
Armed with technology, new models of commercial interaction are developing as business and consumers participate in an increasingly virtual or electronic market place and reap its attendant benefits. New technology has made it possible to pay for goods and services over the internet and in many instances, displace the need to handle physical cash.

However, the emergence of electronic commerce as a result of the development of the internet has brought with it a number of legal and socio-economic issues. Despite its promises, the problem is that the internet lacks the clear and fixed geographic lines of transit that traditionally characterize the physical trade of goods and services. It is against this background that this paper attempts to provide an overview of the regulatory framework, legal issues and prospects in the development of electronic commerce in Nigeria.

While Nigeria is transforming itself in the information and computer technology area, its laws must be relevant to the transition. Not only should the laws be applicable to innovations in e-commerce, they should also be on par with and sensitive to the legal development in electronic transactions and consumer protection in Nigeria.

Electronic commerce refers to the carrying out of business activities based upon the processing and transacting of digitized data, including text, sound and visual images, which ultimately results to an exchange of value across telecommunications networks. It is commonly perceived as the buying and selling of products or services over electronic systems such as the internet and other computer networks. In other words, products are marketed, advertised, sold, paid for and delivered through services of a website via the internet.

In appraising its relevance, e-commerce reduces cost associated with marketing, customer care and the burden of an infrastructure to conduct business, thereby raising the amount of funds available for profit investment. E-commerce has reshaped the foundations of trade and has brought many advantages to individuals and corporate entities. More goods and services are being bought and sold online on a daily basis. In fact some goods and services are bought and sold virtually online without any physical, tangible equivalent e.g. consultancy services and online entertainment.

The key distinguishing feature between e-commerce and other commercial transactions is the electronic element involved. With the development of information technologies as alternatives to paper based businesses, new types of contracts and type of goods were created such as virtual goods, digital contracts, online transactions etc. As a result, certain considerations lost their relevance such as the medium of the transaction or the geographic location of the parties. In spite of the wide difference between online and offline
transactions, the basic idea of contracts apply equally to both. What is needed is to adapt the laws governing commerce to accommodate electronic and internet infrastructure.

But e-commerce requires confidence and trust. One needs to be satisfied that transmitted orders or invoices have not been altered and that they emanate from whoever they appear to be from. There is need for a guaranteed level of privacy/confidentiality with respect to information. In an electronic transaction (not being paper based), the original of a data message is almost indistinguishable from a copy and bears no handwritten signature. This increases the incidence of fraud due to the relative ease in distorting or altering electronic information without being detected. There is also the evidential issue as to the admissibility of such electronic information in a court, although section 34 & 84 of the Evidence Act, 2011 (relating to the authenticity & admissibility of electronic evidence), seem to provide a good working framework in this regards.

Many businesses and consumers are wary of conducting extensive business over the internet sequel to the lack of a predictable legal environment governing electronic transactions in Nigeria. This is particularly so for international commercial activities where concerns about enforcement of contracts, data protection, privacy, security and other matters have lingered on, resulting to a consequent decline in large scale electronic business transactions.

To this extent, our existing legal framework must work with such adaptations as to give due effect and recognition to the rather new concepts of data messages, digital signature, authentication, amongst other terms associated with electronic transactions in Nigeria. The absence of the traditional physical medium in e-commerce necessitates the adaptation of our existing legal framework to satisfy the requirements of known legal concepts as “instruments”, “signature”, and “delivery” that are predicated on the use of a tangible (paper based) medium and geographical location.

It has been suggested that the greatest challenge to admissibility of electronic evidence under the old Evidence Act related to the definition of the word ‘document’ under the Act. The issue was whether the definition was wide enough to accommodate stored representation records such as PDF copies, emails, email logs etc. The provision restricted the definition of ‘document’ to paper-based materials, typically expressed in words and figures. However, the position is different now as the new Evidence Act, 2011 defines documents to include any device by means of which information is recorded, stored or retrievable including computer output.

The clear purpose of making such adaptations to our existing laws is to offer a means by which some or all the functions attributed to commerce in the paper-based medium can be validly performed in an electronic environment with the aim of promoting electronic businesses in Nigeria. Since the primary vehicle for e-commerce is the internet and information technology, the Nigeria legal framework should be adapted to address both the commercial aspect of the transaction and its corollary technological issues.
However, our statutes (written in somewhat archaic language), continues to require conditions as to a written note and signing in respect of contracts.

Two central issues in e-commerce contracts are documentation and signature. There are a number of specific statutory requirements that certain contracts be evidenced in writing, and which also require a signature. For example, Section 4 Statute of Fraud, 1677 states that proceedings to enforce a contract for sale of land can only be brought where the contract or some memorandum or note of it, is in writing and signed by the person against whom the action is brought or that person’s authorized agent. The courts have also held in a number of cases that an unsigned document is a worthless document. However, electronic commerce presents some peculiarities in this regards.

A first issue may be formulated as whether the use of emails may suffice as contracts in writing within the meaning of the Statute of Fraud and our various legislations on the subject; and secondly, whether an electronic mark will constitute a valid signature for the purpose of executing a contract.

With respect to the foregoing, one is generally inclined to interpret electronic signatures or marks in emails as sufficient to satisfy the traditional requirements of writing and execution. By section 93(2) & (3), Evidence Act 2011, an electronic signature in relation to a data message conveniently satisfies any requirement for a handwritten signature in so far as it sufficiently identifies an electronic record to the individual. The provision of Article 7 of the UNCITRAL model law on e-commerce 1996 is equally trite on this issue.

Thus, for the purpose of establishing proof of electronic signature, the use of passwords, identification, usernames etc may suffice. Hence, one may safely posit that electronic signatures for the purpose of execution are admissible in evidence provided it is certified and incorporated in an electronic communication in the course of an e-transaction.

Remarkable strides at the regulation of e-commerce in Nigeria are still at the stage of draft Bills before the legislative houses. Some relevant Bills before the National Assembly are the Security & Information Protection Bill of 2010, Electronic Transactions Protection Bill of 2010 and the Electric Commerce (Provision of Legal Recognition) Bill, 2008 which is modeled after the UNCITRAL model law on e-commerce 1996.

There is a need to assure Nigerians of the authenticity, reliability and legality of electronic transactions. Public confidence in electronic transactions must be boosted and those entering into electronic transactions must be assured that the law will not discriminate against the sanctity of their agreements merely because it is in electronic form.

This mandates an enabling legal environment on principal and ancillary issues surrounding electronic commerce or transactions. The Government should also go beyond creating laws, to actively utilisation of electronic delivery platforms in its commercial interactions and for the delivery of government services.