December, 2020.



# Digital Rights Organization Within and Outside Nigeria

Digital rights organizations are groups of people working together in an organized way to promote and protect those human rights and legal rights that allow individuals to access, use, create, and publish digital media or to access and use computers, other electronic devices, and telecommunications networks.

Examples of Digital Rights Organizations:

## **Paradigm Initiative**

It is a social enterprise that builds an ICT-enabled support system and advocates digital rights in order to improve livelihoods for under-served youths.<sup>33</sup> This pan-African social enterprise works to advance digital rights and inclusion in Nigeria and Africa as a whole. Its annual Digital Rights in Africa Report – first published in since 2016 – gives an in-depth analysis of the state of digital rights in Africa, and examines violations such as Internet disruptions, illegal surveillance, arrest of bloggers and the passage of hurtful legislation, amongst others.<sup>34</sup>



DATA  
PROTECTION

<sup>33</sup><https://paradigmhq.org/about/>, accessed on 7th December, 2020

<sup>34</sup><https://www.google.com/amp/s/www.africanews.com/amp/2020/04/01/digital-rights-in-africa-advocates-must-team-up-to-consolidate-gains-report>

## **European Digital Rights (EDRi)**

This is an international advocacy group headquartered in Brussels, Belgium. It was founded in June 2002 in Berlin by ten NGOs from seven countries.<sup>35</sup> In March 2015, the European Council adopted a proposal that may compromise net neutrality, a major concern of EDRi.<sup>36</sup> This dynamic and resilient collective of NGOs, experts, advocates and academics works to defend and advance digital rights across the continent. For almost two decades, it has served as the backbone of the digital rights movement in Europe.<sup>37</sup>

## **The Electronic Frontier Foundation (EFF)**

This is an international non-profit digital rights group based in San Francisco, California. The foundation was formed in July 1990 by John Gilmore, John Perry Barlow and Mitch Kapor to promote Internet civil liberties<sup>38</sup>

privacy

<sup>35</sup>[https://en.m.wikipedia.org/wiki/European\\_Digital\\_Rights](https://en.m.wikipedia.org/wiki/European_Digital_Rights), <https://edri.org/>

<sup>36</sup>O.P.CIT

<sup>37</sup><https://edri.org/about-us/who-we-are/>, accessed on 7th December, 2020

<sup>38</sup>[https://en.m.wikipedia.org/wiki/Electronic\\_Frontier\\_Foundation](https://en.m.wikipedia.org/wiki/Electronic_Frontier_Foundation), <https://www.eff.org/> accessed on 7th December, 2020

# Non-Governmental Organizations that promotes Digital Rights Includes:



## Access organization:

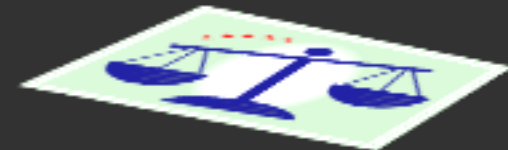
It advocates for open and secure access to digital communications, and its site provides reports and policy recommendations on the freedom of access to the Internet and other forms of digital communications.<sup>39</sup> The site's "Policy Document" offers regional and country-specific information on various topics, including cyber security and denial of Internet access in seven different languages. Under "Privacy," one can search main instruments and initiatives on data protection around the world.

## Article 19

Article 19 is a leading organization for the promotion and protection of freedom of opinion and expression. Its site offers in-depth information on freedom of expression, media regulation, freedom of information, Internet communication technology, press freedom, etc.<sup>41</sup>

<sup>39</sup> Governmental Organizations, available at <https://globalfreedomofexpression.columbia.edu/non-governmental-organizations/>, accessed on 8th December, 2020

<sup>41</sup> <https://www.article19.org/>



## Center for Law and Democracy

The Center for Law and Democracy's mission is to promote and protect fundamental human rights, including the rights to freedom of expression and access to information.<sup>42</sup> Its "Legal Work" section contains in-depth legal examination of relevant national legislations and the organization's legislative proposals. Under "Understanding Democracy Rights," one can find a selection of national laws on freedom of expression and access to information.<sup>43</sup>

### Human Rights Information and Documentation Systems (HURIDOCs)

The Human Rights Information and Documentation Systems (HURIDOCs) is a non-governmental organization involved in providing documentation techniques, monitoring methods, information management systems, and technologies in the defense of human rights.<sup>44</sup> The organization's site provides access to a wealth of training materials, tools and techniques for monitoring and documenting human rights violations and it also provides manuals on media monitoring, information scanning and intelligence for human rights NGOs.<sup>45</sup>

<sup>42</sup><https://www.law-democracy.org/live/>

<sup>43</sup><https://www.law-democracy.org/live/legal-work/legal-analyses/>

<sup>44</sup><https://en.m.wikipedia.org/wiki/HURIDOCs>

<sup>45</sup><https://huridocs.org/>





## **Media Legal Defense Initiative**

The Media Legal Defense Initiative is a non-governmental organization with a mission to protect press freedom by assisting journalists, bloggers, and independent media outlets around the world in defending their rights.<sup>46</sup>

Other non-profit organizations with the goal of promoting digital rights, government transparency, and free speech, include; Share Foundation, Global Voice Advocacy, Freedom House, Freedominfo.org. These independent

<sup>46</sup><https://www.mediadefence.org/>

# CONCLUSION

Digital Rights in Nigeria is still a tot that needed to be mollycoddled but the statutory provisions regulating it functions are still alive. With all discussed above, it is no doubt that digital Rights is in for a lot of wake-up calls in Nigeria. Practitioners are hereby implored to invest their focus in digital Rights as the world demands it; the digital age. This will improve effective operation of our rights in the digital age.

