



THE LEGAL ADVISOR

NOVEMBER 2024



NEWSLETTER AT A GLANCE

▶ INTRODUCTION

THE LEGAL FOUNDATIONS OF
THE NIGERIAN DIGITAL
ECONOMY / KEY LEGAL
REFORMS IMPACTING
NIGERIA'S DIGITAL ECONOMY

▶ INTELLECTUAL PROPERTY (IP) IN THE DIGITAL AGE

▶ AI AND IP IN THE DIGITAL AGE

▶ DIGITAL RIGHTS AND PRIVILEGES

▶ ACCESSING THE GLOBAL DIGITAL MARKET: OPPORTUNITIES AND LEGAL CONSIDERATIONS

▶ LOOKING AHEAD: SHAPING NIGERIA'S DIGITAL FUTURE

SHAPING THE FUTURE

How Law is Empowering Nigeria's Digital Economy

INTRODUCTION

In commemoration of Digital Nigeria Day 2024, themed "Empowering a Digital Future," it is important to reflect on Nigeria's progress towards becoming a dynamic digital economy. In today's world, going digital is no longer optional; it is essential.

To stay competitive globally, countries, industries, and individuals must embrace the digital revolution. From groundbreaking fintech innovations transforming the way we make payments, to tech startups addressing local challenges, the digital economy is reshaping how we do business and how we live.

In this special newsletter edition, we explore the legal frameworks that drive Nigeria's digital transformation. From data protection to digital rights and intellectual property, we take a look at how the law not only enables innovation but also ensures that it occurs within a safe, regulated environment.

THE LEGAL FOUNDATIONS OF THE NIGERIAN DIGITAL ECONOMY/ KEY LEGAL REFORMS IMPACTING NIGERIA'S DIGITAL ECONOMY

In recent years, Nigeria has made significant strides in developing a statutory and regulatory framework that support its growing digital economy. These reforms are key to driving innovation and ensuring that digital activities happen in a safe, regulated space. Below, we have highlighted some of the key statutory and regulatory reforms shaping Nigeria's digital economy.

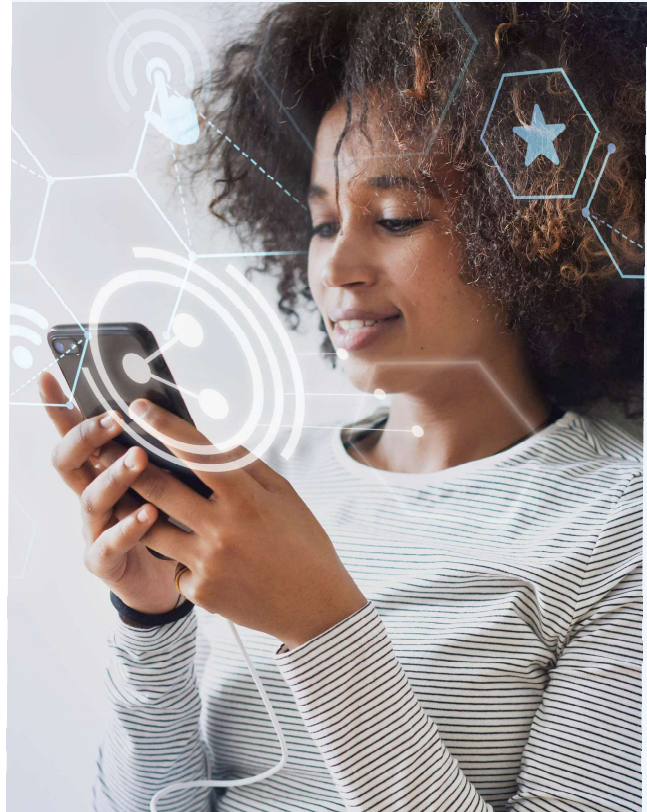
01 The Nigeria Data Protection Act 2023 (NDPA)

The enactment of the NDPA in 2023 was a significant milestone in Nigeria's digital transformation journey. It established the Nigeria Data Protection Commission (NDPC) and laid the legislative foundation for the enforcement of data privacy rights. In an era of increasing data breaches and privacy violations, the NDPA plays a critical role in fostering user trust, which is vital for the growth and credibility of Nigerian digital service providers. By promoting transparency and accountability, the NDPA strengthens the reputation of Nigerian businesses, both locally and internationally, paving the way for global trust and wider adoption of Nigerian digital services.

02 The National Digital Economy and E-Governance Bill 2024 (NDEEG Bill)

The NDEEG Bill 2024 is currently under consideration for passage into law and aims to revolutionize Nigeria's digital landscape. This bill addresses key areas such as electronic transactions, digital signatures, consumer protection, and digitization of the government.¹ Notably, Section 42 of the bill mandates that the Nigerian Information Technology Development Agency (NITDA) in consultation with the Federal Competition and Consumer Protection Commission (FCCPC), develop and issue regulations for online dispute resolution in relation to consumer protection in electronic commerce.

By empowering these agencies to create online dispute resolution regulations for e-commerce, the bill paves the way for faster, more accessible, and cost-effective resolution of consumer disputes in Nigeria's digital marketplace.



03 The Finance Act

The more recent Finance Act has introduced key amendments to the Nigerian tax laws which impact the Nigerian digital economy. Particularly, the amendment to Section 13 (2) of its Companies Income Tax Act (CITA) in the Finance Act 2019 introduced the concept of “**Significant Economic Presence (SEP)**” which marked a shift in how digital transactions are taxed.² Previously, Non-Resident Companies (NRCs) were only taxable if they had a physical presence in Nigeria. With the introduction of SEP, the criteria for determining taxpayers have been extended to include digital service providers operating in the Nigerian Market. NRCs are now taxable in Nigeria if they meet certain criteria, such as earning over N25 million in gross turnover from Nigeria within a given year, using a Nigerian domain (.ng), or customizing their

digital platforms to target Nigerian consumers (i.e., listing prices in Naira or offering local payment options).³

Similarly, the amendments to Section 3 of the Capital Gains Tax Act (CGTA) under the Finance Act 2023 have extended the definition of chargeable assets to include digital assets.

This means that gains from cryptocurrencies, Non-Fungible Tokens (NFTs), and other digital assets are now subject to taxation. These reforms broaden the tax net ensuring that companies profiting from Nigerian consumers contribute to the country's tax revenues, regardless of their physical location. This move aligns Nigeria with global trends in taxing the digital economy and ensures that companies profiting from Nigerian consumers contribute to the country's tax revenue.⁴

04 The Nigeria Startup Act 2022

The Nigeria Startup Act 2022 is also a significant legislative achievement aimed at improving tech innovation in the country. This Nigeria Startup Act introduces a range of incentives, including tax breaks and government funding, specifically tailored for startups.⁵ Key features such as startup labeling, improved access to funding, and regulatory collaboration are designed to attract investment.⁶ By creating a more supportive environment for entrepreneurs, the Act has the potential to restore investor confidence and stimulate growth within Nigeria's startup ecosystem.

05 SEC Regulations

The Security and Exchange Commission (SEC) introduced the 2022 Rules on Digital Assets, marking a significant step towards regulating digital assets in Nigeria. These rules provide a framework for the issuance, offering, and custody of digital assets.⁷ In 2024, the SEC launched the Framework for the Accelerated Regulatory Incubation Program for Virtual Asset Service Providers (VASPs) to foster innovation and provide regulatory clarity for VASPs. However, the program has faced



challenges, such as delays in licensing, with only two companies recently approved under SEC's incubation program.⁸

06 CBN Regulations

The CBN has issued guidelines for VASP bank account operations to regulate the interaction between VASPs and the traditional banking system.⁹ These guidelines permit financial institutions to open designated accounts for VASPs. However, these accounts are restricted to only handling digital asset transactions and cannot be used for other purposes like cash withdrawals or third-party cheque clearances. The guidelines also mandate that VASPs maintain a minimum collateral with the financial institution, ensure real-time access to transaction details for the banks, and settle all transactions in Naira through these designated accounts. While these guidelines provide a framework for VASPs to operate within the banking system, the CBN's previous actions against cryptocurrency transactions still cast a shadow of doubt over the long-term stability of this regulatory approach. This unpredictability makes it difficult for businesses to operate and for investors to confidently engage with the market. A clear

and consistent regulatory framework is crucial for building a stable and thriving digital asset ecosystem in Nigeria.

Despite the significant strides made by these reforms, challenges persist. The slow implementation of critical laws and regulations such as the NDPA, the Nigeria Startup Act, and the SEC Rules on Digital Assets raises serious concerns about Nigeria's ability to keep up with innovation and realize its full digital potential. The tech sector thrives on speed and adaptability, yet the current regulatory framework lacks the necessary enforcement mechanisms and rapid responses to match this fast-paced environment. While a solid legislative foundation is vital, Nigeria must also prioritize enforcement and decisive actions to navigate the ever-evolving digital economy effectively.



INTELLECTUAL PROPERTY (IP) IN THE DIGITAL AGE

In today's digital-driven world, intellectual property (IP) has become more vital than ever before. As tech companies and creatives continue to thrive on the strength of intangible assets, the link between IP and value creation has become undeniable.

With the internet breaking down traditional trade barriers, businesses and innovators are increasingly focused on protecting their ideas, designs, and inventions. Securing IP protection has become a major advantage in the race for success, empowering creators to safeguard their innovations in an age where digital replication and distribution are easier than ever.

In the e-commerce space, IP law plays a significant role in protecting both businesses and customers. Trademarks are vital for safeguarding a brand's identity, particularly in preventing cybersquatting where individuals buy domain names similar to well-known brands to confuse consumers or profit from a brand's goodwill.¹⁰ Trademarks help businesses maintain their reputation while protecting consumers from fraudulent activities. Similarly, copyright protection covers digital content such as product descriptions, website copy, images, and even the code behind websites.¹¹ This level of protection allows businesses to control their digital assets and reduce the risk of unauthorized use.

For software development companies, IP rights such as copyrights, trademarks, and patents are critical in maintaining a competitive edge. These rights not only protect innovative software but also provide opportunities for monetization through licensing and strategic partnerships. By securing exclusive rights, companies are encouraged to continue innovating, confident that their work is legally protected, and the value created is preserved. This has been especially important in Nigeria's fast-growing fintech and technology sectors, where companies like Flutterwave¹² and Moove¹³ have leveraged strong IP strategies to scale and attract international investments.

AI AND IP IN THE DIGITAL AGE

A new challenge facing the digital age, is the rise of Artificial Intelligence (AI) and the ongoing debate over who owns the IP rights to AI-generated content or inventions. The question of ownership (i.e., whether it should belong to the developer of the AI, the user who provides instructions, or the AI system itself) has sparked global discussions. In 2021, South Africa¹⁴ made headlines as the first country to grant a patent application where an AI system named DABUS

was listed as the sole inventor.¹⁵ This move sparked international debate as other jurisdictions, including the U.S and EU,¹⁶ rejected similar patent applications with DABUS listed as sole inventor, maintaining that only natural persons could be recognized as inventors in a patent application. In Nigeria, AI-generated IP remains unaddressed by current laws. As AI adoption grows, there is an urgent need for clear legislative guidance on how to navigate these new complexities. Extant laws, such as the Copyright Act 2022, only recognize ownership by legal persons.¹⁷ However, with the government's focus on promoting innovation and tech development, there's a growing need for legislation or case laws that address AI-related IP issues.

As technology continues to evolve, IP laws must adapt to meet with new challenges. New technologies like blockchain, AI, 3D printing, and Non-Fungible Tokens (NFTs) are raising novel legal questions around ownership, licensing, and enforcement.

To stay competitive, Nigeria must strengthen its IP laws to address these issues, protect innovators, and create an environment that encourages creativity and technological advancement.

DIGITAL RIGHTS AND PRIVILEGES

Digital rights are an important aspect of Nigeria's growing digital economy, protecting individuals' online freedoms and ensuring fair access to digital platforms and services. Nigeria currently lacks a comprehensive law defining digital rights. Although the Digital Rights and Freedom Bill was introduced in 2019 to safeguard human rights online, it failed to pass due to concerns about potential misuse of power to limit free expression.¹⁸ Nevertheless, essential digital rights can be inferred from the **Constitution of the Federal Republic of Nigeria, 1999** (as amended) and other existing legislations. The Constitution guarantees fundamental freedoms, including freedom of privacy, expression, and protection from discrimination.¹⁹ Additionally, the **Cybersecurity Act** establishes measures to

protect critical national information infrastructure and combat cybercrime, further contributing to the protection of digital rights in Nigeria.²⁰



The **Federal Consumer and Competition Protection Act, 2018** also highlights digital rights, ensuring that digital products and services are safe, reliable, and fairly marketed while offering avenues for redress against unfair trade practices. The Federal Consumer and Competition Protection Commission (FCCPC) took it a step further in 2022 by issuing the Limited Interim Regulatory/Registration Framework and Guidelines for Digital Lending to protect consumers from predatory lending practices.²¹

Despite FCCPC's measures, the rising incidents of fraud on e-commerce platforms suggests the urgent need for a more efficient enforcement framework to protect digital rights.

In recent times, there has been an emergence of new trends in digital rights that could reshape the industry. There is a heightened focus on regulating artificial intelligence to ensure ethical use and accountability, especially to prevent discrimination and misrepresentation.

Also, the debate over net neutrality is gaining traction, with advocates pushing for equal treatment of all internet data, which is crucial for maintaining free expression and access to information. As consumers become increasingly aware of their rights, there is a demand for transparency and fairness in digital services, which puts pressure on digital platforms to adopt transparent and more ethical practices.

ACCESSING THE GLOBAL DIGITAL MARKET: OPPORTUNITIES AND LEGAL CONSIDERATIONS

In today's increasingly digital world, the global marketplace is more accessible than ever. Nigerian technology companies, in particular, have a unique opportunity to tap into new markets, diversify their revenue streams, and compete on a global scale. However, expanding internationally brings a range of legal challenges that must be carefully managed to ensure success. Critical areas such as trade laws, IP protection (at national and international level), and cross-border data transfers play a significant role in determining whether a company thrives in new markets. Nigerian companies must familiarize themselves with these legal frameworks to become key players in both the African and global digital economies.

International and regional trade laws and treaties play a key role in the international expansion efforts of businesses within the

Nigerian digital economy. In recent years, Nigeria has strategically worked to diversify its economy and enhance trade through key international agreements, such as the African Continental Free Trade Area (AfCFTA).²² Additionally, Nigeria has established double taxation treaties with at least 16 countries and secured bilateral agreements that offer Nigerian businesses, opportunities to reduce tax burdens, lower tariffs, and streamline regulatory processes when expanding abroad.²³ AfCFTA, offers a range of benefits, including the elimination of tariffs on 90% of goods,²⁴ simplified cross-border trade processes,²⁵ and broader access to the African market. By effectively leveraging these frameworks,²⁶ Nigerian companies can extend their market reach, reduce expansion costs, and position themselves competitively in new markets across the continent and beyond.



When expanding into international markets, protecting IP is also key consideration for companies. Local IP registration only provides protection within the specific jurisdiction where it was registered. For example, registering IP in Nigeria offers protection only within Nigeria, and does not extend to other countries. To address this, international organizations like the [World Intellectual Property Organization \(WIPO\)](#) and regional bodies such as the [European Patent Office \(EPO\)](#), [African Regional Intellectual Property Organization \(ARIPO\)](#), [Organisation Africaine de la Propriété Intellectuelle \(OAPI\)](#), and [Benelux Office for Intellectual Property \(BOIP\)](#) provide platforms

for IP registration with protection across multiple countries. However, challenges persist, including a lack of integration with local registries, leading to enforcement gaps.

Additionally, variations in IP laws and enforcement mechanisms across jurisdictions create inconsistencies in protection scope, implications, and enforcement. Registering and securing intellectual property (IP) protection in multiple countries can be costly. Companies aiming to expand into new markets should seek professional advice to develop effective and cost-efficient strategies for safeguarding their IP. This ensures that their innovations are well-protected while managing expenses associated with registration in multiple jurisdictions.



As companies expand internationally, establishing credibility and assuring customers of data security is crucial. Each country has its own data protection laws and regulations, making compliance across multiple jurisdictions complex. Adhering to international standards such as ISO/IEC 27001:2022 and aligning with stringent frameworks like the General Data Protection Regulation (GDPR) not only improves data security practices but also facilitates compliance across most jurisdictions in which a company operates. Failure to comply with these regulations can result in severe penalties. For instance, [Uber](#) was recently fined 290 million

euros by the Dutch Supervisory Authority (SA) for unlawful transfer of drivers' details to the US.²⁷ With foreign companies increasingly participating in the Nigerian digital economy, there is a pressing need for improved regional and international cooperation to ensure the effective enforcement of data protection laws and regulations. Collaborative efforts among stakeholders can strengthen data privacy frameworks, ultimately fostering a safer digital environment for all participants in the global market.

In the near future, we expect to see more international cooperation in protecting and balancing the interests of businesses and customers in the global digital economy. This collaboration will likely focus on developing comprehensive international standards for digital services, information security, consumer protection, cross border IP rights (especially in the areas of AI), taxation, and cross border enforcement procedure of digital rights.

LOOKING AHEAD: SHAPING NIGERIA'S DIGITAL FUTURE

As Nigeria advances toward becoming a fully digitalized economy, the demand for agile, forward-thinking, and innovative legal frameworks will continue to grow. We anticipate further legal reforms in key areas such as artificial intelligence, digital rights protection, fintech, and digital assets, where regulation is still evolving.

By creating an enabling environment where tech companies can thrive and investors feel confident in backing innovative ventures, Nigeria is positioning itself as a future digital powerhouse.

At Tope Adebayo LP, we guide businesses through these evolving legal landscapes, from inception to growth and expansion. We are confident that with the right support and an enabling environment, innovation will not merely survive; it will thrive!

FOOTNOTE

- ^[1] Federal Ministry of Communications and Digital Economy, *National Digital Economy and E-Governance Act 2024* <https://fmcide.gov.ng/> accessed 23 October 2024.
- ^[2] Section 4 (C) of the Finance Act, 2019.
- ^[3] The Companies Income Tax Order on Significant Economic Presence 2020.
- ^[4] OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, BEPS: The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (OECD 2024) <https://pro.bloombergtax.com/brief/beps-the-oecd-taxation-of-the-digital-economy/> accessed 23 October 2024.
- ^[5] 'What Startups and Investors Should Expect from the Implementation of the Nigeria Startup Act 2022' (2022) <https://topeadebayolp.com/what-startups-and-investors-should-expect-from-the-implementation-of-the-nigeria-startup-act-2022/> accessed 23 October 2024
- ^[6] Sections 1, 24 and 29 of the Startup Act 2022.
- ^[7] Securities and Exchange Commission, *Rules on Issuance, Offering Platforms and Custody of Digital Assets* (SEC 2022)
- ^[8] Securities and Exchange Commission (Nigeria) <https://sec.gov.ng/> accessed 23 October 2024
- ^[9] Central Bank of Nigeria, 'Letter to All Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions' (5 February 2021) <https://www.crowdstrike.com/en-us/cybersecurity-101/threat-intelligence/cybersquatting-domain-squatting/> (Last accessed October 11, 2024)
- ^[10] <https://www.nolo.com/legal-encyclopedia/when-do-you-need-copyright-notice-websites-and-where-do-you-place-it.html#:~:text=If%20you%20have%20a%20website,a%20claim%20for%20copyright%20infringement.> (Last accessed October 11, 2024)
- ^[11] <https://www.crowdstrike.com/en-us/cybersecurity-101/threat-intelligence/cybersquatting-domain-squatting/> (Last accessed October 11, 2024)
- ^[12] <https://www.nolo.com/legal-encyclopedia/when-do-you-need-copyright-notice-websites-and-where-do-you-place-it.html#:~:text=If%20you%20have%20a%20website,a%20claim%20for%20copyright%20infringement.> (Last accessed October 11, 2024)
- ^[13] Flutterwave closes US\$250m in Series D Funding, valuation rises to over US\$3bn (Last accessed October 11, 2024)
- ^[14] <https://www.reuters.com/business/finance/uber-backed-startup-moove-valued-750-million-after-new-funding-2024-03-19/> (Last accessed October 11, 2024)
- ^[15] IP Watchdog, 'DABUS Gets First Patent in South Africa Following Formalities Examination' (IP Watchdog, 29 July 2021) <https://ipwatchdog.com/2021/07/29/dabus-gets-first-patent-south-africa-formalities-examination/id=136116/> accessed 23 October 2024
- ^[16] IP Watchdog, 'DABUS Gets First Patent in South Africa Following Formalities Examination' (IP Watchdog, 29 July 2021) <https://ipwatchdog.com/2021/07/29/dabus-gets-first-patent-south-africa-formalities-examination/id=136116/> accessed 11 October 2024
- ^[17] European Patent Office, 'EPO Publishes Grounds of Its Decision to Refuse Two Patent Applications Naming a Machine as Inventor' (European Patent Office, 27 January 2020) <https://www.epo.org/en/news-events/news/epo-publishes-grounds-its-decision-refuse-two-patent-applications-naming-machine> accessed 23 October 2024
- ^[18] Section 108 of the Copyright Act 2022
- ^[19] HumAngle Media, 'A Time to Look at Digital Rights and Freedom Bill Again' (2024) <https://humanglemedia.com/a-time-to-look-at-digital-rights-and-freedom-bill-again/> accessed 11 October 2024.
- ^[20] Sections 37, 38 and 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
- ^[21] Section 1 of the Cyber Crimes (Prohibition, Prevention etc.) Act 2015.
- ^[22] Cyberbullying by Loan App Operators: Ethical Practices in Loan Recovery and Consumer Rights Protection (2024) [Cyberbullying by loan app operators- ethical-practices-in-loan-recovery-and-consumer-rights-protection-2/](https://topeadebayolp.com/cyberbullying-by-loan-app-operators-ethical-practices-in-loan-recovery-and-consumer-rights-protection-2/) (Last accessed October 11, 2024)
- ^[23] On December 5, 2020, Nigeria became the 34th party to the AfCFTA agreement after ratifying it.
- ^[24] Office of the Secretary to the Government of the Federation, 'Treaties' (OSGF) <https://www.osgf.gov.ng/resources/treaties/> accessed 11 October 2024.
- ^[25] African Union, 'African Continental Free Trade Area (AfCFTA)' <https://au.int/en/african-continental-free-trade-area> accessed 11 October 2024.
- ^[26] Agreement Establishing the African Continental Free Trade Area, Article 19 <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area> accessed 11 October 2024.
- ^[27] Afripoli, 'The Road to Africa's Single Market: Progress So Far and Challenges for the Future' <https://afripoli.org/the-road-to-africas-single-market-progress-so-far-and-challenges-for-the-future> accessed 23 October 2024.
- ^[28] European Data Protection Board, 'Dutch SA Imposes Fine of €290 Million on Uber Because of Transfers of Drivers' Data to the US' (2024) https://www.edpb.europa.eu/news/news/2024/dutch-sa-imposes-fine-290-million-euro-uber-because-transfers-drivers-data-us_en accessed 11 October 2024

PRACTICE KEY CONTACTS



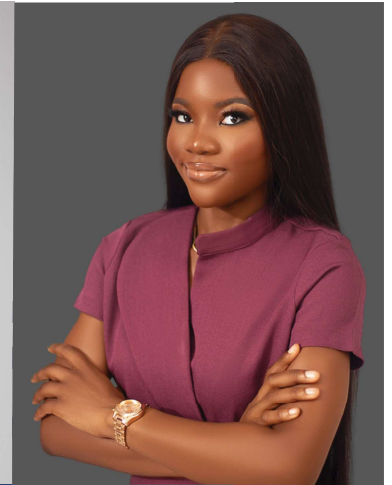
MOSUN OKE
PARTNER



TOLULOPE OGUNTADE
SENIOR ASSOCIATE



AZEEZAT OGUNSOLA
ASSOCIATE



EYITAYO AJISAFE
ASSOCIATE

Brought to you by TALP's Cooperate Commercial Department

For further enquiries, log onto www.topeadebayolp.com

Do you need to get in touch with us, to know more on how we can help you and your business? Kindly contact us by using any of the details provided below:

TOPEADEBAYO LP

25C Ladoke Akintola Street, G.R.A, Ikeja Lagos Nigeria

p: +234 (1) 628 4627

e: info@topeadebayolp.com

w: www.topeadebayolp.com

