



DATA PROTECTION IN NIGERIA

The Need for Compliance



The world has rapidly approached the digital age, where technology dominates almost every aspect of human interaction. Technology is massively involved in every human's day to day interaction that it seems as though Ray Kurzweil might have been right when he mentioned that Technology is part of humanity. Almost all of these interactions involve the transfer of data and Personal, private/sensitive data is being transmitted on a daily basis across various platforms, you are most likely sharing sensitive information on your device every time you access an unregulated web platform.

Protection of personal data has become a very sensitive issue, with the European Union [EU] adopting its General Data Protection Regulation of 2018 in response to various instances of personal data breach by major corporations. The most notable example is the Facebook–Cambridge Analytica scandal which shook the world.

Under Nigerian laws the right to privacy is protected under the constitution in Section 37 (Constitution of the Federal Republic of Nigeria 1999), and the law that most specifically deals with Data privacy and protection in Nigeria is the Nigeria Data Protection Regulations (**NDPR**) 2019. The regulation has been established with the primary objective of safeguarding data privacy; fostering safe conduct of transactions involving personal data and to make Nigerian institutions globally competitive and relevant. Several other Nigerian regulations deal with data protection to a limited extent such as the **Freedom of Information Act (2011)**, **The Cyber Crimes (Prohibition, Prevention Etc) Act 2015**, the **Consumer Protection Framework 2016** etc. But none most particularly deals with data protection like the NDPR.

The NDPR has set out a list of guidelines and requirements for all corporate organizations to follow, breach of these regulations are taken rather seriously. In 2018 for instance, Facebook was allegedly involved in a breach of data protection laws in the United Kingdom, by granting third party access to user information without sufficient consent. As a result of this allegation, a fine of £500, 000 (Five Hundred Thousand British Pounds) was imposed on Facebook by the United Kingdom Information Commissioner's Office and its Chief Executive Officer, (CEO) Mark Zuckerberg appeared before US Congressional Committees to answer questions on the extent and implications of the breach with Congress option to explore several options including stricter legal regulations, sanctions and a possible dissolution of the company. Similarly the NDPR stipulates fines for noncompliance that rise up to N10,000,000 (ten million naira). Typically almost all corporation who deal with third party data are required to comply with the NDPR with the annual deadline for compliance being March 15th yearly [although the deadline for filing the 2021 mandatory Data Protection Audit Report by Data Controllers has been extended from



15th March 2021 to 30th June 2021 as a response to the current economic realities – covid etc]

Basically, every company needs Data Protection compliance services. The NDPR specifies that a company that handles personal data of more than two thousand (2000) data subjects needs to conduct an audit and file an Annual Data Protection Audit Report on or before the 15th of March every year. The two thousand (2000) data subject threshold is limited to natural persons and includes employees, vendors, clients, visitors to company's premises and any other person who for one reason or the other has his information in the company's records. The test for Personal Data is that any information that can be used to identify a person is regarded personal data.

Invariably, it would appear that data compliance requirements is mandatory for every small to large scale corporation in Nigeria. Breaches of these requirements are typically followed by immediate sanctions, a most recent example is that on the 16th day of March 2021, the National Information Technology Development Agency (NITDA) announced that it has imposed a fine of ₦ 5, 000,000.00 (Five Million Naira) Only on Electronic Settlement Limited for personal data breach following an investigative process.

Without further ado, It has become fairly obvious that the need to properly comply with provisions on Data privacy protection cannot be overemphasized. It is noteworthy that data breaches are considered offences that do not only carry fines but retain options for prison sentences as they are regarded as breaches of the National Information Technology Development Agency Act (NITDA) 2007 provisions. The Act accordingly provides that first offenders will be liable on conviction to a fine of N200,000.00 (Two Hundred Thousand Naira) or imprisonment for a term of one (1) year or to both such fine and imprisonment. The Act further provides that for a second and subsequent offence, such offender will be liable to a fine of N500,000.00 (Five Hundred Thousand Naira) or to imprisonment for a term of 3 years or to both such fine and imprisonment.

Notwithstanding the above implications, there are obvious commercial implications that affect a company that has been accused of breaching data privacy policies. The damage



to public trust and the company's reputation is often time irreparable, thus a consumer dependent company may not survive a data breach sanction. In light of the above, we encourage companies to take immediate actions towards data compliance.

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