

## Key Contacts



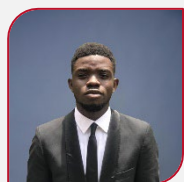
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# DIGITAL DISPUTE RESOLUTION: NAVIGATING LEGAL CHALLENGES IN ONLINE TRANSACTIONS

## Introduction

The development of Internet and Information and Communication Technology (ICT) has revolutionised the world and brought with them the emergence of online commerce. Trades are now concluded on the Internet between parties from different parts of the world. Online transactions have reshaped the foundations of trade and have brought many advantages to many 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 or tangible equivalent. Interestingly, Nigerian Courts are increasingly adopting digital tools, especially in the wake of the Covid-19 pandemic to resolve commercial disputes. Alternative dispute resolution (ADR) procedures such as arbitration and mediation are also being digitized.

Chiefly, given the borderless coverage of the internet, which courts will have jurisdiction in the event of a dispute, and what law(s) will apply? How can the terms of the contract be determined? How is the contract evidenced? Given the instantaneous nature of internet transactions, for instance, a message is sent as soon as a key is pressed or at the click of a button, what happens in situations where a message is garbled or sent in error? How about situations where the message is unauthorized or sent by an impostor? What rules of contract apply to online transactions or electronic commerce? In other words is there a binding contract enforceable by the courts when you access online content, etc.? This article attempts to answer the above questions and goes on to consider various aspects of online contractual obligations.

## Terms of Online Contract

Where a contract is negotiated by email, the same principles that apply where the contract is on ink and paper would also apply. Thus, the courts will consider the various exchange of emails, the terms stated in these emails that are not in conflict, the current and past conduct of the parties, the terms implied by industry customs and the terms implied by law

in order to determine the terms of the contract. For contracts via websites, and other online services, usually, the purchaser completes a pre-set order form and transmits it back to the seller. When the company accepts

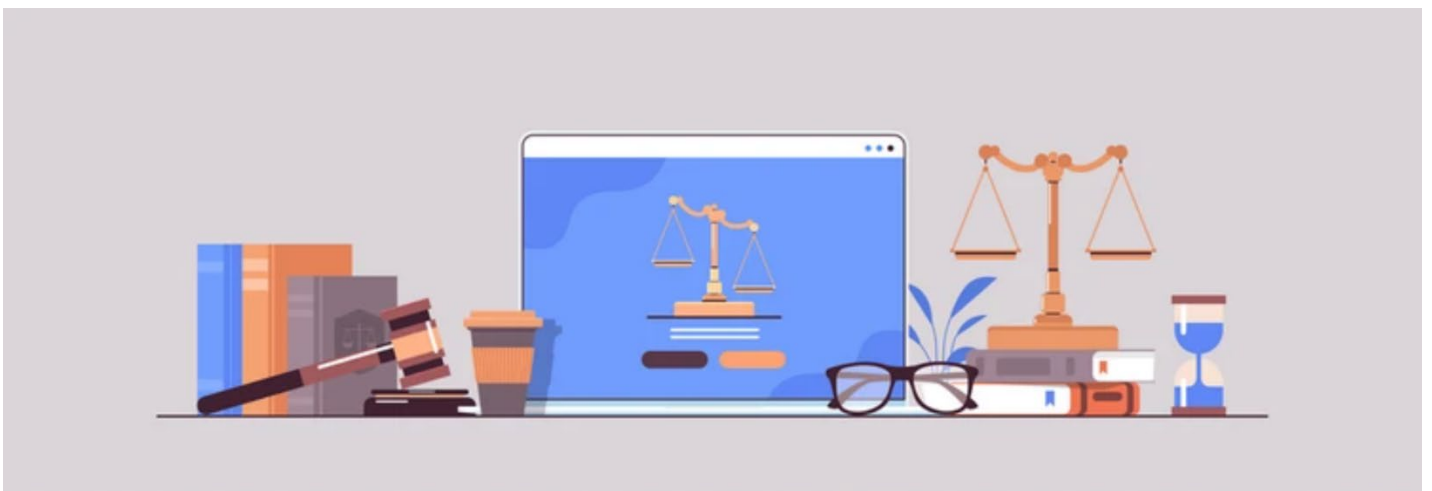
the order whether by sending an acknowledgment, delivering the goods, or billing the purchaser, a contract ensues.

In many online transactions, computers exchange formatted documents such as purchase orders and acknowledgments electronically, often with little or no human intervention through a process known as Electronic Data Interchange. The transaction sets usually contain basic information such as quantity and price but generally do not contain detailed terms such as warranties, limitations of liability, or remedies.

### **Click-Wrap Contracts and Browse-Wrap Contracts.**

**Click-wrap contracts** are used when an online publisher of software or other digital content imposes restrictions on its users by displaying terms and conditions on screens along with the content, stating that the user is deemed to accept the terms by using or downloading the content. If a webpage has multiple pages, the licence or other terms should be referenced on every page. Ideally, a user should be required to view the terms and click on an “Accept” button before proceeding. In fact, online contracts are more likely to be considered binding if express assent has been obtained, such as when a user clicks on a button to signify agreement to particular terms, usually referred to as click-wrap agreement.

**Browse-wrap contract** is where the user is presumed to be bound by merely visiting or using a website. The terms of use are listed on the web page or through a link at the bottom of the page and manufacturers claim to bind the user who visits the page or downloads content from the site. The courts generally are reluctant to enforce browse-wrap contracts because there is lack of an affirmative action on the part of the user to signify his assent to these terms and conditions.



### **Relevant laws and regulations that impact online transactions in Nigeria.**

- a. National Information Technology Development Agency Act, 2007
- b. Cybercrimes (Prohibition, Prevention, Etc.,) Act, 2015
- c. Federal Competition and Consumer Protection Act, 2018
- d. Evidence Act, 2011 (the Principal Act)
- e. Evidence (Amendment) Act, 2023
- f. Arbitration and Mediation Act, 2023
- g. Nigerian Data Protection Act, 2023
- h. Standard Organisation of Nigeria Act, 2015
- i. Sale of Goods Act, 1893

j. Statute of Frauds 1677.

### **How are Online Contracts Formed?**

Contracts may be formed online where the parties exchange emails which consist of an offer and acceptance. It is also possible for the ingredients of the contract to be partly by exchange of emails or other forms of electronic communications, paper documents, faxes and oral discussions, phone calls and text messages etc. Contracts may also be formed via websites and similar online services. An example is where a website advertises goods or services for sale and the customer completes and transmits an order form which is displayed on the website. A contract then ensues as soon as the vendor accepts the order, which is the offer.



Basically, online contracts like most other contracts may be either unilateral (contract of adhesion) or bilateral. The contract is unilateral when it is a non-negotiated agreement entered into electronically and is actually a proposed contract that becomes binding if assent is obtained. Majority of online contracts are of this nature and are therefore contracts of adhesion as the buyer often does not possess any bargaining power over the terms and conditions put up by the seller and the former is caged into a situation of take-it-or-leave-it. A bilateral contract is one where the parties negotiate and may be entered into either online or offline.

### **Enforceability and Common Legal Challenges in Online Contracts**

- a. Breach and Consequences of Breach of Online Contracts
- b. Evidential Problems and Proof of Online Contracts. See **Section 84 of the Evidence (Amendment) Act, 2023**
- c. Jurisdictional Issues and Conflict of Laws
- d. Infrastructural Inadequacy
- e. Anonymity
- f. Developing an Effective Legal Framework for Online Contracts

### **Consumer Protection in Online Transactions**

- i. The Sale of Goods Act provides for conditions that help unsuspecting buyers recover their money and reject goods which are not in line with their purchase order. See **Section 34 of the Sale of Goods Act**.

- II. The Federal Competition and Consumer Protection Act, 2018 (FCCPA) also provides several coverages for consumers. See **Sections 122, 127 and 128 of the FCCPA.**

### **Legal Considerations regarding Data Privacy and Security in Online Transactions**

Businesses can take a number of steps to protect their customer's data privacy. These steps include: using strong security measures, educating employees about data privacy, having a data privacy policy. **See Section 27 of the NDPA, 2023**

The NDPA mandates data controllers and data processors to take appropriate measures to protect the confidentiality and integrity of personal data under their control. What happens in the event of data breaches or privacy violation? **See section 40(2) of the NDPA.**

### **Alternative Dispute Resolution (ADR) in the Digital Space**

Courts of justice everywhere in the world are facing growing problems when trying to meet the needs of the market. ADR solutions to these problems, whether they are initiated privately or publicly, have a common goal: to solve disputes simply, quickly, efficiently and at a cost proportional to the stakes. Note also that using online or traditional ADR provides the parties to a conflict with greater guarantees of confidentiality. As we have seen, more and more stakeholders avoid referring disputes to the courts and favour the use of ADR.

**The Arbitration and Mediation Act, 2023** was enacted to provide unified framework for the fair and efficient settlement of commercial disputes by arbitration and mediation and make applicable, the convention on the recognition and enforcement of foreign arbitral awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of International commercial arbitration.

### **Conclusion**

In the current legal regime, a contract is no less a contract merely because it was formed online. In determining the nature of online contracts, this article intuitively turned to the traditional rules of contract formation. Because of the nature of online contracts, problem may arise as to the validity of offers and acceptance by computers in situations where there is no human involvement. In the international plane, a computer or a computer program is an electronic agent. A person that uses an electronic agent that he has selected for making an authentication, performance of an agreement, including manifestation of assent, is bound by the operations of the electronic agent, even if no individual was aware of or reviewed the agent's operations or the results of the operations. The law has long recognised the ability to enter into contracts through agents.

Parties to online contracts can agree on the terms and conditions of the contract including the choice of laws to govern the transactions. However, where there is no choice of governing law clause in an online contract and where the governing law cannot be implied, then it falls on the court or tribunal to determine the law to apply using the international conflict of law criteria.

In Nigeria, the determining factor for the applicable law that will apply in an online contract would be the location of the Court that will try the case irrespective of the substantive law of the contract. In area of proving of online contract, there have been progress as electronically generated evidence and digital signatures have been made admissible in the Nigerian courts and alternative dispute resolution forums.