

**Course Content**

Laws governing the use of communication technologies. Access and publication of information. Laws relevant in Nigeria in relation to Europe, America and Asia. Legal issues arising in relation to the Internet. Telecommunications regulation. Intellectual property. Antitrust. Constitutional law. Challenges posed by technological change for economic regulation. Theories and laws of privacy. Impact of technologies on financial, medical, and workplace privacy.  
30h (T); C

**Laws Governing the Use of Communication Technologies****The Wireless Telegraphy Act**

The Wireless Telegraphy Act (WTA) was initially enacted in 1961. Having preceded all other extant laws in the sector, the WTA nevertheless continues to provide clarity in relation to the nature of the regulatory management of communications in Nigeria. Essentially, the Act seeks to regulate the licensing, location and operation of wireless telegraphy services in Nigeria. Under the Act, it is an offence for a person to establish or use any station for wireless telegraphy, or install or use apparatus for wireless telegraphy except in accordance with a license issued by the Commission. In this regard, the "Commission" is defined to mean the Nigerian Communications Commission (with regard to telecommunications matters) and the National Broadcasting Commission (with regard to broadcasting matters).

**The Nigerian Communications Act**

The Act was enacted in 2003 to create a regulatory framework for the Nigerian communications industry. The Act established the Nigerian Communications Commission (NCC) as an independent National Regulatory Authority (NRA) for the telecommunications industry in Nigeria. The Act further created provisions for the licensing and operations of telecommunications service providers and other related matters. A major focus of this Act is the granting of licensed persons to operate a communications system or facility or provide a communications service in Nigeria. This is evidenced in Chapter 4 of the NCA.

Digital technology in the communications sector has converged the distinct communication subsectors into one. This has caused overlap of regulatory functions among the distinct regulators, collision in the regulatory bodies, ineffective or over regulation, inefficient use and allocation of scarce resources and making most provisions in the enabling Act obsolete. This poses some legal and regulatory challenges to the regulators. Studies have found that the existing Nigerian Communications Act 2003 is inadequate to engender an efficient and effective regulation of the sector in an ICT convergent era as the Act made provisions for only telecommunications and its specific regulator. Experts have recommended that, the various policies and laws in the communication subsectors in Nigeria should be reviewed, harmonized and a converged law enacted. The law should be reviewed constantly and made more flexible because of the evolving nature of convergence.

### **The National Broadcasting Commission Act**

The Act was first promulgated as a Decree on 24 August 1992. However, the Decree and its amendments have been adopted as an Act of the National Assembly in 1999. The National Broadcasting Commission Act therefore regulates radio broadcasting activities in Nigeria, as well as the licensing of Cable, DTH and all terrestrial radio and television services. It aims to implement the National Mass Communication Policy of the Federal Republic of Nigeria and also sets standards with regards to the contents and quality of materials being broadcast over the country's radio waves. Though a critical component in convergence, neither the law nor the institution appear interested in regulatory convergence in the manner that technology has made it possible for broadcasting, internet and phone calls to occur through the use of one piece of equipment, such as a computer or a mobile phone.

### **The National Film and Video Censors Board Act**

The National Film Video Censors Board Act was enacted in 1993. The Act established the National Film Video Censors Board as a regulatory body to regulate the films and video industry in Nigeria. The Board is empowered by law to censor, approve and classify all films and videos whether imported or produced locally. It is also the duty of the Board to register all films and video outlets across the country and to keep a register of such registered outlets. Over the years, the NFVCB has operated without interfacing with either the National Broadcasting Commission or the Nigeria Communications Commission. The separate institutional and operational focus of the ICT sector agencies leaves many practices potentially harmful to consumers unsanctioned.

### **Evidence Act**

This Act repeals the 2004 Evidence Act of Nigeria and enacts a new evidence act which applies to all judicial proceedings in or before courts in Nigeria. The Act is the power house of civil and criminal procedure in Nigeria. The regime governing both civil and criminal procedure in Nigeria is the evidence Act, 2011. Relevant to the sphere of ICT Law is the fact that the Act provides for the admissibility of electronically-generated evidence in its 84th Section. That section provides as follows:

“In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in sub-section (2) of this Section are satisfied in relation to the statement and computer in question.” Section 84(2) provides thus:

“The conditions referred to in Sub-section (1) of this Section are-

- (a) That the document containing the statement was produced by the computer during a period over which the computer was regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;
- (b) That over that period, there was regularly supplied to the computer in the ordinary course of those activities, information of the kind contained in the statement or of the kind from which the information is derived;
- (c) That throughout the material part of that period, the computer was operating properly, if not, that in any respect in which it was not operating properly or was out of operation during that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) That the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.”

Closely connected to admissibility of computer-generated evidence is the provision contained in section 93 of the Act dealing with admissibility of electronic signatures. Specifically, section 93(3) provides that:

“An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person in order to proceed further with a transaction to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person”. The Act does not however define electronic signature.

Furthermore, one of the documentary exceptions to the rule against hearsay evidence in the repealed Act was contained in section 33(1) b, dealing with statement made in the ordinary course of business by a person who cannot be called as a witness. In the previous provision the admissible record must be ‘a book’. In the 2011 Act<sup>17</sup>, such record or entry, contained in an electronic device is now also admissible. Such ‘electronic device’ would include a compact disc, a flash drive, tape and other electronic storing devices. Also, Section 258 (1) (d) of the Evidence Act, 2011 describes a document, “any device by means of which information is recorded, stored or retrievable including computer output”. A Computer is in turn described to be “any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.” This definition is wide enough to cover all hand-held phones, i-pads, i-pods, ATM machines, and any other electronic device(s) that store, process and retrieve information.

### **Cyber Crime Act**

The Act provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. This act also ensures the protection of critical national information infrastructure, and promotes cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.

The 59 section Act has among its objectives to provide an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria; ensure the protection of critical national information infrastructure; and promote cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights. The Act protects critical national information infrastructure as seen in its Section 3. Part III of the Act stipulates offences and their respective penalties. Section 5 punishes anyone who commits an offence against the Critical national information infrastructure to varying imprisonment terms. Anyone who has access unlawfully to a computer is guilty of a crime. The Act also punishes any person who perpetrates electronic fraud or online fraud using a cyber café.

Other crimes stipulated for in Part III of the Act, particularly as seen in Sections 8-36 include System interference; Interception of electronic messages, email, electronic money transfers; Tampering with critical infrastructure; Willful misdirection of electronic messages; Unlawful interceptions; Computer related forgery; Computer related fraud; Theft of Electronic Devices; Unauthorized modification of computer systems, network data and system interference; Electronic Signature; Cyber terrorism; Fraudulent issuance of e-instructions; Reporting of cyber threats;

Identity theft and impersonation; Child pornography and related offences; Cyber stalking; Cybersquatting; Racist and xenophobic offences; Attempt, conspiracy, aiding and abetting; Importation and fabrication of e-tools; Breach of confidence by service providers; Manipulation of ATM/POS Terminals; Employees Responsibility; Phishing, spamming, spreading of computer virus; Electronic cards related fraud; Dealing in card of another; Purchase or sale of card of another; and Use of fraudulent device or attached emails and websites.

### **Copyright Act**

The Nigerian Copyright Act is an act which makes provision for the definition, protection, transfer, infringement of, remedy and penalty thereof of the copyright in literary works, musical works, artistic works, cinematograph films, sound recordings, broadcast, and other ancillary matters. The act, with relevance to the ICT sphere is seen providing that Copyright be conferred on Cinematograph films, sound recordings and broadcasts Act further prescribes punishment for various levels of breach of the provisions of the Act.

### **National Identity Management Commission Act**

This act establishes the National Identity Management Commission. The purpose of the act is to provide for the establishment of a National Identity Database and the National Identity Management Commission to be charged with the responsibilities for maintenance of the National Database, the registration of individuals, and the issuance of general Multi-purpose Identity Cards; and for related matters. Section 14 of the Act provides specifically for the establishment of a national identity database. The database according to that section of the Act shall contain registered information or data relating to citizens of Nigeria and non-Nigerian citizens who are registerable persons within the meaning of the Act. Furthermore, any person in respect of whom an entry is made in the Act is identified using unique and unambiguous features such as fingerprints and other biometric information. The Act further prescribes offences and their accompanying penalties.

### **National Information Technology Development Agency Act**

This act establishes the National Information Technology Development Agency (NITDA). The main aim of the act is to make regulations on the functioning of the agency. This it does by providing for the Composition of the Governing Board, their Powers and Functions Highly relevant to the sphere of ICT is the provision which stipulates the establishment of Information Technology Parks (an area where companies have offices and laboratories and do work involving science and technology). Section 19(2) of the NITDA Act provides that upon application made in that behalf by the Minister, through the Board charged with responsibility for matters relating to Commerce, the President may by Order designate the Parks as Free Zones and may specify in the Order such incentives and/or tax holidays that enterprises engaged in the Parks may enjoy The Act, in its interpretation section defines ICT related terms such as computer, computer network, computer system, data, electronic form, electronic record, software and information technology.

## **THE INSTITUTIONAL FRAMEWORKS**

### **The Nigerian Communications Commission**

The Nigerian Communications Commission (NCC) was established by the Nigerian Communications Act as an independent national regulatory authority for the telecommunications industry in Nigeria. The NCC is responsible for creating an enabling environment for competition among operators in the industry as well as ensuring the provision of qualitative and efficient

telecommunications services throughout the country. The main functions of the NCC, apart from implementing the WTA, include, inter alia: (a) The facilitation of investments in and entry into the Nigerian market for the provision and supply of communications services equipment and facilities; (b) The protection and promotion of the interest of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities; (c) Ensuring that licensees implement and operate at all times the most efficient and accurate billing system; (d) The promotion of fair competition in the communications industry and the protection of communications services and facilities providers from the misuse of market power or anti-competitive and unfair practices by other services or facilities providers or equipment suppliers.

### **The National Broadcasting Commission**

The National Broadcasting Commission (NBC) is established by the National Broadcasting Commission Act. The NBC is responsible for advising the federal government on the implementation of the National Mass Communication Policy, with particular reference to broadcasting as well as licensing Cable, DTH, and all terrestrial radio and television services. The NBC is also responsible for undertaking research and development in the broadcast industry, upholding the principles of equity and fairness in broadcasting, and establishing and disseminating a national broadcasting code, while also setting standards with regards to the contents and quality of the materials broadcast.

### **The Broadcasting Organizations of Nigeria**

The Broadcasting Organizations of Nigeria (BON) is a broad coalition of public and private broadcast organizations, duly registered by the Corporate Affairs Commission, as the nation's umbrella body of Terrestrial free-to-air Radio and Television, Direct-To-Home (DTH), Digital Terrestrial Television (DTT) and Multimedia Distribution System (MMDS).

Essentially, BON is an independent, non-governmental umbrella association of all private, public, commercial and community electronic media houses in Nigeria. Effort at forming the BON dates back to 1973. By then, there was the need for a collaborative organization under which the broadcasting media in Nigeria would operate. Apart from serving as an organ through which television and radio stations would speak with one voice, such organization would be used as a rallying point for coverage of major national and international events. In particular, there was the need for effective co-ordination of broadcast media coverage for the 1973 “All Africa Games” held in Nigeria. The world Festival Black African Arts and Culture (FESTAC) provided the platform through which BON was revived and given a new lease of life in 1977. After FESTAC '77, the fledgling organization went into hibernation once again and remained comatose for about seven years and was resuscitated in august, 1988.

### ***Function of BON include:***

1. Serves as a point of meeting for all local Radio, Television, DTH, MMDD, and DTT broadcasters.
2. Encourage the innovation of content and technology in the industry.
3. Foster the advancement of the membership interest both in the local, state, national, international, industry, and affairs of the public.

4. Serves as a body that advises the Federal and State governments on issues that have to do with the Broadcasting industry.
5. Sustains and encourages greater cooperation, unity, and collaboration among the Broadcasting Organisation as well as other players in the industry.
6. Engineer the improvement of quality and profitability when it comes to broadcasting in general.
7. Seek and judiciously utilize every given resource in order to improve manpower, research and also set training standards.

### **The National Information Technology Development Agency (NITDA)**

Following the approval of the National Information Technology Policy (National IT Policy) by the Federal Government of Nigeria in March 2001, the National Information Technology Development Agency (the NITDA) was established in 2001 under the Federal Ministry of Science and Technology. It was initially given with the task of implementing the policy through coordinating and promoting the development and use of information technology in Nigeria. Later, in 2007, the NITDA was formally established under an Act of the Nigerian National Assembly. The primary functions of the NITDA under the law comprise these: (a) creating a framework for the planning, research, development, standardisation, application, coordination, monitoring, evaluation and regulation of information technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose; (b) providing guidelines to facilitate the establishment and maintenance of appropriate infrastructure for information technology and systems application and development in Nigeria for the public and private sectors, urban/rural development, the economy and the government; (c) developing guidelines for electronic governance; (d) developing guidelines for the networking of public and private sector establishments; (e) developing guidelines for the standardisation and certification of information technology Escrow Source Code and Object Code Domiciliation, Application and Delivery systems in Nigeria; (f) rendering advisory services in all information technology matters to the public and private sectors; (g) introducing appropriate regulatory policies and incentives to encourage private sector investment in the information technology industry; (h) determining critical areas in Information technology requiring research intervention and facilitating research and development in those areas; and, (i) accelerating internet penetration in Nigeria and promoting sound internet governance.

An additional function of NITDA is to advise the Federal Government generally on issues related to the management and administration of Nigeria's country code top level domain (.ng) and also to supervise any organisation incorporated under the laws of Nigeria to manage and administer Nigeria's country code top level domain (.ng).

### **The National Environmental Standards and Regulation Enforcement Agency**

The National Environmental Standards and Regulation Enforcement Agency (NESREA) was established in 2007 by the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act. The Agency is responsible for ensuring the effective enforcement of environmental laws and regulations in the country, except in the oil and gas industry. The Act establishing the Agency creates provisions for the setting of air quality standards and atmospheric protection. The Act also prohibits the discharge of hazardous substances into the air or upon the land and waters of Nigeria or at the adjoining shorelines except where such discharge is permitted

or authorised under any law in force in Nigeria. Importantly, these provisions constitute a framework for controlling hazardous emissions from telecommunications and ICT equipment to prevent environmental and health hazards. An oversight in the law is illustrated by incessant confusion between the NESREA and the NCC's competing claims over the regulation of masts.

### ***Electro-magnetic radiation (EMR) and health concerns***

There are health dimensions to ICT usage. However, between governments and ICT operators in many jurisdictions, it seems that the attempt is chiefly to discredit claims that there are health hazards rather than to structure an effective legal regime that guarantees best practice. There are grounds to conclude that telecommunications equipment such as base stations as well as mobile phones do in fact emit electro-magnetic radiation that is ultimately harmful to the health of human beings. Electro-magnetic radiation consists of waves of electric and magnetic energy moving together through space at the speed of light. Issues regarding the harmful health impact of electro-magnetic radiation from base stations have been the subject of legal disputes in several countries. For example, in 2002 Vodafone, a GSM operator in Britain, sought to install mobile telephone antennae in the towers of the churches of St Margaret, Hawes and Holy Trinity, Knaresborough, in Leeds, England. This action resulted in objections from residents who lived within the vicinity of the churches, primarily on the grounds of the risks to their health from living close to the antennae. Vodafone petitioned the court in the combined cases of St. Margaret Hawes (No 215 of 2002) and Holy Trinity Knaresborough (No 233 of 2002). The issue for determination before the court was whether or not radiation from a telecommunications base station might affect the health of people in the vicinity of such base stations. The matters were resolved by determining the appropriate base station radiation emission threshold. In Nigeria, all deployed telecoms equipment, installations, terminal equipment, mobile handsets and equipment in customers' premises sold by all Nigeria telecom operations in their various bundled promotions are required to be type-approved by the telecommunications industry regulator, the Nigeria Communications Commission (NCC). This is in compliance with the electro-magnetic field (EMF) thresholds set by the International Commission on Non-ionising Radiation Protection (ICNIRP) guidelines, the ITU, Institute of Electrical and Electronic Engineers (IEEE), amongst other industry standards-setting bodies. While the debate on whether or not emissions pose health threats for Nigerian users of identified products continues, NESRA has sustained the task of regulating the related practices and the location of base stations to prevent environmental health hazards.

### **The Standards Organisation of Nigeria**

The Standards Organisation of Nigeria (SON) was established under the Standards Organisation of Nigeria Act as a regulatory framework for enforcing standardising methods of production in Nigeria. The SON is required under the law to be actively involved in the inspection of imported goods and quality assessment at the ports and manufacturing establishments. The importance of this exercise is enormous, considering the economic, health and safety implications of the influx of substandard goods into the country. This regulatory function of the SON extends to the ICT industry in the regulation and enforcement of standards of ICT products and equipment manufactured in the country or imported from elsewhere.

**Referenced Legislations**

Evidence Act of 2011

National Broadcasting Commission Act 38 of 1992 (amended by Act 55 of 1999)

National Environmental Standards and Regulations Enforcement Agency (Establishments) Act of 2007

National Film Video Censors Board Act 85 of 1993

National Information Technology Development Agency Act of 2007

Nigerian Communications Act of 2003

Nigerian Electronic Transactions Bill, 2011

Standards Organisation of Nigeria Act of 2004

Wireless Telegraphy Act of 1990