



TEMPLARS Legislative Watch: The Draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries.

21 June 2022

On 13 June 2022, the National Information Technology Development Agency (“**NITDA**”) released the draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries (the “**Code**”) for review and public comment.

Among other objectives, the Code seeks to set out best practices required of Interactive Computer Service Platforms¹/Internet Intermediaries² (the “**ICSPs/IIs**”, collectively referred to as “**Platform Providers**”) which will make the digital ecosystem safer for Nigerians and Nigerian residents. This note briefly highlights some of the novel provisions sought to be introduced by the Code which may significantly modify the existing legislative and regulatory framework for online platforms (such as Twitter, Instagram, YouTube, Google Search, etc.) in Nigeria. Some of the salient-provisions in the Code are highlighted below.



1. The Code mandates Platform Providers to take down unlawful or prohibited³ content within 24 hours of receiving complaint



Key Contacts



Ijeoma Uju
Partner
ijeoma.uju@templars-law.com



Oghomwen Akpaibor
Senior Associate
oghomwen.akpaibor@templars-law.com



Okabonye Chukwuani
Associate
okabonye.chukwuani@templars-law.com

¹ICSPs are defined as any electronic medium or site where services are provided by means of a computer resource and on-demand and where users create, upload, share, disseminate, modify, or access information, including websites that provide reviews, gaming platform, online sites for conducting commercial transactions.

² IIs are defined to include social media operators, websites, blogs, media sharing websites, online discussion forums, streaming Platform, and other similar oriented intermediaries where services are either enabled or provided and transactions are conducted and where users can create, read, engage, upload, share, disseminate, modify, or access information.

³ Defined as content or information objectionable on the grounds of public interest, morality, order, security, peace, or is otherwise prohibited by applicable Nigerian laws

from a user⁴ or an authorised government agency⁵ about the existence of an unlawful or prohibited content⁶ on its platform.⁷

2. Following receipt of a Court order, Platform Providers are required to expeditiously provide any information under its domain including but not limited to disclosure of the identity of the creator of information on its Platform or render such assistance as may be required by an authorised government agency for the purpose of carrying out an investigation or prosecution of an offence.



3. Platform Providers are required to provide a channel that will always be available to authorised government agencies to lodge or forward a request or complaint against unlawful or harmful content. While the Code defines “unlawful content” as any content that violates an existing Nigerian law, “harmful content” is ambiguously defined as any content that is not unlawful but harmful.



4. The Code further seeks to provide for a mandatory regulatory filing as a form of a compliance monitoring mechanism. In this regard, it states that an annual compliance report is to be filed with NITDA by Platform Providers which should contain some specific information, such as the number of registered users on its platform in Nigeria, the number of content removed and reuploaded on the platform and information on the number of complaints registered on its platform.⁸



5. It provides for a definition for Large Service Platforms⁹ (the “LSPs”) and prescribes additional responsibilities for this class of Platform Providers, some of which include: mandatory incorporation in Nigeria, appointment of a liaison officer who will act as communication channel between the Platform Provider and the Nigerian government, data storage requirements and furnishing specific information to an authorised agency and/or a user on demand of such information.¹⁰



6. It stipulates that compliance with the Code is mandatory and non-compliance will be construed as a breach of the NITDA Act.¹¹



7. In keeping up with requirement to restrict hosting of prohibited materials, Platform Providers are also required to consider and comply with all Nigerian laws with relevant

⁴User is defined as any person who is registered or unregistered with a Platform Provider and uses, accesses, publishes, shares, transacts, views, displays, engages, downloads, or uploads any information on the Platform Provider’s Platform.

⁵ Authorised government agency is defined to include the NITDA, Nigerian Communications Commission, National Broadcasting Commission, or any agency authorised by its enabling law to issue a take-down order.

⁶ Prohibited Content is defined as any content or information objectionable on the grounds of public interest, morality, order, security, peace, or is otherwise prohibited by applicable Nigerian law.

⁷ Paragraph 2 of Part I of the Code, and Part IV of the Code.

⁸ Paragraph 9 of Part II of the Code.

⁹ LSPs are defined as a Platform Provider with more than 100,000 (One Hundred Thousand) users.

¹⁰ Part III of the Code.

¹¹ This makes contravening entities liable to a fine of N200,000.00 (c.\$480) or imprisonment for a term of 1 year or to both such fine and imprisonment (for first offenders), or a fine of N500,000 (c. \$1,200) for subsequent offenders.

provisions on prohibited materials including but not limited to the Advertising Practitioner’s Act and Code, Nigerian Broadcasting Commission Act and Code, Nigeria Communications Act and Code, to name a few.



Conclusion

The Code, which is now available for public comments, aims to safeguard the security and interest of Nigerians and non-Nigerians regarding activities conducted on the digital ecosystem, as well as to combat online harms such as disinformation, cyber harassment, child pornography, and others.

However, the Code raises a host of questions as its provisions which are laden with practicality and enforceability concerns, could create an unfavourable commercial market for Platform Providers. Furthermore, such provisions which appear to stifle these businesses with unfettered regulatory oversight and onerous compliance / takedown obligations, could potentially expose Platform Providers to a wide number of enforcement actions from the government or from aggrieved users.



Many of the obligations under the Code imposed on Platform Providers appear to conflict with judicial precedents on the applicability of certain laws such as the APCON Act & Code to certain categories of Platform operators, the international practices of such Platform Providers for dealing with complaints, the timeline for taking down content and the security measures for protecting the identities of users. There appears to be little to no room for the Platform Providers to exercise any discretion in taking down purportedly unlawful content.



There are also major concerns that the Code threatens the fundamental human rights of Nigerian citizens to freedom of speech and expression, enshrined in the 1999 Constitution of the Federal Republic of Nigeria (as amended), as it appears to give authorised government agents an unfettered discretion to determine what qualifies as a “harmful content”, and unilaterally issue complaints against such content to Platform Providers.



Additionally, the provisions of the Code particularly with respect to LSPs largely suggest that the Code can be used as a means for the government to monitor and control the nature of content that is available to the Nigerian public, especially considering the fact that the regulator is given the power to designate any Platform whose users are less than one hundred thousand (100, 000) to still comply with the obligations of a LSP on the basis of preserving the sovereignty, security, public order, foreign diplomatic relations, and integrity of Nigeria.



We will continue to monitor the progress of the Code, any potential enforcement of the Code by NITDA and the public feedback it receives.