June 24, 2022

The Nigerian government has launched an initiative to regulate social media platforms with a new Code of Practice, months after lifting the controversial 7-month Twitter ban. On June 13, 2022, the National Information Technology Development Agency ("NITDA") published a draft regulatory document titled: Code of Practice (the “Code”) to regulate Interactive Computer Service Platforms¹ and Internet Intermediaries² ("Platform Providers"). The main goal of the Code is to regulate and establish the best practices for Platform Providers and define the rules for interactions in conducting various activities in the Nigerian digital ecosystem. The Code also speaks to morality and information regulation as it aims to prevent users from promoting revenge porn, child sexual abuse, cyberbullying, and spreading misinformation ³.

The Code highlights specific responsibilities which Platform Providers are expected to bear in line with all information and content presented on their platform as well as their duty to abide by Nigerian laws. Some of these responsibilities have been highlighted below:

1. Removal of unlawful content⁴ within 24 hours of receiving a complaint on their platform by a user or an authorized government agency⁵.

2. Upon a court order, prompt submission of information or provision of assistance where requested by any authorized government agency to assist with investigating, combating cybercrimes, or prosecuting an offense⁶.

3. Provision of a dedicated channel for the submission requests or complaints against unlawful or harmful content⁷ by authorized government agencies and users.

4. Filing of annual compliance report with NITDA which should contain specific information such as the number of registered users on their platforms, the number of active registered users, the number of closed and deactivated accounts, the number of removed content with and without notice or court order, number of contents put back with or without notice and any other relevant information, amongst others in Nigeria⁸.

5. Large Service Platforms⁹ ("LSPs") are required to fulfill certain conditions in order to operate in Nigeria such as mandatory incorporation in Nigeria, payment of taxes, and the appointment of country representatives who shall serve as a communication channel between the government and the Platform Provider.

6. Platform Providers with less than 100,000 users may be required to comply with the obligations of an LSP where it appears necessary to preserve the sovereignty, security, public order, foreign diplomatic relations, and integrity of Nigeria¹⁰.

7. Non-compliance with the provisions of the Code shall be construed as a breach of the provisions of the NITDA Act of 2007, which provides for penalties such as fines and imprisonment for convicted offenders¹¹.

Conclusion

While the provisions of the Code are generally commendable, it may be argued that some of the provisions infringe on certain fundamental human rights, such as freedom of expression¹² and the right to privacy¹³. Specifically, the
The definition of harmful content seems to give the Nigerian government unfettered control over the determination of what constitutes "harmful content". In addition, and as highlighted in Paragraph 2 above, the right to require the assistance of social media platforms, with investigations, albeit with a court order, is undoubtedly worrisome and poses a threat to the right of privacy of the users.

Nonetheless, given that the NITDA has recently informed the public that it is still entertaining stakeholders' contributions to the Code, which is in draft form, it is expected that some of these concerns will be addressed prior to the publication of the Code, in its final form.

1. Interactive Computer Service Platforms means 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. Internet Intermediaries include, but not limited to, 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. Paragraph 4 and 5 of Part 1 and Part II of the Code
4. Unlawful Content means any content that violates an existing law in Nigeria
5. Authorised Government Agency means the National Information Technology Development Agency (NITDA), Nigerian Communications Commission (NCC), National Broadcasting Commission (NBC), or any agency authorised by its enabling law and Paragraph 3 of Part 1 of the Code
6. Paragraph 2 of Part 1 of the Code
7. Harmful Content means content which is not unlawful but harmful and Paragraphs 7 and 8 of Part 1 of the Code
8. Paragraph 9 of Part II of the Code
9. LSPs are Platforms Providers with more than 100,000 users
10. Paragraph 1-6 of Part III of the Code
11. Section 18 of the NITDA Act 2007
12. Section 39 of the 1999 Constitution (as amended)
13. Section 37 of the 1999 Constitution (as amended).

Your Key Contacts

Omolola Coker
Partner, Lagos
D +234 1 279 7030
M +234 809 801 7742
omolola.coker@dentons.com

Iyunola Adekanye
Managing Associate, Lagos
D +234 1 279 7030
M +234 818 601 6692
iyunola.adekanye@dentons.com

Jeremy Odor
Senior Counsel, Lagos
D +234 1 279 7030
M +234 908 034 9794
jeremy.odor@dentons.com