

# **E-Commerce in Nigeria: How to Move Forward**

## **Legal Framework for the Introduction of E-Commerce**

### **Introductory Issues**

- Distinguishing factor between e-commerce and other transactions is the electronic element.
- Most existing laws and regulations do not provide for the electronic element in e-transactions and that by itself necessitates the modification of the laws and regulations to accommodate this element.
- Primary vehicle for e-commerce is the Internet and Information technology and the legal framework must not only address the commercial aspect of the transaction but also the technology issues
- Nigeria currently does not have e-commerce specific legislation or bye-laws. Some existing legislation would however apply to Nigerian e-commerce, with some modifications of course.

### **What are the major issues**

- Legislation and Bye-laws
  - Domain name registration regulations
  - Consumer protection issues
  - Contract laws and regulations
  - Privacy laws and regulations
- Enforcement processes
  - Regulatory Process and agency
  - Specialized Law Courts and practitioners

### **Domain Name Registration Regulations**

- E-Mail is the major vehicle for e-commerce and e-mail is based on domain name registration
- Domain name is a finite resource mainly because it depends on alphabets, numbers, dots and dashes and therefore requires efficient management.
- Domain name has also been the subject of disputes and court cases in different parts of the world e.g. copyright infringement, cyber-squatting, anti-competitive acts etc.
- Italian Courts have ruled that the domain name is a distinctive sign and therefore that the registration of a domain name which is identical or confusingly similar to a distinctive name or trademark infringes trademark law and unfair competition rules.

- Indian Courts have similarly ruled and enforced trademark and copyright claims by domain name owners, particularly against cyber-squatters.
- In Nigeria, we do have Copyright and trademark laws [no competition law yet] but there has been no instance of adjudication thereon in regard to domain name registration mainly because no attention has been paid to this yet in Nigeria.
- Nigeria does not appear to have a Registration Authority for the assignment and management of domain names within the country code top-level domain
- Such a Registration Authority should also manage and maintain the database of registered domain names.
- There should also be regulation on domain name registration - e.g. assignments, revocations, dispute resolution processes, etc.

## **Consumer protection issues**

- Consumer Protection Council Act 1992 makes absolutely no provision in regard to electronic transactions.
- Hungary provides an example of a country with consumer protection laws for e-commerce. It recently updated its Distant Contract Regulations, viz:
  - This covers sale of goods or services through distant communications of which e-mail is a ready example;
- Exemptions include financial services, insurance, investment services.
- Mandatory information that must be provided by the seller include:
  - Full identity of supplier;
  - Main characteristics of goods or services;
  - Cost of delivery;
  - Payment arrangements;
  - Validity period of offer
- These details must be sent also in written and durable form (could be e-mail) to the buyer and must be received before or at conclusion of contract.
- Additional information to be supplied to the customer include:
  - conditions and procedures for exercising right of withdrawal;
  - Geographical address of supplier's place of business where consumer may address complaints;
  - After sales services and guarantees
  - Conditions for unspecified or exceeds a year.
- Consumer has a right of withdrawal without penalty or need to provide reasons within 8 working days or 3 months if supplier did not comply with its obligations to provide aforementioned information.
- If Consumer exercises his withdrawal option, Supplier must refund amount paid by Consumer within 30 days thereafter.

## **Contract and Evidence Laws**

- Major issues in e-commerce contracts are
  - Documentation; and
  - Signature
- Traditional contract consummation require that contracts be reduced into writing and properly signed by the parties. E-commerce presents peculiarities in this regard.
- Encryption and Digital signature provide the best method for guaranteeing the legality of documents
  - E-commerce documents must guarantee
    - Authentication - that document was executed by the parties
    - Integrity - document was not modified or tampered with between being sent and received
    - Non-repudiation - parties cannot resile and deny document
    - Confidentiality of document
  - Encryption takes care of confidentiality while digital signature ensures authentication, integrity and non-repudiation
  - Third party authorities are necessary for certification - they keep the public key for the encryption
- Some administrations and businesses insist on back-up confirmations e.g. standard documents and signatures to confirm contract.
- Nigeria's Evidence Laws makes no provision for digital signatures and even admission of e-mail as documentary evidence, particularly when not signed.
- Certification authorities required to be established

## **Privacy laws and regulations**

- This is absolutely essential to protect parties in regard to publication of market survey details and information
- In the processes of business transactions, it is customary for organisations to collate personal data of their customers and clients.
- Nigeria has absolutely no privacy and personal information laws. This lacunae is even more material in an Internet world where information published on the web is open to a global audience.
- Different countries have laws that restrict release of personal information e.g.
  - Data subjects' consent is required;
  - Data must be used for purposes for which they were compiled;
  - Data user may request, free of cost, for blocking or rectification of inaccurate data or enforce remedy against breach of confidentiality;
  - Processing of children's data must have the consent of the parents and there must be verification of such consent through regular mail; and

- Strict criminal and pecuniary sanctions are imposed in the event of default.

## **Criminal laws**

- Nigeria has none against Internet criminals e.g. cyber-squatters, hackers and virus manufacturers
- Breaches of some of the provisions in regard to e-commerce transactions should attract criminal sanctions e.g. breach of privacy laws
- Traditional definition of stealing may not cover electronic industrial espionage

## **Regulator processes and agency**

- International best practice recommends self-regulation by industry practitioners, with industry regulator exercising supervisory control.
- Industry Forum in New Zealand, for example, is taking the initiative at the instance of Government to establish practice codes that would ensure
  - Fair business practices
  - Advertising and marketing practices
  - Disclosure of identity of business
  - Disclosure of terms and conditions of contract
  - Mechanism for conclusion of contracts
  - Customer dispute resolution processes
  - Privacy principles
- This followed Government survey which established that
  - 90% of e-business failed to advise customers on which laws apply
  - 78% failed to explain how to lodge complain
  - 75% had no privacy policies
  - 62% had no refund or exchange policies
  - 50% failed to outline payment security mechanisms
  - 25% showed no physical address
- Britain also has such an industry forum called Which. Nigeria perhaps should evolve such an industry group that would work on self-regulation.

## **Global jurisdiction**

- Issues relating to e-commerce are virtually global in nature and require execution of international treaties between countries and formulation of model laws
- Some recent cases illustrate these issues
  - French Court's decision in N@rt ruled that the American company that was auctioning French art through Internet was in breach of French law which restricted French auction exclusively to French companies and individuals; and

- French Court’s decision against Yahoo held that the American company infringed French law against public presentation of anti-semitic materials since of course their web site was open and accessible to French audience
- Issue of jurisdiction could consequently be a problematic issue in e-commerce transactions.

### **Specialised Law Courts and practitioners**

- In order to adjudicate on e-commerce issues, one must be steeped in the intricacies and technical details of Communications and in particular, Information Technology and Internet
- Practitioners and Courts must be specialists if justice must be done in the event of disputes
- So far, Nigerian High Courts seem to recognise specialisation only in the area of Maritime practice. Specialised divisions should be created for Communications practice.