



# THE DIGITAL ECONOMY AND THE LAW; PROSPECTS AND CHALLENGES

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## INTRODUCTION

While change is said to be constant, the world has experienced in most recent times a change that is exponential in effect as opposed to a geometric change. This change is undoubtedly a result of the impact of the information and communication technologies in recent decades. Today, the world has moved past the traditional economy and have embraced digitalization in full, not by choice, but as a compulsory means to stay relevant in the times. The impact of the rapid changes cuts across all areas of law, from private law concerns to public law, the economic aspect of human life is not spared, in fact, it may pass as the most impacted sector. A variety of terms have been used to refer to this phenomenon, including 'gig economy', 'sharing', 'collaborative', 'platform', or 'on-demand' economy, 'crowdsourcing', 'cloud sourcing' and 'digital economy'.<sup>[1]</sup> With these unstoppable changes comes a number of legal concerns that must be addressed. This paper seeks to lightly point at some of these concerns, while acknowledging the positive impacts already being enjoyed and the possibility of gaining more from the new system.

## WHAT IS DIGITAL ECONOMY?

The term digital economy is yet to receive a unified definition to aid the understanding of what it entails. Divergent views have been expressed on what can be described as the digital economy. The core of the digital economy is the 'digital sector': the IT/ICT sector producing foundational digital goods and services. The true 'digital economy' – defined as "that part of economic output derived solely or primarily from digital technologies with a business model based on digital goods or services" – consists of the digital sector plus emerging digital and platform services. The widest scope – use of ICTs in all economic fields – is here referred to as the 'digitalised economy'.<sup>[2]</sup> Some relatable examples include Facebook, Amazon, Jumia, Law Pavilion, Apple, Google, Hale, Uber, etc.

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Some other attempts at defining the digital economy are provided here. The digital economy is "...the recent and still largely unrealized transformation of all sectors of the economy by the computer-enabled digitization of information." [3] "...includes goods or services whose development, production, sale, or provision is critically dependent upon digital technologies." [4] "The global network of economic and social activities that are enabled by digital technology, such as the internet and mobile networks." [5] "...an economy based on digital technologies (sometimes called the internet economy)." [6] "A complex structure of several levels/layers connected with each other by an almost endless and always growing number of nodes. Platforms are stacked on each other allowing for multiple routes to reach end-users and making it difficult to exclude certain players, i.e. competitors." [7] "The digital economy refers to both the digital access of goods and services, and the use of digital technology to help businesses." [8] "...a broad range of economic activities that include using digitized information and knowledge as the key factor of production, modern information networks as an important activity space, and the effective use of information and communication technology (ICT) as an important driver of productivity growth and economic structural optimization" [9] "...the economic activity that results from billions of everyday online connections among people, businesses, devices, data, and processes. The backbone of the digital economy is hyperconnectivity which means growing interconnectedness of people, organisations, and machines that results from the Internet, mobile technology and the internet of things (IoT)." [10] The concept of the digital economy is still growing towards uniformity, but there are common factors which cuts across all attempts at defining or describing the concept. These factors include the use of Information Communication Technologies and connected devices.

## **DIGITAL ECONOMY AND THE LAW IN NIGERIA**

The National Bureau of Statistics for Q4 2020 showed that the Information and Communications Technology sector contributed an impressive 14.70% to the Gross Domestic Product (GDP) of Nigeria and 12.9% in full year. [11] This speaks volume of the impact of the digital economy on the Nigerian economy. It is worthy of note that Nigeria has a National Digital Economic Policy and Strategy which focuses on 8-pillars amongst which is development of regulations. [12] The acceptance of the need to put in place regulations to enable the development of the sector is commendable.

Currently, existing regulatory instruments for the Digital Economy in Nigeria include [13] the Guidelines for Nigerian Content Development in Information and Communication Technology (ICT), Universal Access and Universal Service Regulations, Cybercrime Act 2015, Type Approval Regulations, Nigeria e-Government Interoperability Framework (Ne-GIF), Nigeria Cloud Computing Policy, Framework and Guidelines for Information and Communication Technology (ICT) Adoption in Tertiary Institutions, Nigeria ICT Innovation and Entrepreneurship Vision (NIIEV), Framework and Guidelines for Public Internet Access (PIA) 2019, Framework and Guidelines for the Use of Social Media Platforms in Public Institutions, Guidelines for Clearance of Information Technology (IT) Project by Public Institutions, Nigeria Data Protection Regulation 2019, Standards for Data Interoperability, Telecommunications Networks Interconnection Regulations, and the Consumer Code of Practice Regulations. There exist some other regulations which by virtue of their scope would cover the digital economy space, these would pass as secondary regulatory instruments.

Several government agencies are concerned and connected with the day-to-day running of the digital economy in Nigeria, ranging from approvals to regulatory powers, issuance of permits, inspection/investigation, etc. Amongst a host of others are, the Federal Ministry of Communications and Digital Economy, Nigerian Communications Commission (NCC), National Information Technology Development Agency (NITDA), etc.

## PROSPECTS AND CHALLENGES

As it has been rightly put forward, the digital economy calls to play different sectors, in like manner the operation of the digital economy touches on diverse areas of legal concern. In the United States, just like in other countries, the digital economy accounted for 6.5 percent (\$1,209.2 billion) of current-dollar GDP (\$18,624.5 billion) in 2016.[14] With the visible contribution of the digital economy to the world's system in economic growth, job creation, competitiveness, wider market reach, trade flexibility, innovation, speed, ease, and more, it will be out of place to undermine the impact of this industry.

In the midst of these positives is where the challenges also exist. The digital economy has brought about complex policy, regulatory and legal issues. By the very nature of the rapid change in new technologies, it has been very difficult to keep up with the trends by way of law making and regulation when it pertains to the digital economy. While the legislative/law making and regulation drafting is ongoing to address specific forms or concerns as produced by the digital economy, a new variant or a change in the existing concern occurs, making the law stale and unable to address the concerns. This goes on in different legal quarters and leaves the sector highly difficult to regulate. The borderless nature of this economy, explosion in connectivity, ever increasing data volumes, digital communication, dynamism, e-commerce and use of the Internet in general makes it an uphill task to bring up regulations that are timely and of long-lasting effect.

Further to this, the areas of legal concerns based on the operation of the digital economy includes, issues around how to treat and deal with electronic currencies, smart contracts, electronic signature, intellectual property rights, data protection and privacy, competition laws, human rights violations, freedom of expression and information and permissible limits thereof, cybercrimes, among other concerns. As it stands the extent of legal damage that can be caused by the digital economy and the means to prevent same cannot be comprehended in full.

## CONCLUSION

Regardless of the identified legal concerns, the digital economy has thrived smoothly gaining better acceptance by the day. The world is only playing catch-up with the light-speed of the digital economy. Laws are in place to ensure peace and order, and therefore, to avoid a chaotic state, laws must be put in place to regulate all activities. We must employ dynamism and open-mindedness if we must beat the fast pace movement of the digital economy and ensure it is rightly regulated. With respect to players in various industries, service providers or users alike, highly or lightly affected by the new normal, there now exist more reasons why legal consultation must be prioritized. Every bit of the digital economy has a connection or root in law, to scale through without regulatory issues, innocent violations, adequate protection of your rights and upholding the rights of others, sound legal advice must not be negotiated or compromised.

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