



NDPR Academy® Foundation Course

MODULE 1: INTRODUCTION TO NIGERIA PRIVACY RIGHTS LAW

Module 1: Overview

In this Module, we will learn about, the:

- 1.1 basis of and conversations on Nigeria's privacy rights laws;
- 1.2 structure of the 2019 Nigeria Data Protection Regulation (NDPR); and
- 1.3 material and territorial scope of the NDPR.



1.1 The Basis of Nigeria's Privacy Rights Laws:



- 1.1.1 Nigerian Law is sourced from the following 5 major sources:
 - 1.1.1.1 1999 Constitution of the Federal Republic of Nigeria (the Constitution);
 - 1.1.1.2 Nigerian legislations;
 - 1.1.1.3 Judicial decisions;
 - 1.1.1.4 Received English Law – comprised of the Common Laws of England, the Doctrines of Equity and the Statutes of General Application that were in force in England on January 1, 1900; and
 - 1.1.1.5 Customary and Islamic laws.

- 1.1.2 Of the above 5, only the first 4 have developed laws or rules on privacy rights in the context in which privacy rights is globally recognised.
- 1.1.3 The Constitution guarantees the privacy rights of Nigerian citizens. It states that: “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic, communications is hereby guaranteed and protected.”¹ This right is however not absolute as the same Constitution states that the guaranteed privacy right can be infringed upon by any other law made:



- 1.1.4 The National Information Technology Development Agency (NITDA) Act, 2007 has become a major Nigerian legislation on privacy rights law in light of the NDPR. NITDA's function includes the development of guidelines for electronic governance and monitoring the use of electronic data



interchange and other forms of electronic communication transactions as an alternative to paper-based methods in government, commerce, education, the private and public sectors, labour, and other fields, where the use of electronic communication may improve the exchange of data and information.³

- 1.1.5 The NDPR is a January 25, 2019 regulation of NITDA. Its preamble references NITDA's function to develop regulations for electronic governance and generally monitor electronic communications. Accordingly, it has been argued if NITDA can regulate privacy rights in general, given the limitation of its functions to electronic communications. It is noteworthy however that NITDA itself was established to implement Nigeria's National Information Technology Policy of 2000 where Strategy 13.3(ii) created the mandate of ensuring the protection of individual and collective privacy, security, and confidentiality of information.

¹ Section 37 of the Constitution.

² Section 45 of the Constitution.

³ Section 6(c) of the NITDA Act.

1.1.6 NDPR has 4 main objectives which are, to:

1.1.6.1



safeguard the rights of Data Subjects to the privacy of their Personal Data;

1.1.6.2



foster safe conduct for transactions involving the exchange of Personal Data;

1.1.6.3



prevent manipulation of Personal Data; and

1.1.6.4



ensure that Nigerian businesses remain competitive in international trade through the best practice safeguards afforded by NDPR.

1.1.7 The only post-NDPR judicial decision was in **Paradigm Initiative for Information Technology v. Nigerian Identity Management Commission (NIMC)**.⁴ The FHC was called to decide whether NIMC had the right to collect personal data without adequate security and regulatory framework to guide the process. The FHC took judicial notice of the NDPR and dismissed the case on the basis that the issues complained of by the Plaintiff had been addressed with the making of the NDPR. In the absence of any other judicial pronouncement, it is currently safe to conclude that Nigerian Law recognizes the NITDA Act and NDPR as the relevant legal regime for Personal Data protection and processing in Nigeria.

1.2 Structure of NDPR:

1.2.1 NDPR is divided into the preamble and 4 parts. The parts must be read in conjunction with the preamble in order to fully understand what the NDPR requires.

1.2.2 Part 1 states NDPR's objectives, scope and defines its special terminologies and abbreviations.

⁴ https://ndpracademy.ng/resources/PARADIGM_INITIATIVE_FOR_INFORMATION_TECHNOLOGY_V._NIMC.pdf

- 1.2.3 Part 2 deals with the principles of lawful data processing and obtaining consent. It goes further to highlight the how and why of privacy policies, data security and third-party data processing contracts. Other subjects include, Data Subject objections, penalties for defaults and foreign transfers of Personal Data.
- 1.2.4 Part 3 is exclusive to the rights of Data Subjects.
- 1.2.5 Part 4 details the mechanisms for the implementation of NDPR, the Administrative Redress Panel (ARP) for dealing with complaints and breaches; and the local and international cooperation required for the implementation of NDPR.

1.3 NDPR's Material and Territorial Scope:

- 1.3.1 NDPR has a limited scope. It seeks only to protect the Personal Data of Data Subjects.
- 1.3.2 A Data Subject is an identified or identifiable natural person who:

- (i) is a Nigerian citizen, regardless of where he or she lives; or
- (ii) lives in Nigeria, regardless of his or her nationality.

Accordingly, NDPR regulates the processing of the Personal Data of these Data Subjects, regardless of where the Personal Data processing activities take place.

- 1.3.3 A natural person must be identifiable by his or her Personal Data. In other words, by the nature of the Personal Data, the Data Subject must easily be identified or identifiable, whether directly or indirectly. Accordingly, Personal Data could include information such as: a name; address; photograph; bank details; identification number; location data; an online identifier; the physical, physiological, genetic, mental, economic, cultural or social identity of the Data Subject; posts on social networking websites; medical information; and other unique identifiers such as but not limited to MAC address, IP address, IMEI number, IMSI number and others.⁵



⁵ See the definition section of the NDPR.

⁶ Ibid.

- 1.3.4 Included in the above samples of Personal Data are a special category of Personal Data known as Sensitive Personal Data. They are Personal Data relating to religious or other beliefs, sexual orientation, health or biometrics, race, ethnicity, political views, trades union membership, criminal records or any other sensitive personal information.⁶
- 1.3.5 A natural person is a living individual, accordingly, NDPR's scope does not extend to the protection of the data of artificial persons (for example, corporates) or a non-living human person. NDPR does not protect the Personal Data of a dead person, with the exception of the deceased person's estate where the Personal Data relates to a Data Subject such as a beneficiary of the estate.
- 1.3.6 NDPR promotes the Data Subject's rights to the ownership and control of his or her Personal Data. These rights become particularly relevant when the Personal Data is being processed by Data Controllers or Data Administrators. Since Personal Data processing is carried out on an increasingly global scale, it is important that Data Subjects understand their rights to and control of their Personal Data.
- 1.3.7 NDPR applies to all Personal Data processing transactions notwithstanding the means by which the Personal Data processing is being conducted or intended to be conducted.
- 1.3.8 NDPR will not deny any Nigerian citizen or any foreigner living in Nigeria, the other privacy rights that they may be entitled to under any law, regulation, policy or contract for the time being in force in Nigeria or in any foreign jurisdiction. Accordingly, any Nigerian citizen or any foreigner living in Nigeria, can in addition to the NDPR, enforce any of their other privacy rights.
- 1.3.9 NDPR regulates all Data Controllers or Data Administrators whose main establishment, typically their headquarters, is located in Nigeria. This is regardless of where the actual Personal Data processing activities take place. Accordingly, a Data Controller or Data Administrator that outsources its Personal Data processing activity outside Nigeria is still subject to NDPR.
- 1.3.10 NDPR regulates any Personal Data processing activity on goods or services, regardless of payment or consideration. Accordingly, marketing and data sharing activities are as subject to NDPR as direct sales is.



1.3.11 Processing activities that monitor Data Subjects' behaviour are similarly regulated by NDPR. Accordingly, organisations that employ cookies on their websites will have to review their grounds for doing so in relation to Data Subjects under the NDPR.



1.4 Definitions of Common Terms in Module 1:

We set out below, a glossary of the terms and abbreviations used in this Module:

	Term	Meaning
1.4.	Data Administrator	An organisation or individual that processes Personal Data, usually at the instance of the Data Controller.
1.4.	Data Controller	An organisation or individual who determines the purposes for and the manner in which Personal Data is processed or to be processed.
1.4.	Data Subject	This is an identified or identifiable natural person who: <ul style="list-style-type: none"> (i) is a Nigerian citizen, regardless of where he or she lives; or (ii) lives in Nigeria, regardless of his or her nationality
1.4.	GSM	Global System for Mobile Communication.
1.4.5	IMEI Address	International mobile equipment identity, usually 15 or 17 digits, that identifies the user of a mobile phone.
1.4.6	IMSI Address	International mobile subscriber identity, usually of 15 digits, assigned to GSM, UMTS or LTE subscribers.
1.4.7	IP Address	Internet protocol address that is assigned to each device that is connected to a computer network.
1.4.8	MAC Address	Media access control address assigned to a network interface controller.

	Term	Meaning
1.4.9	NDPR	Nigeria's 2019 Data Protection Regulation which came in force on January 25, 2019.
1.4.1	Nigeria	The Federal Republic of Nigeria
1.4.1	Nigerian Law	The sum of all the laws that are in force in Nigeria.
1.4.1	NITDA	Nigeria's National Information Technology Development Agency.
1.4.1	Personal Data	This is the heart of NDPR. It means any information relating to a Data Subject and could include information such as: a name; address; photograph; bank details; identification number; location data; an online identifier; the physical, physiological, genetic, mental, economic, cultural or social identity of the Data Subject; posts on social networking websites; medical information; and other unique identifiers such as but not limited to MAC address, IP address, IMEI number, IMSI number and others.
1.4.1	Personal Data Processing	This refers to any operation on Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
1.4.1	Sensitive Personal Data	They are Personal Data relating to religious or other beliefs, sexual orientation, health or biometrics, race, ethnicity, political views, trades union membership, criminal records or any other sensitive personal information.
1.4.1	UMTS	Universal Mobile Telecommunications Service.

1.5 Module 1: Summary

- 1.5.1 Other than the 1999 Constitution, the NITDA Act and NDPR are currently the legal basis of privacy rights conversation in Nigeria.
- 1.5.2 NDPR is divided into the following 4 parts and subject matters:
 - 1.5.2.1 Part 1 – NDPR objectives, scope and definitions
 - 1.5.2.2 Part 2 – Personal Data processing principles
 - 1.5.2.3 Part 3 – Rights of Data Subjects
 - 1.5.2.4 Part 4 – Implementation and remedies
- 1.5.3 NDPR's material and territorial scope extends to:
 - 1.5.3.1 all Nigerian citizens in whatever jurisdiction they live;
 - 1.5.3.2 all living natural persons that live in Nigeria; and
 - 1.5.3.3 all Personal Data processing activities carried out by all Data Controllers and Data Administrators situated in Nigeria regardless of the jurisdiction where the processing activity takes place.

Further Reading:

1. Sections 37 and 45 of the Constitution of the Federal Republic of Nigeria, 1999.
2. 2019 Nigeria Data Protection Regulation⁷
3. National Information Technology Development Act 2007⁸
4. **Paradigm Initiative for Information Technology v. Nigerian Identity Management Commission (NIMC)**

⁷Available at: ndpracademy.ng/resources/Nigeria-Data-Protection-Regulation.pdf

⁸Available at: ndpracademy.ng/resources/NITDA-act-2007.pdf